SUPREME COURT
FIRST DIVISION

ELENA F. UICHICO, SAMUEL FLORO, VICTORIA F. BASILIO,
***Petitioners*,**

-versus-

G.R. No. 121434
June 2, 1997

NATIONAL LABOR RELATIONS COMMISSION, LUZVIMINDA SANTOS, SHIRLEY PORRAS, CARMEN ELIZARDE, ET AL.,
***Respondents*.**
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D E C I S I O N

HERMOSISIMA, JR., *J.*:

Sought to be reversed in this Special Civil Action for Certiorari and Prohibition are the Resolutions of public respondent National Labor Relations Commission (NLRC, for brevity), dated September 30, 1993, December 7, 1995, and May 24, 1995, holding petitioners herein liable for the illegal dismissal of private respondents and ordering them to pay the latter separation pay plus backwages.

Private respondents were employed by Crispa, Inc. for many years in the latter's garments factory located in Pasig Boulevard, Pasig City.

Sometime in September, 1991, private respondents' services were terminated on the ground of retrenchment due to alleged serious business losses suffered by Crispa, Inc. in the years immediately preceding 1990. Thereafter, respondent employees, on November, 1991, filed before the NLRC, National Capital Region, Manila, three (3) separate complaints for illegal dismissal and diminution of compensation against Crispa, Inc., Valeriano Floro, and the petitioners. Valeriano Floro was a major stockholder, incorporator and Director of Crispa, Inc., while the petitioners were high ranking officers and directors of the company. Said complaints were consolidated in order to expedite the proceedings. The case was assigned to Labor Arbiter Raul Aquino.

On July 20, 1992, after due hearing, Labor Arbiter Aquino rendered a decision dismissing the complaints for illegal dismissal but at the same time ordering Crispa, Inc., Floro and the petitioners to pay respondent employees separation pay equivalent to seventeen (17) days for every year of service, viz:

> "WHEREFORE, premises considered, the instant complaint for illegal dismissal is hereby DISMISSED for lack of merit. However, as discussed in this decision, respondents is (sic) hereby directed to pay the separation pay of the complainants equivalent to seventeen (17) days for every year of service and computed as follows:
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> x x x
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> All other claims are hereby dismissed for lack of merit. Respondent is hereby ordered to pay 10% attorney's fees based on the award.
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> SO ORDERED."[1]

Dissatisfied, private respondents appealed before the public respondent NLRC. In a Resolution, dated September 30, 1993, the Second Division of the NLRC found Crispa, Inc., Valeriano Floro, together with the petitioners liable for illegal dismissal, and modified the award of separation pay in the amount of one (1) month for every year of service instead of seventeen (17) days, to wit:

> "WHEREFORE, the assailed Decision is hereby Affirmed with Modification in so far as the award of separation pay is concerned to the effect that respondents are ordered to pay complainants one month for every year of service, instead of 17 days.
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> All other rulings are hereby AFFIRMED."[2]

Petitioners filed a Motion for Reconsideration on November 12, 1993 but the same was denied by the NLRC in a Resolution dated December 7, 1993, thus:

> "After due consideration of the Motion for Reconsideration filed by respondents on November 12, 1995, from the Resolution of September 30, 1993, the Commission (Second Division) RESOLVED to deny the same for lack of merit."[3]

On August 8, 1994, private respondents sought a clarification of public respondent NLRC's Resolution dated September 30, 1993 insofar as the computation of separation pay by the Examination and Computation Division was concerned as well as the failure of the Resolution to award them full backwages despite the finding of illegal dismissal.

On April 21, 1995, the NLRC, treating the Motion to Clarity Judgment as an Appeal, granted the same in this wise:

> "ACCORDINGLY, in view of the foregoing, the complainants-appellees Motion to Clarify Judgment is partially GRANTED and Mr. Ricardo Atienza, Acting Chief of the Examination and Computation Division is hereby directed to include in the computation, six months backwages as provided for in the September 30, 1993 Resolution of the Division, which was however omitted in the dispositive portion thereof.
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> SO ORDERED."[4]

Petitioners filed a Motion for Reconsideration of the April 21, 1995 Resolution, which was denied in another Resolution[5] dated May 24, 1995.

Hence, this petition.

We shall dismiss the petition. The law recognizes the right of every business entity to reduce its work force if the same is made necessary by compelling economic factors which would endanger its existence or stability. In spite of overwhelming support granted by the social justice provisions of our Constitution in favor of labor, the fundamental law itself guarantees, even during the process of tilting the scales of social justice towards workers and employees, "the right of enterprises to reasonable returns of investment and to expansion and growth."[6] To hold otherwise would not only be oppressive and inhuman,[7] but also counter-productive and ultimately subversive of the nation's thrust towards a resurgence in our economy which would ultimately benefit the majority of our people. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses,[8] the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[9] Thus, Article 283 of the Labor Code, which covers retrenchment, reads as follows:

> "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 (1/2) 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."

Retrenchment, or "lay-off" in layman's parlance, is the termination of employment initiated by the employer through no fault of the employee's and without prejudice to the latter, resorted to 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.[10] Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.[11] Nevertheless, while it is true that retrenchment is a management prerogative, it is still subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence. And since retrenchment strikes at the very core of an individual's employment, which may be the only lifeline on which he and his family depend for survival,[12] the burden clearly falls upon the employer to prove economic or business losses with appropriate supporting evidence.[13] Any claim of actual or potential business losses must satisfy certain established standards before any reduction of personnel becomes legal, viz:

"1. The losses expected and sought to be avoided must be substantial and not merely de minimis in extent;

2. The substantial losses apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer;

3. The retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and

4. The alleged losses, if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence."[14]

In sustaining the company's submission that it suffered serious business losses in 1991, thus necessitating the retrenchment of respondent employees, the Labor Arbiter found:

> "On the ground invoked by respondent for closing its business, i.e., serious losses and financial straits, respondent submitted Financial Report wherein it incurred a net loss of Fourty (sic) Three Million Four Hundred Eighteen Thousand Two Hundred Seventy Two and Ninety Eight Centavos (P43,418,272.98) in 1991. Thus, based on all the foregoing, we are constrained that respondent was, indeed, suffering from financial reverses that would justify its decision to close down its business. Hence, under Section 9 (b) Book VI, Rule III of Omnibus Rules Implementing the Labor Code, it provides:
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> > 'Section 9. (b) Where the termination of employment is due to retrenchment to prevent losses and in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, or where the employee suffers from a disease and his continued employment is prohibited by law or is prejudicial to his health or to the health of his co-employees, the employee shall be entitled to termination pay equivalent to at least one-half month pay for every year of service, a fraction of at least six months being considered as one whole year.'"[15]

The NLRC, in its September 30, 1993 Resolution, however, reversed the foregoing findings of the Labor Arbiter and adjudged Crispa, Inc. as well as the petitioners liable for illegal dismissal. The NLRC ruled, thus:

> "We observe that the basis of the Labor Arbiter in sustaining the argument of financial reverses is the Statement of Profit and Losses submitted by the respondent (Supra.). The same however, does not bear the signature of a certified public

> accountant or audited by an independent auditor. Briefly stated, it has no evidentiary value. As such, the allege financial losses which caused the temporary closure of respondent CRISPA, Inc. has not been sufficiently established. In the case of Lopez Sugar Corp. vs. FFW, 189 SCRA 179, the Supreme Court held that 'alleged losses if already realized and the expected losses sought to be forestalled must be proved by sufficient and commencing (sic) evidence'. Consequently, there being no financial reverses for (sic) men (sic) the termination of herein complainants from their employment is perforce illegal."[16]

We are more in accord with the aforequoted observations made by the NLRC. It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases.[17] However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value.[18] The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but self-serving documents which ought to be treated as a mere scrap of paper devoid of any probative value. For sure, this is not the kind of sufficient and convincing evidence necessary to discharge the burden of proof required of petitioners to establish the alleged losses suffered by Crispa, Inc. in the years immediately preceding 1990 that would justify the retrenchment of respondent employees. In fact, petitioners, as directors and officers of Crispa, Inc., already concede, albeit quite belatedly, in its Reply to Comment of Public Respondent,[19] the finding of public respondent NLRC that petitioners utterly failed to establish the alleged financial losses borne by Crispa, Inc.,[20] thus making the company guilty of illegal dismissal against the private respondents. According to petitioners, what they are actually assailing is the decision of the NLRC holding them solidarily liable with the company for the payment of separation pay and backwages to the private respondents. It is the contention of the petitioners that the award of backwages and separation pay is a

corporate obligation and must therefore be assumed by Crispa, Inc. alone.

We do not agree. A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The general rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities.[21] There are times, however, when solidary liabilities may be incurred but only when exceptional circumstances warrant such as in the following cases:

> "1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;
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> 2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;
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> 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or
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> 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action."[22]

In labor cases, particularly, corporate directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith.[23] In this case, it is undisputed that petitioners have a direct hand in the illegal dismissal of respondent employees. They were the ones, who as high-ranking officers and directors of Crispa, Inc., signed the Board Resolution retrenching the private respondents on

the feigned ground of serious business losses that had no basis apart from an unsigned and unaudited Profit and Loss Statement which, to repeat, had no evidentiary value whatsoever. This is indicative of bad faith on the part of petitioners for which they can be held jointly and severally liable with Crispa, Inc. for all the money claims of the illegally terminated respondent employees in this case.

WHEREFORE, finding no grave abuse of discretion on the part of the public respondent NLRC, the instant petition is hereby **DISMISSED**.

Costs against petitioners.

SO ORDERED.

Bellosillo, Vitug and Kapunan, *JJ.*, concur.
Padilla, *J.*, is on leave.

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[1] Decision, pp. 9 11; Rollo, pp. 45-47.
[2] Resolution, p. 8; Rollo, p. 34.
[3] Annex "F"; Rollo, p. 48.
[4] Decision, p. 5; Rollo, p. 22.
[5] Annex "B"; Rollo, p. 24.
[6] Balbalec vs. National Labor Relations Commission, 251 SCRA 398, 402 [1995], citing Section 3, Article XIII of the Constitution.
[7] Id., citing Gregorio Araneta Employees Union vs. Roldan, 97 Phil. 304 [1955].
[8] Id., citing Lopez Sugar Corporation vs. Federation of Free Workers 189 SCRA 179 [1990].
[9] Id., citing Gregorio Araneta Employees Union, supra.
[10] Sebuguero vs. National Labor Relations Commission, 248 SCRA 532, 542 [1995], citing Jose Agaton Sibal, Philippine Legal Encyclopedia, 502 [1986].
[11] Id., citing LVN Pictures Employees and Workers Association vs. LVN Pictures Inc., 35 SCRA 147 [1970]; Columbia Development Corp. vs. Minister of Labor and Employment, 146 SCRA 421 [1986].
[12] Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC, 194 SCRA 573, 577 [1991].
[13] Balbalec, supra., at 403.
[14] Lopez Sugar Corporation, supra., at 186-187 [1990].
[15] Decision, pp. 8-9; Rollo, pp. 44-45.
[16] Resolution, pp. 6-7; Rollo, pp. 32-33.
[17] Article 221, Labor Code of the Philippines.

[18] Jarcia Machine Shop and Auto Supply, Inc. vs. National Labor Relations Commission, G.R. No. 118045, 2 January 1997.
[19] Dated November 27, 1995.
[20] Reply, p. 1.
[21] Santos vs. National Labor Relations Commission, 254 SCRA 673, 681 [1996].
[22] MAM Realty Development Corporation vs. NLRC, 244 SCRA 797, 802-803 [1995].
[23] Ibid.; See also General Bank and Trust Company vs. Court of Appeals, 135 SCRA 569 [1985]; Sunio vs. NLRC, 127 SCRA 390 [1984].