SUPREME COURT
FIRST DIVISION

SABAS B. VILLENA,
***Petitioner*,**

-versus-

G.R. No. 90664
February 7, 1991

NATIONAL LABOR RELATIONS COMMISSION and BATANGAS, LAGUNA, TAYABAS BUS CO.,
***Respondents*.**
x----------x

D E C I S I O N

GRIÑO-AQUINO, *J.*:

This Petition seeks to annul the Decision of the National Labor Relations Commission (NLRC) dated June 15, 1989 in NLRC NCR Case No. 06-02151-87 entitled, "Sabas Villena vs. B.L.T.B. Co., Max Potenciano and Candido Potenciano," ordering the company to pay the petitioner retirement benefits equivalent to one month basic salary for every year of service in the company as provided in the CBA.

Sabas B. Villena started working with Batangas, Laguna and Tayabas Bus Company (BLTBCo.) as a bus conductor when he was only twenty-five years old. He rose from the ranks through dint of hard

work and dedicated service for thirty-two (32) years until he became the traffic operations manager in 1987 at the age of fifty-seven (57), directing the traffic operations with three traffic supervisors under him, who in turn, supervised drivers, inspectors and conductors on all the bus routes covering the major provinces of the Southern Tagalog region. Villena's work required continuous service on the road from dawn to dusk, hardly allowing him free time even on holidays.

On April 30, 1987, at around 8:30 in the morning, he received the schock of his life when a letter was handed to him by the company, advising that he was compulsorily retired from the service effective immediately. The letter reads:

> "April 24, 1987
>
> "MR. VILLENA B. SABAS
> 13 NOBLE EXT.
> BATANGAS CITY
> "438 MANAGER, TRAFFIC
>
> "Dear Mr. SABAS:
>
> "Sad to state, our company has been incurring big losses since 1985. In our determination to keep the company going, we have exerted the best of our efforts and talents to solve the problem but still the losses continued to grow to the extent that the whole company is now endangered. Rather than allow the company to die and deprive the families of more than 2,000 employees of their source of livelihood, the Management has decided to take decisive measures to prevent further losses by cutting down the expenses and improving its operations at the least cost.
>
> "You have been with us for more than 20 years. We have valued your services and have already considered you as a member of the BLTBCo. family. Deep within our heart, it is painful just to think of losing you from our sight even for a moment. But with our hands chained by the burdens imposed by our Collective Bargaining Agreement, our choice of solutions have been narrowed down to just a few, one of which is to avail of the

compulsory retirement provisions of our CBA. We, therefore, regret that much as we wish to retain you, we are forced by the circumstances to RETIRE you from the service effective April 30, 1987.

"We want to emphasize that your long service with the company is engraved in the history of BLTBCo. Rest assured that after getting your retirement benefits, you are still welcome to visit us. We are still hopeful that as soon as we overcome the present economic crisis, we may again take you in so that you may be rewarded for your sacrifice of these items.

Very truly yours,
"(Sgd.) Candido A. Potenciano
"V-P Administration"
(Annex A, p. 34, Rollo.)

Villena was verbally advised to turn over his service vehicle, collect all his belongings, and leave the company premises on the same day. Hurt, dejected and confused, he meekly left the company premises and waited for advice regarding the "benefits" mentioned in the letter which failed to mention how much he would receive. At the time he was "compulsorily retired," Villena was receiving the following remunerations:

Basic salary	P1,750.00
Allowance (mandatory)	510.00
Company Assistance	1,490.00
	P3,750.00
	=======

That amount was in addition to per diems and representation allowance.

After one month had elapsed and he did not hear from the company, Villena sought legal counsel and assistance.

On May 27, 1987, Villena's lawyer wrote the company a letter demanding clarification of the terms of Villena's "retirement" from the service, and raising the following points:

"1. The ground upon which you base Mr. Villena's compulsory retirement is the big and continuous losses suffered by your company. Thus, the retrenchment of personnel. Under Philippine law, a company is required to give at least one (1) month notice to the employee before the intended date of termination for this ground for separation.

"In this particular case, the notice of termination was given to Mr. Villena only in the morning of April 30, 1987, the very same day his termination was to take effect.

"2. Mr. Villena is a managerial employee who is excluded from the bargaining unit as defined in your company's CBA. Notwithstanding said exclusion, you are using the CBA compulsory retirement provision to apply to him in this particular instance.

"3. Your letter did not state the amount of separation benefits and other payments that Mr. Villena will be given due to this separation. Neither did you inform him the time within which he can expect said payment to be given.

"All of these amount to violation of Mr. Villena's rights as an employee. It is made worse by the fact that he has served your company with utmost dedication and loyalty for the PAST 32 YEARS. We strongly protest your company's blatant disregard of his rights as an employee and dignity as a person!" (p. 35, Rollo.)

BLTBCo. ignored the letter, prompting Villena to file a complaint for illegal dismissal in the NLRC. During the conciliation proceedings, the company admitted its omission to serve the required notice of termination and offered to pay P66,370 computed on the basis of Villena's salary, as follows:

Retirement Pay (one month's basic salary for every year of service, including integration of existing wage orders to latest salary)	P 62,620.00

One Month salary for the month of May, 1987 in lieu of the prior 30 day notice	P3,750.00
	P 66,370.00
	========

Villena claimed that the basis for computing his benefits should be his gross compensation at the time he was separated from service, including the amount reflected as "company assistance," which amounted to P3,750. Based on this computation, Villena claimed entitlement to P123,750. BLTBCo. did not agree to pay him that amount.

During the last conciliation meeting before the labor arbiter, Villena requested that the amount of P66,370 admitted by BLTBCo. as its liability be released to him, without prejudice to the determination of the correct amount due him, but the company refused to do so.

On November 11, 1987, the labor arbiter issued a decision, declaring that the computation of Villena's retirement benefits should be based on the company's CBA provision on compulsory retirement for rank-and-file employees, notwithstanding the fact that he was a managerial employee. The CBA provision used only an employee's basic salary as basis for the computation of retirement pay. In addition, Villena was awarded one month pay in lieu of advance notice of termination which BLTBCo. failed to observe.

Villena appealed from the labor arbiter's decision. The company opposed the appeal. On February 28, 1989, the Fourth Division of the NLRC unanimously promulgated a decision ruling in favor of Villena. The NLRC held that the main reason for Villena's compulsory retirement was retrenchment because of financial reverses which the company claimed to have suffered. However, the company was found wanting in legal compliance with the retrenchment procedures and its alleged business reverses were not identified or proven. The provisions of the company CBA for the rank-and-files were erroneously interpreted to include Villena, who was a managerial employee, to the detriment of the latter's tenurial rights.

BLTBCo. filed a motion for reconsideration of the decision. On June 15, 1989, the Second Division of the NLRC rendered a decision setting

aside the February 28, 1989 decision of the Fourth Division and restored that of the labor arbiter.

Villena filed this petition, alleging that the respondent Second Division of the NLRC gravely abused its discretion and/or acted without or in excess of its jurisdiction:

1. in failing to rule on his dismissal;

2. in sustaining his termination in the guise of "compulsory retirement," notwithstanding the lack of evidence to prove financial losses and prior notice;

3. in declaring a provision in the CBA of the company's rank-and-file employees "beneficially" applicable to a managerial employee; and

4. in awarding him separation pay based on "basic salary" instead of his gross compensation at the time of his illegal dismissal.

Why Villena was singled out for compulsory retirement when he was only 57 years old and after having served thirty-two (32) years in the company, has not been explained. While the purpose was allegedly to carry out a retrenchment program to cut losses, the legal procedure for the retrenchment of personnel was not followed, to wit: (1) one-month prior notice to the employee as prescribed by law was not given (Art. 283, Labor Code of the Philippines, as amended; Sec. 5, Rule XIV, B.P. 130); (2) no fair and reasonable criteria were used in carrying out the retrenchment program, such as (a) less-preferred status (i.e., temporary employees), (b) efficiency rating, and (c) seniority (Asiaworld Publishing House vs. Ople, 152 SCRA 219); and (3) no proof of the alleged financial losses suffered by the company was produced (Columbia Development Corp. vs. Minister of Labor & Employment, 146 SCRA 421). It appears, therefore, that the so-called "compulsory retirement" was a scheme employed by the company to terminate Villena's employment without complying with the due process requirements of the law and without regard for his right to security of tenure.

While the law recognizes the right of an employer to dismiss an employee in justifiable cases, it frowns upon the arbitrary and whimsical exercise of that prerogative when the employee's right to due process is violated (Tan, Jr. vs. NLRC, G.R. No. 85919, March 23, 1990). Business losses as a just cause for retrenchment, must be proved, for they can be feigned (Garcia vs. NLRC, 153 SCRA 639; Columbia Development Corporation vs. Minister of Labor and Employment, 146 SCRA 421).

Such proof was wanting in this case. The "compulsory retirement" of Villena was in effect a dismissal in violation of law. He still had a full three years to serve the company when his employment was peremptorily terminated by his employer. Having been illegally dismissed, he is entitled to receive full compensation for the remaining three years of his work life. Upon reaching age sixty (60), he may be retired and shall be entitled to receive the normal retirement benefits under the company's applicable bona-fide retirement plan or established company policy, or, in the absence thereof, as provided in Section 14, Book VI of the Implementing Regulations to the Labor Code, which provides:

> "Sec. 14. Retirement benefits — (a) An employee who is retired pursuant to a bona-fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent to at least one month salary or to one half-month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.
>
> "(b) Where both the employer and the employee contribute to the retirement plan, agreement or policy, the employer's total contribution thereto shall not be less than the total termination pay to which the employee would have been entitled had there been no such retirement plan. In case the employer's contribution is less than the termination pay the employee is entitled to receive, the employer shall pay the deficiency upon the retirement of the employee.

"(c) This Section shall apply where the employee retires at the age of sixty (60) years or older."

WHEREFORE, finding grave abuse of discretion in the Decision dated June 15, 1989 of the Second Division of the National Labor Relations Commission in Case No. 06-02151-87, the questioned decision is hereby annulled and set aside and a new one is entered ordering the private respondent, Batangas, Laguna, Tayabas Bus Co., to pay the petitioner, Sabas Villena, his full backwages, allowances and other benefits for a period of three (3) years after his illegal dismissal from the service on April 24, 1987, until he reached the compulsory retirement age, plus his retirement benefits equivalent to his gross monthly pay, allowances and other benefits for every year of service up to age sixty (60), which is the normal retirement age for him. Costs against the respondent Batangas, Laguna, Tayabas Bus Co.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, *JJ.*, concur.