

**AG&P UNITED RANK AND FILE ASSOCIATION (AG&P URFA)
REYNALDO V. REYES, MARCELINO ADLIT, QUINTIN ONG III,
TEOFILO C. RAMOS, FELIMON R. VALIENTE, MA. MAGDALENA
MAGALONG, TORIBIO B. ...**

G.R. No. 108259. November 29, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a special civil action for certiorari to set aside the resolution, dated May 29, 1992, of the First Division of the NLRC and its resolution promulgated on October 29, 1992, reconsidering the decision of the Third Division of the same body and reinstating that of Labor Arbiter Quintin Mendoza who dismissed petitioners' complaint for illegal dismissal and unfair labor practice.

The facts are as follows:

Petitioner union is the duly certified bargaining agent of the rank and file employees of the respondent corporation. The individual complainants are officers and members of petitioner. As a result of a deadlock in the negotiations for a collective bargaining agreement, the union declared a strike on September 22, 1987.

Less than a month later, the Department of Labor and Employment assumed jurisdiction over the dispute. Then Secretary Franklin Drilon rendered a decision on February 10, 1988 from which both parties appealed.

On January 11, 1988, prior to the rendition of the decision of the Secretary of Labor and Employment, the president of respondent company announced the adoption by the company of several cost-cutting measures to forestall impending financial losses. Among these was a so-called "redundancy program," which, as implemented on March 1, 1988, resulted in the layoff of around 177 employees, some of whom were officers and members of the petitioner union. The affected employees were given separation pay equivalent to one month pay for every year of service, for which they signed documents of waiver.

On March 14, 1988, however, petitioners filed a complaint for unfair labor practice and illegal dismissal. After trial, Labor Arbiter Mendoza found the complaint to be without merit and accordingly dismissed it. He found the "redundancy program" necessary for the company's existence and considered private respondent's practice of rehiring of reemploying dismissed employees under the said program as managerial prerogative, made not only in pursuance of the company's policy of giving preference to its dismissed workers, but actually beneficial to the workers as well. Moreover, he held that petitioners' acceptance of termination pay and other benefits constituted a waiver of their right to question their dismissal.

On appeal, the Third Division of the National Labor Relations Commission reversed the labor arbiter's ruling. It found that the company did not incur losses but instead made substantial profits from 1983 to 1986. Consequently it held private respondents guilty of unfair labor practice and illegal dismissal of petitioners and ordered it to reinstate the individual petitioner to their former positions without loss of seniority rights and to pay them full

back wages, plus ten percent (10%) of the total award as attorney's fees.[1]

The company moved for a reconsideration. On May 29, 1992, the First Division, to which the case was reassigned after the reorganization of the NLRC under R.A. No. 6715, reconsidered the decision of the Third Division and reinstated the decision of the labor arbiter. It admitted on appeal evidence of losses sustained by the company from 1987 up to 1990. The admission of the evidence strengthened private respondent's claim that the petitioners had not been illegally dismissed but had been separated from employment as a result of the "redundancy program" implemented in accordance with the conditions for retrenching, to wit:

- (1) The losses expected should be substantial and not merely de minimis in extent.
- (2) The substantial loss 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.[2]

Petitioners filed a motion for reconsideration but their motion was denied in a resolution promulgated on October 29, 1992. Hence, this petition.

Petitioner contend that the NLRC gravely abused its discretion by:

- (1) admitting evidence of losses, which was not introduced in the proceedings before the labor arbiter;
- (2) declaring the legality of the redundancy program implemented by private respondent on March 31, 1988;
- (3) not declaring the private respondent guilty of illegal dismissal and unfair labor practice;
- (4) not declaring as null and void the quitclaims and releases issued by petitioners.

The petition has no merit.

It is now settled that the NLRC has the power to admit on appeal additional evidence to show lawful cause for dismissal, provided that the delay in the submission of said evidence is explained and the same clearly proves the employer's allegation of a valid cause for dismissing his employees.[3]

In the case at bar, evidence of losses for the years 1987 up to 1990 was belatedly introduced in the NLRC. But the delay was satisfactorily explained by respondent company, as the audit conducted on its financial report by Sycip Gorres Velayo and Co. was completed only in 1991. The additional evidence presented confirmed private respondent's allegation that the losses expected by the company were substantial and reasonably imminent to justify the layoff of the individual petitioners.

At this point, it is necessary to distinguish "redundancy" from "retrenchment." Both are mentioned in Art. 283 of the Labor Code as just causes for the closing of establishments or reduction of personnel. "Redundancy" exists when the services of an employee are in excess of what is required by an enterprise.[4] "Retrenchment" on the other hand, is one of the economic grounds for dismissing employees and is resorted to primarily to avoid or minimize business losses.[5] Private respondent's "redundancy program," while denominated as such, is more precisely termed "retrenchment" because it is primarily intended to prevent serious business losses.

As already stated, the Labor Code recognizes retrenchment as one of the authorized causes for terminating the employer-employee relationship and the decision to retrench or not to retrench is a management prerogative.[6] In the case at bar, the company losses were duly established by the financial statements presented by both parties. As the NLRC (First Division) noted:

In the case at bar, there is no question that respondent's income had been continuously decreasing P205 million

in 1984; P175 million in 1985 and P101 million in 1986. In 1987, however, it declared a loss of P34 million. The declining trend in respondent income and losses in 1987, confirms its allegation that respondent is predicting a bleak future considering the slump not only in foreign contracts but with respect to domestic contracts as well. True enough, respondent incurred further tremendous losses in 1990 in the amount of P176,181,505.00. In other words, the losses or abrupt down fall in income which respondent wanted to abate by resorting to the reduction in the number of employees was imminent and real.

Indeed, the records show that aside from its "redundancy program," respondent company had to resort to other cost-cutting measures in order to stave off impending losses.[7]

Petitioners contend that the "redundancy program" was actually a union-busting scheme of management, aimed at removing union officers who had declared a strike. This contention cannot stand in the face of evidence of substantial losses suffered by the company. Moreover, while it is true that the company rehired or reemployed some of the dismissed workers, it has been shown that such action was made only as company projects became available and that this was done in pursuance of the company's policy of giving preference to its former workers in the hiring of project employees. The rehiring or reemployment does not negate the imminence of losses, which prompted private respondent to retrench.

Lastly, it is not disputed that petitioners signed documents of waiver which, in part, read:

I do hereby further acknowledge and declare that I have been paid by the Atlantic Gulf & Pacific Company of Manila, Inc. all amounts due me by way of compensation arising out and in the course of my employment; and that this separation from the service has no relations whatsoever with my union affiliations or activities; that I admit the regularity of my separation and that I signed these presents after having fully understood its contents.

Petitioners insist that the documents are without any effect because quitclaims and releases are contrary to public policy and therefore, null and void.[8] Not all quitclaims and releases are however, contrary to public policy. As we have stated:

Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[9]

In the case at bar, the documents of waiver were executed by the affected employees without any force or duress used against them by private respondent or its representatives. To the contrary, the employees waived their claims because of awareness of the precarious financial condition of the company as shown by a steady decline in its income. The documents embodied reasonable settlement of the parties' claims. As a matter of fact, the employees received separation pay equivalent to one month pay for every year of service, which was more than what they were entitled to receive under the law[10] which provides for separation pay equivalent to one month pay or one half (1/2) month pay for every year of service, whichever is higher.

In sum, there is substantial evidence supporting the decision of both the labor arbiter and the NLRC, consisting of the company's audited financial reports, its policy of preferring former workers in the recruitment of project employees and the documents of waiver voluntarily executed, which negates petitioners' charge of grave abuse of discretion.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] Rollo, p. 31.

[2] Lopez Sugar Corporation v. Federation of Freeworkers, 189 SCRA 179 (1990).

[3] Anderson vs. NLRC, 252 SCRA 116 (1996); Bristol Laboratory's Employees Association v. NLRC, 187 SCRA 118 (1990); Columbia Development Corp. v. DOLE, 146 SCRA 421 (1986); Haverton Shipping Limited v. NLRC, 135 SCRA 685 (1985).

[4] Wiltshire File Co., Inc. v. NLRC, 193 SCRA 665 (1991).

[5] Precision Electronics Corporation v. NLRC, 178 SCRA 667 (1989).

[6] AHS/Philippine Employees Union v. NLRC, 149 SCRA 5 (1987).

[7] On January 11, 1988 the company announced the following cost-cutting measures to be taken:

- immediate suspension of foreign leave privileges;
- immediate freeze of salary increases for all officers and staff members;
- discontinuance of upfitable overseas activities and operations;
- closure and disposal of either AG & P Engineering Center or the AG & P House;
- transfer and consolidation of the activities at the AG & P Engineering Center to Batangas;
- implementation of the decision made last year to transfer and consolidate Tanyag activities with the Batangas Marine & Fabrication yard;
- Other measures to eliminate waste and unnecessary frills.

[8] Fuentes v. NLRC, 167 SCRA 767 (1988); MRR Yard Crew Union v. Phil. National Railways, 72 SCRA 88 (1976).

[9] Periquet v. NLRC, 186 SCRA 724, 730-731 (1990). Accord, Loadstar Shipping Inc. v. Gallo, 229 SCRA 654 (1994); Sicangco v. NLRC, 235 SCRA 96 (1994).

[10] LABOR CODE, Art. 283.

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