FILIPINAS (PRE-FABRICATED BLDG.) SYSTEMS “FILSYSTEMS,” INC. AND FELIPE A. CRUZ, JR., PETITIONERS, VS. ERNESTO GATLABAYAN, RICARDO P. ANTONIO, PAULINO C. FRANCISCO, ROGELIO E. BE...

G.R. NO. 167959. April 19, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69716, as well as its Resolution[2] denying the Motion for Reconsideration thereof.

Filipinas (Pre-fabricated Bldg.) Systems "FILSYSTEMS," Inc. (Filsystems) is a domestic corporation engaged in the construction business with principal office at 69 Industrial Road, Bagumbayan, Quezon City. Petitioner Felipe A. Cruz, Jr. is its President and General Manager.

Filsystems employed Ernesto B. Gatlabayan, Joel B. Bandiala, Ronito A. Bañacia, Delfin E. Timbal, Rogelio E. Bertulfo, Paulino C. Francisco, Ricardo P. Antonio, Antonio A. Belangel, Carmelo B. Erederos, Gil A. Paralejas, Edgardo D. Paralejas, Ulpiano R. Riano, and Nelson O. Aquino as grillers, carpenters and laborers on various dates from 1992 to July 24, 1999. Sometime in the early part of August 1999, the said employees filed their respective complaints for illegal dismissal against Filsystems and Cruz, praying that they would be awarded monetary benefits, inclusive of separation pay, holiday pay and attorney's fees. The cases were consolidated for further proceedings with Labor Arbiter Joel S. Lustria.

The complainants claimed that as carpenters, millers, and laborers in Filsystems' construction business, they were all assigned in the wood-working department of the company's main plant, in charge of fabricating wooden door samples, preparing designs and specifications, and other matters pertaining to woodworks. They insisted that they all had impeccable employment records. While they worked in the main plant, they were also assigned to other projects for which Filsystems would issue travel order reports. They would then be required to report to the main plant to perform their usual work. Their average length of service with Filsystems ranged from two to nine years. Their latest and last assignment was in Meralco, in Antipolo, after which they reported back to the main plant.

Complainants narrated that they were verbally informed that their services were no longer needed on July 24, 1999 (considering that they were only project employees and the project to which they were last assigned had already been completed). When they reported for work on July 26, 1999, they were surprised that their timecards were no longer there. They were ordered to report to the personnel department on July 27, 1999, where they were informed that their services were terminated because of the completion of the Meralco project. The head of the department also told them that, to claim their wages, 13th month pay, and other benefits, they must first sign the letter of termination. Due to dire necessity, some of the complainants signed the termination letter while others steadfastly refused.

Filsystems, on the other hand, averred that the complainants were employed as project employees on different dates.[3] It was further alleged that -

> After their respective project[s] were completed, their employment were, likewise, terminated. Each completion or termination of employment was correspondingly reported to the DOLE.
>
> x x x x
>
> In addition, under Department Order No. 19, it is given in the construction industry that employees of such companies engaged for a particular project, work exclusively with the project and that their services are co-terminus with the duration of the said project or undertaking. Hence, it may be said that the employee concerned derives his employment from the existence of a construction project which his employer is able to obtain. Conversely, in the absence of any such project, there appears to be no reason to maintain the services of said affected employee.
>
> In law, such employment may be said to be subject to a resolutory period. In other words, the project employee continues to be in aegis of his employer for the duration of the construction project. In essence, the arrival of the day certain, i.e., the completion of the project, resolves and/or dissolves the employer-employee relationship even in the absence of a notice from employer. The employment contract itself serves as notice to both employer and employee that upon that day certain, their symbiotic relationship shall cease.
>
> A cursory look at the employment contracts showed that complainants are project workers with specific project assignments. As reflected in the foregoing exhibits, the same workers were hired for a specific period. They are all covered by employment contract. Their completion of assignment or termination of contract has been regularly and aptly reported to the Department of Labor.
>
> The records show that complainants' services were exclusively utilized by the respondent in its various construction projects. Thus, complainants were hired on a particular project such as City Square, Antel Tower, World Finance, Jaka Tower, MRT-3 and (sic) etc. Being project employees, complainants are not covered of security of tenure at the end of the project or undertaking where he is actually employed.[4]

In their Reply, the complainants alleged that, as gleaned from their employment contracts, the "projects' covered were located in only one place - No. 69 Industria Road, Bagumbayan, Quezon City, Filsystems' principal office. As borne by the records, only the contracts of Delfin Timbal[5] and Rogelio Bertulfo[6] were located at Meralco Avenue, Ortigas Center, Quezon City and Ayala Avenue, Makati City, respectively.[7] The complainants further averred that they were still regular employees regardless of the written agreement indicating that they were mere project employees, thus:

> What is very obvious in the annexes submitted by the respondents is the fact that while the complainants may have been assigned to various project[s] as stipulated in the above-mentioned contracts, the greater majority of them were assigned to work at one location-the main plant. The main plant of respondent's business is located at #69 Industria Road, Bagumbayan, Quezon City.
>
> The greater majority among complainants were not required at all to work at their respective project assignment[s]. The employment contract clearly indicated that the location was at the main plant, particularly at the woodworking section.
>
> As employees in the woodworking section, it was the responsibility of those hired as laborers to assist in the fabrication of forms and other matters related to [woodworks], those hired as carpenters were hired to perform carpentry while millers were hired to perform milling works. Most of them were to perform their assigned task at the main plant. They were in charge of all the [woodworking] needs of the respondents in various projects.
>
> The mere fact alone that they were assigned to work at the main plant already debunks the respondents'

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argument that they were project employees. In fact and in law, they are considered as regular employees entitled to security of tenure.

Their work though, does not end in the main plant. Many of them at times were given special assignments to several projects as woodworkers. But after completion or termination of the special assignments, they were again required to report at the main plant to perform their usual activity.[8]

In their Rejoinder, petitioners countered:

- It is not true that complainants were all assigned in the main plant of respondent company located at 69 Calle Industria, Bagumbayan, Quezon City. If ever they are being assigned at the Main Office, it is because of space limitations at the projects where they are supposed to work.

- Respondent admits that complainants "were instrumental in the completion of several [woodworking] projects, fabrication of wooden door sample and the like" but not in the preparation of design and specification, and other matters pertaining to [woodworks] as complainants alleged. Complainants simply cannot just be trusted of preparing designs and specification being just laborers, carpenters and, (sic) etc.

- Complainants are indeed hired for projects, which entail wood-working. Their being at the main office is a matter of convenience as to work in the jobsite entails more inconvenience from transportation and accommodation not to mention space limitation. It should be noted that without a project that needs [woodworking] work, [complainants], likewise, would not be hired in the first place.

- It should be noted further that respondent does not manufacture [woodworking] products and sell these in public or deliver these at its authorized dealers. It is only when projects with [woodworking] are obtained that services of complainants are needed.

- A number of [the] complainants are indeed required to go to the projects to coordinate with the project management on the matter of project requirements relative to their work being done or fabricated at the main office.

- [Complainants'] claim that they are members of respondent's "work pool" should be debunked as it is glaringly illogical for a company to form "work pool" consisting mainly of laborers.[9]

Filsystems further alleged that the identification cards it issued to the complainants clearly indicate that they were project employees, as seen from their assignments and the location of their specific sites they were contracted for employment. Petitioners appended the report of termination of the employment of Nelson Aquino which they submitted to the Department of Labor and Employment (DOLE).[10]

On July 20, 2000, the Labor Arbiter rendered judgment in favor of the complainants, declaring that they were regular employees of petitioner Filsystems who were dismissed without lawful or just cause. The decretal portion of the decision reads:

WHEREFORE, premises considered, let judgment be, as it is hereby rendered in favor of the complainants, and ordering respondent FILSYTEMS, INC. to comply with the following:

1. To pay complainants their full backwages, from the time of their dismissal up to the promulgation of this decision, as well as their separation pay, in the amounts opposite their respective names:

NAMES BACKWAGES 13[th] MONTHPAY SEPARATION PAY

1. E. Gatlabayan P67,759.90 P5,646.66 P34,866.00

2. R. Antonio 67,739.10 5,644.93 34,866.00

3. P. Francisco 68,439.37 5,703.28 58,110.00

4. R. Bertulfo 68,269.50 5,689.13 34,866.00

5. A. Belangel 65,648.70 5,470.73 52,299.00

6. J. Bandiala 67,245.10 5,603.76 29,055.00

7. R. Bañacia 67,759.90 5,646.66 46,488.00

8. C. Erederos 67,759.90 5,646.66 17,433.00

9. D. Timbal 67,245.10 5,603.76 23,244.00

10. N. Aquino 68,099.63 5,674.97 46,488.00

11. E. Paralejos 67,759.90 5,646.66 23,244.00

12. R. Ulpiano 68,269.50 5,689.13 34,866.00

13.G. Paralejas 67,759.90 5,646.66 23,244.00

Total P879,755.50 P73,312.79 P459,069.00
The complaint of Benito Lolito and Alfredo Bolledoir is hereby dismissed for failure to prosecute.

Other claims are dismissal (sic) for lack of merit.[11]

Filsystems appealed the decision to the National Labor Relations Commission (NLRC) insisting that the complainants were project employees. On September 10, 2001, the NLRC rendered judgment, affirming the appealed decision and dismissing the appeal.[12] A motion for reconsideration was filed, which the NLRC also denied.[13]

Filsystems and Cruz then sought relief from the CA via Petition for Certiorari alleging that:

I

WHETHER RESPONDENT NLRC ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT THE PRIVATE RESPONDENTS WERE REGULAR EMPLOYEES AND NOT PROJECT EMPLOYEES.

II

WHETHER RESPONDENT NLRC ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT THE PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED FROM EMPLOYMENT.

III

WHETHER OR NOT THE RESPONDENT NLRC ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE LABOR ARBITER'S DECISION ORDERING THE PAYMENT OF MONETARY AWARDS TO THE PRIVATE RESPONDENTS.[14]

On November 21, 2003, the CA rendered judgment, affirming the decision of the NLRC with modifications. The fallo of the decision reads:

WHEREFORE, on the basis of the above premises, the instant petition is hereby DISMISSED. The assailed resolutions of the NLRC, dated September 10, 2001 and November 27, 2001, respectively, are AFFIRMED with MODIFICATION: the backwages due the private respondents should be computed from the time of their alleged dismissal up to the finality of this decision while their separation pay should be computed from the date of the dismissed employees' service until the finality of this decision.

SO ORDERED.[15]

In ruling for the dismissed employees, the CA ratiocinated that, as shown by their employment contracts, the expected completion or termination of the projects to which they were assigned was not indicated therein, much less made known to them, thus:

> The predetermination of the duration or period of a project employment is important in resolving whether one is a project employee or not. On this score, the term period has been defined to be "a length of existence;" duration. A point of time marking a termination as of a cause or an activity; an end, a limit, a bound; conclusion; termination. A series of years, months, or days in which something is completed. A time of definite length or the period from one fixed date to another fixed date.
>
> The employment contract only provides in general terms that the same is good only for the duration of the project or phase thereof to which the private respondents are assigned.
>
> Petitioners could have presented additional evidence to buttress their claim. For instance, petitioners could have presented the pertinent construction project contracts with their clients, to show the time, duration and scope of the projects or phase thereof to which the private respondents are assigned. The data from these contracts could then have been correlated to the data which could be found in private respondents' individual employment contracts, termination reports and in petitioners' payroll records for, let us say, the past three years or so, to show that private respondents had been working intermittently, and when they were assigned to said projects, and that their compensation had been computed on the basis of such work. But petitioners did not produce such additional evidence, and we find that it failed to discharge its burden of proof.
>
> Petitioners have not denied private respondents' allegation that they worked in the main plant, although petitioners explained that some of the [woodworks] are done in the company's main plant because the project sites do not have enough working space. In order to avoid a cramped-up work site, it is practical to do the [woodworks] for a certain project at the main plant. Also, petitioners have not denied that a number of private respondents were indeed required to go to the projects to coordinate with the project management on the matter of project requirement[s] relative to their work being done or fabricated at the main office.
>
> On this point, petitioners could have presented the travel orders issued to the private respondents. The data from the travel orders could also have been correlated to the data appearing in the private respondents' employment contracts in order to prove that the projects which they were required to do are the particular projects assigned to them. For petitioners' failure to present this evidence, they have failed to discharge their burden of proof.
>
> The fact that private respondents had worked continuously for a period of two to nine years before their services were terminated argues persuasively for the existence of a work pool in the petitioners' establishment from which the company drew its project employees, among whom were private respondents. This being the case, private respondents were non-project employees or employees for an indefinite period within the contemplation of Policy Instruction No. 20 of the Department of Labor and Employment (Stabilizing Employer-Employee Relations in the Construction Industry), the pertinent portion of which reads:
>
> "Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or any phase thereof will not mean severance of employer-employee relationship."
>
> Clearly, private respondents were non-project employees. The successive contracts of employment where they were made to perform the same kind of work as laborers, carpenters and millers, the repeated rehiring, and the performance of essentially the same tasks, would clearly manifest that private respondents' tasks were necessary or desirable in the usual trade or business of petitioners. Thus, they are deemed regular

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employees.[16]

The CA denied the motion for reconsideration filed by Filsystems and Cruz for lack of merit.

In the instant petition, petitioners claim that the appellate court erred as follows:

> - IN NOT APPLYING THE NO PROJECT NO WORK NO PAY PRINCIPLE AS TO THE TERMINATION OF THE RESPONDENTS FROM EMPLOYMENT, FOR WHICH DISMISSAL FROM EMPLOYMENT DUE TO LACK OF CONSTRUCTION PROJECT, THE RESPONDENTS SHOULD BE CONSIDERED AS NOT ILLEGALLY DISMISSED FROM EMPLOYMENT.
>
> - IN APPLYING ART. 282 OF THE LABOR CODE, AS TO THE TERMINATION OF THE RESPONDENTS' EMPLOYMENT, WHICH REFERS TO THE GROUNDS FOR THE TERMINATION OF EMPLOYMENT BY AN EMPLOYER, LIKE SERIOUS MISCONDUCT, NEGLECT OF DUTY, FRAUD, ETC., AND NOT APPLYING ART. 283 OF THE LABOR CODE, WHICH PROVIDES THAT "CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL AS JUST AND VALID CAUSES FOR THE TERMINATION OF THE RESPONDENTS FROM EMPLOYMENT.
>
> - IN NOT APPLYING THE LATEST DOCTRINE HELD IN "JENNY AGABON VERSUS NLRC," WHERE IT WAS RULED THAT AN EMPLOYEE WHO IS DISMISSED FOR A VALID CAUSE, BUT WITHOUT BEING ACCORDED DUE PROCESS, IS NOT CONSIDERED ILLEGALLY DISMISSED FROM EMPLOYMENT, BUT ENTITLES THE EMPLOYEE TO THE PAYMENT OF NOMINAL DAMAGES IN AN AMOUNT SUBJECT TO THE SOUND DISCRETION OF THE COURT.[17]

Petitioners concede that respondents were initially project employees considering that they were continuously re-hired even after the cessation of a project and the tasks they performed were necessary and desirable to its usual business of petitioner. While petitioners admit that the circumstances surrounding their work gave them the status of regular employees, petitioners nevertheless maintain that the termination of the project where the respondents were assigned resulted in a suspension of work. They aver that there is no showing that any of the respondents were "left out" when another project was commenced. As such, during the period that their work was suspended, respondents had no right to claim backwages or reinstatement as a remedy. Petitioners assert that no compensation can be demanded from petitioner Filsystems because the stoppage of operations at the end of a project and before the start of the new one is expected by both parties to the labor contract.

Petitioners aver that in case there is no work to be performed, the employment of regular employees, much like regular seasonal employees, is not severed but merely suspended. These employees are, strictly speaking, not separated from service but are merely on leave of absence without pay until reemployed. Thus, there is no factual basis for the rulings of the Labor Arbiter, the NLRC and the CA that respondents were illegally dismissed on the basis of a finding of regular employment status.

Petitioners posit that, as admitted by respondents, they were terminated from work due to the completion of their last project assignment, the Meralco project. Therefore, their termination from employment was due to redundancy on account of completion of the undertaking for which they were hired. Thus, the two-notice rule under Article 279 has no application in this case; what applies is Article 283 of the Labor Code which requires that one month prior notice be given to the affected employees and the DOLE. Petitioners argue that the respondents were notified in advance, albeit less than one month prior to their termination. They also insist that the DOLE was notified after the termination was effected, pursuant to Sec. 2.2(e), Department Order No. 19, Series of 1993.

Petitioners claim that the lack of notice requirement does not ipso facto render respondents' dismissal illegal, considering that their work was suspended by reason of redundancy due to the completion of their last project.

They cite the ruling of this Court in Sebuguero, et al. v. National Labor Relations Commission,[18] which upheld the validity of the retrenchment notwithstanding the lack of written notices to petitioners therein and the DOLE.

Petitioners emphasize that when an employee is dismissed for a just and valid cause, but the twin requirements of notice and the opportunity to be heard are not met, the dismissal shall nevertheless be upheld, but the employer must be sanctioned for non-compliance with such due process requirements. Petitioners cite the Court's ruling in Agabon v. National Labor Relations Commission.[19]

In their Comment, respondents aver that under Article 282 of the Labor Code, the completion of a project is not a valid cause for dismissal of a regular employee. The "new theory" advanced by petitioners on appeal in this Court - that of redundancy - is not allowed and should not be countenanced. The respondents aver that the ruling of this Court in Ayala v. National Labor Relations Commission is not applicable because of the divergent factual backdrop.

In their Reply, petitioners contend that in the CA, they alleged that they had to launch and effect a massive retrenchment of its regular employees to forestall serious business losses and/or closure effective July 20, 2000.[20]

The petition is denied.

The records show that by way of defense, petitioners alleged before the Labor Arbiter that respondents were only project employees in petitioners' various construction projects and that their services were co-terminus with the duration of the project; in the absence of any project contract of petitioner-corporation, it was not obliged to maintain the services of respondents. However, after they were rebuffed by the Labor Arbiter and the NLRC, they alleged in the CA that, as early as June 18, 2001, they had already effected the retrenchment of its 117 employees, as evidenced by the Notices of Retrenchment filed with the DOLE, claiming that only one project was on-going, and that it can no longer afford to pay the salaries/wages of the present manpower, and that the project manager and the managers of the different departments were given the privilege to choose those who would be retrenched. In the present case, petitioners realized the utter futility of maintaining their defense and admit that respondents were, after all, regular employees of petitioner corporation, and the latter offered to pay separation pays instead of reinstating them.

As a rule, no questions will be entertained on appeal unless they have been raised below. Points of law, theories, issues and arguments not brought to the attention of the lower court or agency need not be, and ordinarily, will not be considered by the reviewing court as they cannot be raised for the first time at the later stage. Neither consideration of due process impels this rule.[21] Understandably then, the appellate court opted not to resolve this issue in its decision and denied petitioners' motion for reconsideration of said decision.

Even if we delve into the merits of the petition, petitioners' claim that respondents were retrenched must be rejected. Indeed, petitioners even failed to adduce in evidence any notes addressed to respondents notifying them that their employment was terminated on the ground of retrenchment. In Sebuguero v. National Labor Relations Commission,[22] this Court said:

> The requirement of notice to both the employees concerned and the Department of Labor and Employment (DOLE) is mandatory and must be written and given at least one month before the intended date of retrenchment. In this case, it is undisputed that the petitioners were given notice of the temporary lay-off. There is, however, no evidence that any written notice to permanently retrench them was given at least one month prior to the date of the intended retrenchment. The NLRC found that GTI conveyed to the petitioners the impossibility of recalling them due to the continued unavailability of work. But what the law requires is a written notice to the employees concerned and that requirement is mandatory. The notice must also be given at

> least one month in advance of the intended date of retrenchment to enable the employees to look for other means of employment and therefore to ease the impact of the loss of their jobs and the corresponding income. That they were already on temporary lay-off at the time notice should have been given to them is not an excuse to forego the one-month written notice because by this time, their lay-off is to become permanent and they were definitely losing their employment.[23]

Moreover, the minutes of the meeting on August 22, 2000 (supposedly between the management of petitioner corporation, and rank and file and supervisory employees), show that only 13 rank and file employees attended. There is no evidence on record that respondents attended the meeting. There is likewise no evidence on record that petitioners complied with the requirements of Article 283 of the Labor Code of the Philippines, which reads:

> Article 283. Closure of establishment and reduction of personnel - The employer may also terminate the employment of any employee due to the installment 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 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 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 one (1) whole year. (Italics supplied)

In Lopez Sugar Corporation v. Federation of Free Workers,[24] this Court ruled, thus:

> At the other end of the spectrum, it seems equally clear that not every asserted possibility of loss is sufficient legal warrant for reduction of personnel. In the nature of things, the possibility of incurring losses is constantly present, in greater or lesser degree, in carrying on of business operations, since some, indeed many, of the factors which impact upon the profitability or viability of such operations may be substantially outside the control of the employer. Thus, the difficult question is determination of when, or under what circumstances, the employer becomes legally privileged to retrench and reduce the number of his employees.
>
> We consider it may be useful to sketch the general standards in terms of which the acts of petitioner employer must be appraised. Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bona fide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means - e.g., reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. " have been tried and found wanting.
>
> Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent

> losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees. In Garcia v. National Labor Relations Commission, the Court said:
> "x x x But it is essentially required that the alleged losses in business operations must be prove[n]. (National Federation of Labor Unions [NAFLU] v. Ople, 143 SCRA 124 [1986]). Otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures in order to ease out employees." (Italics supplied)

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. x x x[25]

x x x x

The principal difficulty with petitioner's case as above presented was that no proof of actual declining gross and net revenues was submitted. No audited financial statements showing the financial condition of petitioner corporation during the above mentioned crop years were submitted. Since financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company, it is not easy to understand why petitioner should have failed to submit such financial statements.[26]

Thus, petitioner failed to adduce a morsel of evidence to prove the factual basis for a valid retrenchment. It is not enough to allege that it had only one on-going project and that its other projects were "punch-tested," that the market demands a corresponding dismissal of personnel due to advance development in the Asia-Pacific Region affecting the construction business in the Philippines, and that, consequently, it could no longer afford to pay the salaries and wages of the manpower of the corporation. As the Court explained in Central Azucarera de la Carlota v. National Labor Relations Commission,[27] what is required to be presented is "adequate, credible and persuasive evidence x x x [of] dire financial straits x x x from drastic business losses." A mere "litany of woes," in the absence of any solid evidence that they translated into specific and substantial losses that would necessitate retrenchment, will not suffice; the resulting negative effects of alleged crises must be underscored.[28]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED DUE COURSE. Costs against the petitioners.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Perlita J. Tria Tirona (retired), with Associate Justices Josefina Guevara-Salonga and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 272-282.

[2] Rollo, pp. 419-421.

[3]

NAME PROJECT ASSIGNMENT REPORTED TO DOLE

1.Gatlabayan, Ernesto E.M.E.S. West Gate SMPPI 06-28-95 11-24-99 11-24-96

2. Bandiala, Joel SMPPI Pope Paul Stage 10-12-95 09-29-96 09-25-99 09-01-99

3. Bañacia, Ronito City Square Ocean Tower West Gate 10-12-95 09-29-96 11-24-96

4. Timbal, Delfin World Finance 09-01-99

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5.Bertulfo, Rogelio Jaka Pope Paul Stage Ocean Tower 09-25-99 _____ 09-01-98

6. Francisco, Paulino Antel Project Ocean Tower Millenium Plaza 05-25-99 09-25-98 _____

7.Antonio, Ricardo SMPPI Pope Paul Stage Ocean Tower 09-25-98 05-25-99 _____

8. Belangel, Antonio SMPPI Cityland Millenium Plaza 05-25-99 09-25-98 09-06-99

9. Erederos, Carmelo Meralco 01-07-95

10. Paralejas, Gil Cityland Pioneer 09-25-98 05-25-99

11. Betito, Lolito MRT Project 09-25-99 05-25-99

12.Boledo, Alfredo Raffles Project 09-01-99

13.Paralejas, Edgardo World Finance City Square 09-01-99 05-25-99

14.Riano, Ulpiano Ocean Tower West Gate City Square 09-25-98 05-25-99 _____

[4] Records, pp. 55-56.

[5] Exhibit "H," id. at 81.

[6] Exhibit "I," id. at 90.

[7] Id. at 136-139.

[8] Id. at 139-140.

[9] Id. at 119-120.

[10] Exhibits "DD" to "GG."

[11] Records, p. 169.

[12] Id. at 196-204.

[13] Id. at 208.

[14] Rollo, p. 276.

[15] Id. at 281-282.

[16] Id. at 278-280.

[17] Id. at 10.

[18] G.R. No. 115394, September 27, 1995, 248 SCRA 532.

[19] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[20] Rollo, pp. 255-257.

[21] Del Rosario v. Bonga, G.R. No. 136308, January 23, 2001, 350 SCRA 101, 108.

[22] Supra note 18.

[23] Supra, at 545.

[24] G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-188.

[25] Id. at 186-188.

[26] Id. at 189-190.

[27] 321 Phil. 989, 997 (1995).

[28] Id. at 596.

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