

**PHILIPPINE CARPET EMPLOYEES ASSOCIATION (PHILCEA), FOR
AND IN BEHALF OF ITS 77 MEMBERS AFFECTED, PETITIONER, VS.
HON. PATRICIA STO. TOMAS, SECRETARY OF LABOR AND
EMPLOYMENT, PHI...**

G.R. NO. 168719. February 22, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The Philippine Carpet Manufacturing Corporation (Corporation for brevity), a corporation duly registered in the Philippines, is engaged in the business of manufacturing wool and yarn carpets and rugs.[1] The Corporation also had 100% equity investments in the following corporations: Pacific Carpet Mills Corporation (PCMC-USA) which sold carpets and mats on wholesale basis; Pacific Carpet Manufacturing Corporation (PCMC-Clark) which manufactured hand-tufted and machine-tufted carpets and rugs; and the Philippine Woolen Spinning Corporation (PWSC) which manufactured wool yarn. The Corporation also owned 17.95% of the shares of stocks in DI Security and General Services, Inc., and 2.20% of such shares in the Manila Peninsula Hotel, Inc.[2] The Corporation employed 473 employees, 355 of whom were members of the sole bargaining unit of the employees therein, the Philippine Carpet Employees Association (Union for brevity).[3]

The 2002-2004 Collective Bargaining Agreement (CBA) between the Corporation and the Union was to expire on March 16, 2004.[4] In a letter dated February 10, 2004 addressed to the Corporation's Assistant Vice President for Administration, Manuel Ike Diaz, the Union proposed the holding of a conference between representatives of the Union and the Corporation on February 24, 2004, to commence negotiations for the next CBA. Appended to the letter were proposals on revisions of the previous CBA, which included wage and bonus increase, welfare allowances and hospitalization incentives, transportation, uniform, and rice subsidy augmentation. The Union also proposed the amendment of the existing retirement program of the Corporation for its employees.[5]

The Corporation did not respond to the letter. Consequently, the proposed conference failed to materialize.[6] On March 9, 2004, Diaz issued a Memorandum informing all employees that a comprehensive cost reduction program would be implemented by the Corporation on April 15, 2004, "on account of depressed business conditions brought about by the currency crisis in Southeast Asia, the Middle East war and the 9/11 incident in the United States of America." According to the Memorandum, the employees concerned would receive the following benefits:

- a) Separation pay
- b) Cash equivalent of earned but unused vacation and sick leave credits
- c) Pro-rata 13th month pay[7]

Of the 88 employees who were terminated from employment, 77 were Union members,[8] including Edgardo Villanueva, who was elected Union officer after the personnel reduction program commenced. The 14 Union members who were retrenched received their separation pay and other benefits from the Corporation.[9]

In a letter dated March 11, 2004, Diaz informed the Department of Labor and Employment (DOLE) of its retrenchment program, which was being implemented "on account of a slump in the demand of its products due to their uncompetitiveness compared to similar products made elsewhere in Asia where cost of labor is very low." According to the letter, the Corporation decided to retrench its personnel to save production costs and to stay in business.[10] The Corporation submitted the list of 88 employees who were to be retrenched effective at the close of working hours on or about April 15, 2004.[11]

In a letter[12] dated March 18, 2004 signed by Rafael G. Villareal, Acting Assistant General Manager, the Corporation proposed a moratorium on wage increase and additional benefits, considering that business, especially the export manufacturing sector, had been hard hit by "a series of externally generated factors." It was pointed out that the prices of the Corporation's products remained uncompetitive compared to those of China, Thailand, and Indonesia, and this drove prospective buyers away. The Corporation was also confronted with stiff competition coming from traders who brought in smuggled goods and the fact that the market trend had shifted to cheap foreign-produced carpet rolls. The letter also stressed that the car carpet industry profits were predominantly marginal due to competition and customer requirements.

The letter further stated that the Philippine economy in general was in crisis, and that the biggest problem of all was the uncertainty of the country's political and economic future. Consequently, the volume of business generated by the Corporation had steadily declined from 2000 to 2003, such that workers were forced to avail of their leaves as there was not enough workload. The Corporation's objective was to keep the business viable by rationalizing manpower and reducing production and labor cost, including the implementation of the voluntary retirement program. The Corporation anticipated a prolonged demand slowdown and it was surmised that, based on reasonable projections, the business would remain at a standstill with no improvement until after two or three years.[13] Thus, given these circumstances, the only way to survive the crisis was for the Union to agree on a moratorium on increase in wages and benefits.[14]

Frustrated at the Corporation's response, the Union filed a notice of strike with the DOLE on the same day. Negotiations before the National Conciliation and Mediation Board ensued,[15] but the Corporation stood pat on its stance for a moratorium on increases in wages and benefits. The Union rejected this and accused the Corporation of union busting, as 77 of its members were dismissed.

On March 31, 2004, the Union filed a petition[16] with the DOLE for the Secretary of Labor and Employment (SOLE) to assume jurisdiction over the labor dispute involving the following issues:

- ECONOMIC ISSUES

- Wage Increase

- Benefits

- 2.1 Uniform

- 2.2 HMO (Hospitalization Assistance)

- 2.3 Christmas Bonus

- 2.4 Rice Subsidy

- 2.5 Early Retirement

- NON-ECONOMIC ISSUES

- Scope of the Bargaining Unit

- UNFAIR LABOR PRACTICE

- Illegal dismissal of 76 union members;

- CBA violation; and
- Refusal to bargain.[17]

In its Position Paper, the Union alleged that its proposed CBA package for three years (2004 to 2007) would amount only to P35,890,500.00, or an average of P11,963,500.00 per CBA year, hardly a dent on the Corporation's accumulated net profit of P213,858,402.00 for the last six years (1998 to 2003). It was pointed out that the Corporation earned a net income of P39,553,028.00 in 2002, and P12,729,776.00 in 2003. The Union claimed that there was no valid economic reason to retrench employees, and that a "slump" in demand of the Corporation's products was not a valid ground to dismiss employees. The Union also charged the Corporation of resorting to a sinister scheme of re-channeling its carpet business to its wholly owned subsidiary, PCMC-Clark, while negotiations for a new CBA were ongoing. According to the Union, this was also to justify the dismissal of the 77 Union members and bust the Union in the process. The Union insisted that the Corporation was guilty of unfair labor practice.[18]

The Union maintained that in dismissing its employees, the Corporation violated the mandatory 30-day notice rule because such employees received the notice of termination on March 13, 2004 (Saturday), to take effect the following working day, March 15, 2004 (Monday). It stressed that the 30-day mandatory notice could not be substituted by paying the affected employees their respective one month salaries.[19]

For its part, the Corporation alleged that based on the documents submitted to the SOLE, it suffered a sharp decline in business in terms of volume and income derived since 2001, caused by the Asian financial crisis and later aggravated by the 9/11 incident in the U.S. and the ongoing war in the Middle East. This was aggravated by higher production and labor costs as compared to its competitors in China, Thailand, and Indonesia; as such, the net incomes of the Corporation drastically declined from 2000 to 2003, as follows:

2000 — P41,905,721.00
2001 — P32,903,800.00
2002 — P27,661,213.00
2003 — P11,122,142.00[20]

The Corporation went on to explain that its income from the domestic market and export operations declined sharply: from its export operations, its income of P28,855,000.00 in 2001 dropped to P23,927,000.00 in 2002; and, thereafter, to P5,796,000.00 in 2003. From its domestic operations, it had a net loss of P1,406,000.00 in 2001 which increased to P7,363,000.00 in 2002, and to P6,605,000.00 in 2003. The sharp decline in export sales and income in 2003 was due to the fact that it lost 16 of its clients in the Middle East, costing the Corporation a total of US\$4,668,908.28 in unrealized sales.[21] It also lost 70 of its domestic clients to its competitors, resulting in unrealized sales of P69,866,638.67.[22] Due to the lack of orders, the volume of business was drastically reduced, as shown in the workload of the Corporation as of April 2004:

x x x the workload for PPC was good for only 8 days; for Spinning, 40 days; for Dyeing, 2 days; for Graphic Arts, 8 days; for Stenciling, 15 days; for Weaving, 8 days; for Sample, 3 days; for Pass Machine, 1 day; and for Car Carpet, 16 days.[23]

Aside from the 88 affected employees, even managerial and supervisory employees were not spared, as six of them were also retrenched. Seventeen Union members had accepted their separation pay and other benefits, and as to the remaining employees, the Corporation averred that they received the following, aside from productivity incentive bonuses:

Average basic wage P382.15 per day

Transportation allowance 8.00 per day

Meal allowance 5.50 per day

ECOLA 20.21 per day

13th month pay 37.84 per day

Average seniority pay 41.62 per day

Average vacation/sick leave conversion 18.92 per day

Rice subsidy 14.52 per day^[24]

On June 23, 2004, the SOLE rendered a Decision^[25] granting wage increases totalling P8,039,330.00 to the employees for the three years of the CBA:

1st year – ten pesos per day (P10.00/day)

2nd year – twelve pesos per day (P12.00/day)

3rd year – thirteen pesos per day (P13.00/day)^[26]

Relative to increased benefits for uniform, Christmas package, rice subsidy, and early retirement plan/separation pay, the SOLE ordered the retention of the status quo. However, the SOLE denied the demand of the Union as to the scope of the bargaining unit.^[27]

The SOLE likewise affirmed the termination of the 88 employees on the ground that, if not for the personnel reduction program implemented from 2001 to 2004, the Corporation would have lost P12,024,958.00 in 2003; P22,820,151.00 in 2004; P29,274,211.00 in 2005; and P26,924,602.00 in 2006.^[28] The SOLE also ruled that the Corporation was not guilty of union-busting.^[29]

The Union thereafter filed a petition for certiorari with the Court of Appeals (CA), assailing the decision of the SOLE on the following grounds:

I

THE HON. SECRETARY OF LABOR AND EMPLOYMENT GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT THERE WAS JUST CAUSE FOR DISMISSAL. THE ALLEGED "SLUMP IN THE DEMAND FOR OUR PRODUCTS" IS NOT A GROUND FOR DISMISSAL AS RULED IN THE CASE OF VIVIAN Y. IMBUIDO VERSUS NATIONAL LABOR RELATIONS COMMISSION, INTERNATIONAL INFORMATION SERVICES, INC. AND GABRIEL LIBRANDO.

II

THE HON. SECRETARY OF LABOR AND EMPLOYMENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT FINDING THAT RESPONDENT PHILIPPINE CARPET MANUFACTURING CORP. AND ITS OFFICERS ARE LIABLE FOR UNFAIR LABOR PRACTICE. RESPONDENTS CANNOT BE ALLOWED TO HIDE ON ITS CORPORATE VEIL IN ORDER TO IMPLEMENT THEIR "EVIL SCHEME" AGAINST THE UNION AND ITS MEMBERS.

III

THE HON. SECRETARY OF LABOR AND EMPLOYMENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT FINDING THAT THE 30-DAY MANDATORY

NOTICE WAS SUBVERTED FOR VALID DISMISSAL.[30]

On June 2, 2005, the Union submitted a Manifestation dated May 30, 2005, stating "that Philippine Carpet had more business in 2004 than the previous year thereby negating its very ground for Mass Dismissal of 77 Union members on ground of low volume of business." [31] The Union averred that based on the Consolidated Balance Sheets of the Corporation and its subsidiaries, there was a P504,580,259.00 increase in net sales in 2004, compared to the P469,129,788.00 net sales in 2003. They alleged that the income from their operations tripled to P60,494,908.00 in 2004 with a net profit of P48,193,416.00. After the retrenchment program was implemented, more than 100 new workers were hired, including some of those who had been retrenched, and 12 managers and supervisors were promoted. The Union appended to its Manifestation an audit report of the Corporation dated March 10, 2005 prepared by SGV & Co. which was filed with the Securities and Exchange Commission (SEC) on April 15, 2005. [32]

The Corporation replied that the newly hired and rehired employees were only for fixed periods, a practice it had adopted even before it dismissed the 88 employees, inclusive of the 77 Union members.

On April 19, 2005, the CA rendered judgment [33] dismissing the petition for lack of merit. The appellate court ruled that the Corporation failed to prove that the SOLE committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the decision.

The appellate court affirmed the finding of the SOLE that there was a slump in the demand of the Corporation's products, holding that while low volume of work was not listed as a valid ground for dismissal under Articles 282 and 283 of the Labor Code of the Philippines, it nevertheless justified the dismissal on the ground of redundancy. Citing the ruling of this Court in *Imbuido v. National Labor Relations Commission*, [34] the CA declared that while low volume of work and completion of project alone did not justify dismissal under the Labor Code, if accompanied by evidence which show that certain positions had become redundant, employees could be validly dismissed on such ground. The CA also declared that a position is redundant when it is superfluous, and may be caused by decrease in volume of business. It emphasized that what determines the validity of the dismissal based on redundancy is the sufficiency of evidence showing the superfluity of the position and the substantial compliance with the procedure laid down under the aforesaid article. [35]

The appellate court declared that while the corporation hired employees after the retrenchment, the new workers were hired for fixed periods only. The Corporation had been hiring workers for fixed periods and "on a need basis" even before the retrenchment program was implemented. The CA observed that it even engaged the services of independent contractors to perform carpet installation work to augment its personnel complement. Thus, contrary to the position of the Union, the hiring of workers for a fixed period was not intended to fill up the positions left by the retrenched 77 Union members. [36]

The CA also ruled that the Memorandum announcing the retrenchment to the employees was circulated on March 9, 2004. It was even followed by individual notices of termination on March 13, 2004 indicating that the intended termination would take effect only on April 15, 2004. Hence, the employees were given prior notices, more than one month before the intended termination. [37]

The Union filed a motion for reconsideration, which the appellate court denied. [38]

Thus, petitioner Union seeks relief from this Court, alleging that the CA erred in affirming the dismissal of its Union members on the ground of retrenchment or redundancy, and in dismissing its complaint for unfair labor practice against respondent Corporation.

Petitioner avers that there was no factual basis for the dismissal of 77 of its members due to retrenchment or

redundancy. Contrary to the findings of the CA that there was a "slump" in demand for respondent's products and a decrease in volume of business and profits, net sales increased to P504,580,259.00, gross profit to P145,507,002.00, and net profit to P48,193,416.00 in 2004. Petitioner relies on the annual audited report of respondent Corporation filed with the SEC on April 15, 2005. Such claim of a slump in product demand is likewise belied by the following: hiring or rehiring 100 new employees, mass promotions of 12 managerial and supervisory employees, contracting janitorial services, and authorizing full blast overtime work for 6 hours every day.[39]

Petitioner posits that respondent Corporation transferred most of the jobs of the 77 dismissed Union members to its subsidiary, the PCMC-Clark, to justify the mass dismissal. Petitioner insists that respondent Corporation should not be allowed to evade its liabilities for unfair labor practices and hide behind the cloak of the separate corporate entity of its wholly-owned subsidiary.[40]

Petitioner avers that respondent Corporation violated Section 3(e), Article IV of the CBA by dismissing Edgardo Villanueva, an elected senior officer. Moreover, in effecting the dismissal of its 77 members, respondent Corporation violated the 30-day mandatory notice rule under the existing CBA.[41]

By way of Comment,[42] respondent Corporation avers that the issues raised by petitioner are factual, and under Rule 45 of the Revised Rules of Court, such issues are proscribed. It insists that the evidence relied on by petitioner in its Manifestation dated May 30, 2005 was irrelevant, relating as it does to its financial status and those of its subsidiaries known as "The Group." It further asserts that some managers and supervisors were promoted in the ordinary course of personnel movement based on merits. It reiterates that the services of the 77 Union members were terminated due to redundancy, a result of a radical reduction in volume of business, and implemented in the legitimate exercise of its management prerogative. Respondent Corporation cites the ruling of the SOLE as basis to reject petitioner's plea to pierce the separate corporate entity of the PCMC-Clark and find respondent guilty of union busting.

In reply,[43] petitioner avers that the documents appended to its Manifestation dated May 30, 2005 before the CA pertained to respondent Corporation, and were filed with the SEC on April 15, 2005.

The petition is meritorious.

Retrenchment is an authorized cause for the termination of employment under Article 283 of the Labor Code, which reads:

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 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 one (1) whole year.[44]

Retrenchment is defined as the termination of employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted by management during periods of business recession,

industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.[45] Explaining the import of the phrase "to prevent losses," this Court held in *Lopez Sugar Corporation v. Federation of Free Workers*,[46] thus:

In its ordinary connotation, the phrase "to prevent losses" means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the losses anticipated are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until sometime after losses shall have, in fact, materialized; if such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as taking property from one man to give to another. This is simple enough.[47]

The prerogative of an employer to retrench its employees must be exercised only as a last resort, considering that it will lead to the loss of the employees' livelihood. It is justified only when all other less drastic means have been tried and found insufficient or inadequate.[48] Moreover, the employer must prove the requirements for a valid retrenchment by clear and convincing evidence; otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning losses or reverses in their business ventures in order to ease out employees. The requirements are:

xxx (1) that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) that the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) that the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher; (4) that the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and (5) that the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[49]

What the law speaks of is serious business losses or financial reverses. Sliding incomes or decreasing gross revenues are not necessarily losses, much less serious business losses within the meaning of the law. The bare fact that an employer may have sustained a net loss, such loss, per se, absent any other evidence on its impact on the business, nor on expected losses that would have been incurred had operations been continued, may not amount to serious business losses mentioned in the law.[50] The employer must also show that its losses increased through a period of time and that the condition of the company will not likely improve in the near future.

Redundancy, on the other hand, exists when the service capability of the work force is in excess of what is reasonably needed to meet the demands of the enterprise. A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company, or phasing out of a service activity previously undertaken by the business. Under these conditions, the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.[51]

For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly

abolished.[52]

Respondents failed to adduce clear and convincing evidence to prove the confluence of the essential requisites for a valid retrenchment of its employees. We believe that respondents acted in bad faith in terminating the employment of the members of petitioner Union.

Contrary to the claim of respondents that the Corporation was experiencing business losses, respondent Corporation, in fact, amassed substantial earnings from 1999 to 2003. It found no need to appropriate its retained earnings except on March 23, 2001, when it appropriated P60,000,000.00 to increase production capacity.[53] The respondent Corporation never incurred any net loss during said period, which is borne out by the evidence on record, thus:

Retained Earnings (Unappropriated)	Retained Earnings (Appropriated)
1999 P103,200,960.00	
2000 P156,772,118.00	
2001 P125,593,550.00	P60,000,000.00
2002 P155,077,328.00	
2003 P157,737,854.00	[54]

Respondent Corporation appropriated the P60,000,000.00 to fund the increase in production capacity on March 23, 2001 and P20,000,000.00 for the expansion of its plant. Although the Corporation's retained earnings declined in 2001, in 2002 such earnings amounted to P155,077,328.00, slightly lower than its P157,737,854.00 earnings in 2003.[55]

The evidence on record belies the P22,820,151.00 net income loss in 2004 as projected by the SOLE. On March 29, 2004, the Board of Directors approved the appropriation of P20,000,000.00 to purchase machinery to improve its facilities, and declared cash dividends to stockholders at P30.00 per share. This is evidenced by the financial report:

- On March 29, 2004, the BOD approved the reversal of the appropriation for plant expansion amounting to P60,000,000. On the same date, the BOD approved the declaration of P10 per share cash dividends to stockholders of record as of March 29, 2004 and the appropriation for acquisition of machinery and equipment amounting to P20,000,000 out of the Parent Company's unappropriated retained earnings.
- On September 16, 2004, the BOD approved the appropriation from unappropriated retained earnings for the purchase of machinery and improvement of the Parent Company's facilities amounting to P20,000,000. On the same date, the BOD declared cash dividends of P30 per share payable in 2005 and reversed the appropriation made on March 29, 2004 for acquisition of machinery and equipment.[56]

It bears stressing that the appropriation of P20,000,000.00 by the respondent Corporation on September 16, 2004 was made barely five months after the 77 Union members were dismissed on the ground that respondent Corporation was suffering from "chronic depression." Cash dividends were likewise declared on March 29, 2004, barely two weeks after it implemented its "retrenchment program."

If respondent Corporation were to be believed that it had to retrench employees due to the debilitating slump in demand for its products resulting in severe losses, how could it justify the purchase of P20,000,000.00 worth of machinery and equipment? There is likewise no justification for the hiring of more than 100 new employees, more than the number of those who were retrenched, as well as the order authorizing full blast overtime work for six

hours daily. All these are inconsistent with the intransigent claim that respondent Corporation was impelled to retrench its employees precisely because of low demand for its products and other external causes.

The evidence on record also shows that from 1999 to 2003, respondent Corporation had the following net sales, gross and net profits, as well as net income:

Net Sales

Gross Profit

Net Profit

Net Income

1999

P339,443,017.00

P78,100,485.00

P7,562,572.00

P29,068,388.00

2000

P417,490,309.00

P87,448,322.00

P29,158,284.00

P63,640,408.00

2001

P419,821,466.00

P99,081,438.00

P70,603,790.00

P46,559,917.00

2002

P405,893,286.00

P89,814,698.00

P66,290,405.00

P39,553,028.00

2003

P413,616,177.00

P78,864,114.00

P64,516,917.00

P12,729,776.00[57]

Thus, there was a substantial increase in net sales from 1999 to 2000, amounting to P78,047,292.00. Although net sales in 2001 decreased by P2,331,157.00, this was caused by the political crisis in the latter half of 2000. The considerable decrease in net sales in 2002 (P8,928,130.00) was caused by the decrease in sales to one of respondent Corporation's domestic customers, the Universal Far East Corporation (from P10,191,891.00 in 2001 to P29,663,371.00 in 2002).[58] This prompted respondent Corporation to retrench some of its personnel and stop the operation of PWSC effective July 31, 2002. However, it recovered in 2003 and increased net sales by P7,722,891.00, which paralleled its net sales in 2001. Consequently, respondent Corporation increased its retained earnings to P156,772,118.00. In 2003, the net sales increased by more than P8,000,000.00. There was also an increase of sales to subsidiaries and associates from P55,900,384.00 in 2002 to P71,954,982.00 in 2003.[59] The personnel costs for salaries and wages, employee benefits and allowances and retirement costs also decreased from P140,559,753.00 in 2002 to only P122,075,383.00 in 2003.[60] Even general and administrative expenses slightly decreased to P14,586,471.00 in 2003 from P15,262,901.00 in 2002.[61] The net income of respondent Corporation in 1999 (P29,068,388.00) increased to P63,640,408.00 in 2000. Its retained earnings of P84,201,822.00 at the beginning of 1999 increased to P103,200,960.00 in 2000.[62] The Corporation's net profits of P7,562,572.00 in 1999 increased to P29,158,284.00 in 2000.

Admittedly, the net income of respondent Corporation of P46,559,917.00 in 2001 decreased to P37,764,303.00 in 2002. However, such decrease ensued because respondent Corporation declared cash dividends for its shareholders amounting to P28,000,000.00.[63]

It also appears that respondent Corporation's gross profit of P89,814,698.00 in 2002 decreased to P78,864,114.00 in 2003. The reason for this is that the cost of goods sold in 2002 amounted to P316,078,588.00. In 2003, it increased to P334,752,063.00 in 2003,[64] in large part due to net changes in finished goods and goods in the process amounting to P9,203,605.00,[65] as well as costs for raw materials used, spare parts and supplies, light, power and water, and depreciation of cost of goods sold increased. However, personnel costs decreased to P97,971,479.00.[66] There was thus no reason for respondent Corporation to implement its "retrenchment program" and terminate the 88 employees.

The net income of the respondent Corporation of P39,553,028.00 in 2002 decreased to P12,729,776.00 in 2003.[67] It bears stressing, however, that the stockholders received cash dividends in the total amount of P12,259,473.00.[68] Also, the net income of respondent Corporation decreased because its income before equity in net earnings of its subsidiaries and associates was reduced to P11,122,142.00.[69] As shown in the SGV & Co. Audit Report, the net income of PCMC-USA decreased to P6,612,000.00, while PCMC-Clark and MPHI suffered net losses.[70]

That respondents acted in bad faith in retrenching the 77 members of petitioner is buttressed by the fact that Diaz issued his Memorandum announcing the cost-reduction program on March 9, 2004, after receipt of the February 10, 2004 letter of the Union president which included the proposal for additional benefits and wage increases to be incorporated in the CBA for the ensuing year. Petitioner and its members had no inkling, before February 10, 2004, that respondent Corporation would terminate their employment. Moreover, respondent Corporation failed to exhaust all other means to avoid further losses without retrenching its employees, such as utilizing the latter's respective forced vacation leaves. Respondents also failed to use fair and reasonable criteria in implementing the

retrenchment program, and instead chose to retrench 77 of the members of petitioner out of the dismissed 88 employees. Worse, respondent Corporation hired new employees and even rehired the others who had been "retrenched."

As shown by the SGV & Co. Audit Report, as of year end December 31, 2003, respondent Corporation increased its net sales by more than P8,000,000.00. Respondents failed to prove that there was a drastic or severe decrease in the product sales or that it suffered severe business losses within an interval of three (3) months from January 2004 to March 9, 2004 when Diaz issued said Memorandum. Such claim of a depressed market as of March 9, 2004 was only a pretext to retaliate against petitioner Union and thereby frustrate its demands for more monetary benefits and, at the same time, justify the dismissal of the 77 Union members.

In *Agabon v. National Labor Relations Commission*[71] and *Jaka Food Processing Corp. v. Pacot*,[72] the Court sustained the dismissals for just cause under Article 282 and for authorized cause under Article 283 of the Labor Code, respectively, despite non-compliance with the statutory requirement of notice and hearing. The grounds for dismissal in those cases, namely, neglect of duty and retrenchment, remained valid because the non-compliance with the notice and hearing requirement in the Labor Code did not undermine the validity of the grounds for the dismissals. The Court in those cases directed the employers to pay nominal damages to the employees dismissed for just or authorized cause for non-compliance with the procedural due process.

In contrast, in this case, the retrenchment effected by respondent Corporation is invalid due to a substantive defect, non-compliance with the substantial requirements to effect a valid retrenchment; it necessarily follows that the termination of the employment of petitioner Union's members on such ground is, likewise, illegal. As such, they (petitioner Union's members) are entitled to reinstatement with full backwages.[73] However, in the case of those employees-members of petitioner Union who had received their respective separation pay, the amounts of such payments shall be deducted from the backwages due them.[74] Where reinstatement is no longer feasible because the positions they previously held no longer exist, respondent Corporation shall pay the employees-members of petitioner Union backwages plus, in lieu of reinstatement, separation pay equivalent to one month pay, or one-half month pay for every year of service, whichever is higher.[75]

It is noteworthy that the separation pay being awarded in the instant case is due to illegal dismissal; hence, it is different from the amount of separation pay provided for in Article 283 of the Labor Code in case of retrenchment to prevent losses or in case of closure or cessation of the employer's business, in either of which the separation pay is equivalent to at least one (1) month or one-half (1/2) month pay for every year of service, whichever is higher.[76]

Considering further that there was evident bad faith on the part of respondent Corporation in terminating the employment of the employees-members of petitioner Union on the ground of retrenchment, they are entitled to an award of moral damages in the amount of P20,000.00 each.[77]

IN LIGHT OF THE FOREGOING, the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 87651 are REVERSED AND SET ASIDE. Respondent Corporation is found guilty of illegal dismissal and is ORDERED to reinstate the employees-members of petitioner Union with full backwages, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher. In addition, respondent Corporation is DIRECTED to pay the said employees moral damages in the amount of P20,000.00 each.

SO ORDERED.

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

[1] Rollo, p. 173.

[2] Id. at 175.

[3] Id. at 165.

[4] Id. at 132-141.

[5] Id. at 142-148.

[6] Id. at 107.

[7] Id. at 269.

[8] Id. at 151-154. The Corporation terminated the services of seventy-five (75) employees, comprising: ten (10) Motorizers, nine (9) Installers, six (6) Menders, five (5) CAD Artists, three (3) Production Clerks, Industrial Mechanics, and Dyeing Machine Operators; two (2) Stencillers, PO Analysts, Yarn Clerks, Menders/Shearers, Drivers, and Helpers; and one (1) Storekeeper, Material Clerk, CAD Draftsman, Clerk Typist, Enlarger, Yarn Expediter, QC Inspector, Caryer, Industrial Electrician, Janitress, Plumber, Boiler Tender, Electrician, Pass MC Adjuster, Dyeing Helper II, Dryer Tender, Machine Operator, Sewer, Canvass Sketcher, Ax/Tufting Mender, Loom Adjuster, Rehanker, Winder, and MC Operator/Weller.

[9] Id. at 160.

[10] Id. at 149.

[11] Id.

[12] Id. at 157-158.

[13] Id. at 157.

[14] Id. at 158.

[15] Id. at 159.

[16] Id. at 161-162.

[17] Id. at 161.

[18] Id. at 113-118.

[19] Id. at 125-126.

[20] Id. at 237.

[21] Id. at 238.

[22] Id. at 239.

[23] Id.

[24] Id. at 242.

[25] Id. at 90-105.

[26] Id. at 96.

[27] Id. at 105.

[28] Id. at 94.

[29] Id. at 104.

[30] Id. at 76.

[31] Id. at 365-375.

[32] Id. at 376-400.

[33] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, concurring; rollo, pp. 68-87.

[34] 385 Phil. 999 (2000).

[35] Rollo, p. 81.

[36] Id. at 84.

[37] Id. at 84-85.

[38] Id. at 88.

[39] Id. at 28-50.

[40] Id. at 44-46.

[41] Id. at 50-55.

[42] Id. at 462-481.

[43] Id. at 486-518.

[44] Emphasis ours.

[45] *Trendline Employees Association-Southern Philippines Federation of Labor v. National Labor Relations Commission*, 338 Phil. 681, 688 (1997).

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

[47] Id. at 186.

[48] *Guerrero v. National Labor Relations Commission*, 329 Phil. 1069, 1076 (1996); *Somerville Stainless Steel Corporation v. National Labor Relations Commission*, 350 Phil. 859, 870 (1998).

[49] *Asian Alcohol Corporation v. National Labor Relations Commission*, 364 Phil. 912, 926-927 (1999).

[50] *San Miguel Jeepney Service v. National Labor Relations Commission*, 332 Phil. 804, 814-815 (1996).

[51] *Asian Alcohol Corporation v. National Labor Relations Commission*, *supra* note 49, at 930.

[52] Id.

[53] Rollo, p. 204.

[54] Id. at 171.

[55] Id.

[56] Id. at 395.

[57] Id. at 170, 190, 208.

[58] Id. at 204.

[59] Id. at 186.

[60] Id. at 185.

[61] Id.

[62] Id. at 208.

[63] Id. at 190, 199. (Emphasis supplied)

[64] Id. at 170.

[65] Id.

[66] Id. at 184.

[67] Id. at 170.

[68] Id. at 180.

[69] Id. at 170.

[70] Id. at 181.

[71] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 609.

[72] G.R. No. 151378, March 28, 2005, 454 SCRA 119, 127.

[73] Article 279, LABOR CODE. The base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving such as the emergency living allowances and the 13[th]-month pay mandated under the law. *Paramount Vinyl Products Corporation v. National Labor Relations Commission*, G.R. No. 81200, October 17, 1990, 190 SCRA 525, cited in *F.F. Marine Corporation v. National Labor Relations Commission*, Second Division, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 173-174.

[74] *Ariola v. PHILEX Mining Corporation*, G.R. No. 147756, August 9, 2005, 466 SCRA 152, 175.

[75] *F.F. Marine Corporation v. National Labor Relations Commission*, *supra* note 73, at 72-173.

[76] Id. at 173.

[77] See *Hilario v. National Labor Relations Commission*, 322 Phil. 604 (1996). See also *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 639-640.

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