MOBILIA PRODUCTS, INC., PETITIONER, VS. ALAN G. DEMECILLO, CRISTOPHER S. DALIGDIG, MANUELITO V. SUSON, MARCIANO SUAREZ AND ANTONIO MONTECILLO, JR., RESPONDENTS.

G.R. No. 170669. February 04, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails the Decision [1] dated July 4, 2005 of the Court of Appeals in C.A.-G.R. S.P. No. 78023, which had reversed the Decision [2] dated October 29, 2001 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000072-2000. Reversed by the NLRC was the Decision [3] dated May 24, 1999 of the labor arbiter ordering petitioner to pay respondents backwages amounting to P203,160 and 10% attorney's fees.

The factual antecedents of the case are as follows:

Respondents Alan G. Demecillo, Christopher S. Daligdig, Manuelito V. Suson, Marciano G. Suarez and Antonio Montecillo, Jr. were employees of petitioner Mobilia Products, Inc., a company engaged in the manufacture of furniture for export mainly to Japan.

In July 1998, petitioner initiated a retrenchment program allegedly to cope with reduced orders from Japan because of economic crisis. It enticed employees to voluntarily relinquish their positions by offering twice [4] the amount of separation pay mandated by law. One hundred eight of its 309 employees, including the respondents, accepted the offer and executed quitclaims in petitioner's favor. Instead of giving notice 30 days before the effective date of retrenchment, petitioner paid the employees the equivalent of 30 days salary.

On various dates from July 27, 1998 to September 22, 1998, respondents separately filed complaints [5] for salary differential against petitioner before the Regional Arbitration Branch (RAB) No. VII of the NLRC, Cebu City. By January 1999, all but Antonio Montecillo, Jr. had amended their respective complaint to include a charge for illegal dismissal. [6]

On May 24, 1999, the labor arbiter ruled that respondents were not validly retrenched. It held that petitioner failed to comply with the 30-day notice requirement because the respondents were terminated a day after being notified. The fallo of the decision reads:

> WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring complainants Cristopher Daligdig, Alan Demecillo, Marciano Suarez and Manuelito Suson, as having been invalidly retrenched. Consequently, respondent MOBILIA PRODUCT[S], INC. is hereby ordered to pay the said complainants with backwages from the time they were invalidly retrenched up to the date of this decision, to wit:
>
> 1.
>
> Cristopher Daligdig.....

P5,079.00 x 10 mos

=

P50,790.00

2.

Alan Demecillo.....

5,079.00 x 10 mos.

=

50,790.00

3.

Marciano Suarez.....

5,079.00 x 10 mos.

=

50,790.00

4.

Manuelito Suson.....

5,079.00 x 10 mos.

=

50,790.00

TOTAL----------

P203,160.00

ADD: 10% Attorney's fees.....

20,316.00

GRAND TOTAL----------

P223,476.00

Complainants' other claims are dismissed for failure to substantiate [said claims].

Likewise, the case of other complainants who resigned or have not resigned, are DISMISSED for failure to substantiate their claims and for lack of merit.

SO ORDERED. [7]

On appeal, the NLRC reversed the Labor Arbiter. It noted that only .037% of the 309 employees questioned the validity of the retrenchment. It held that notice was not necessary since the employees consented to the retrenchment thereby acknowledging its validity. Nonetheless, the NLRC granted respondents' claims for overtime differentials and attorney's fees. The NLRC ruled:

WHEREFORE, the assailed decision is REVERSED declaring that the retrenchment was VALID but that all

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> eleven (11) complainants are entitled to overtime pay differentials from September, 1995 to July, 1998. For this purpose, the Arbitration Branch is directed to make the necessary computation, as discussed.
>
> Respondent is also assessed the attorney's fees of ten percent (10%) of the total awards because complainants were forced to litigate to vindicate their rights.
>
> **SO ORDERED. [8]**

Respondents brought the case on certiorari to the Court of Appeals. On July 4, 2005, the appellate court reversed the NLRC decision:

> IN LIGHT OF ALL THE FOREGOING, this petition is GRANTED. The decision of the NLRC dated October 29, 2001 is hereby REVERSED and SET ASIDE. The private respondent is ORDERED to pay petitioners Alan Demecillo, Manuelito Suson, Mar[ci]ano Suarez, Cristopher Daligdig and Antonio Montecillo, Jr. full backwages, computed from the time of their dismissal up to the finality of this decision; nominal damages of P20,000.00 each and 5% of the monetary award in the form of attorney's fees.
>
> All other claims are dismissed.
>
> Costs against the petitioners.
>
> SO ORDERED. [9]

The Court of Appeals observed that petitioner did not present evidence to prove the substantial losses it allegedly suffered to justify retrenchment. The only relevant evidence submitted by petitioner were the letters signifying acceptance of retrenchment and waivers and quitclaims signed by respondents. But while the letters of acceptance were dated July 25, 1998, the notices of termination were dated earlier July 23, 1998. [10] The Court of Appeals opined that the 30-day notice rule cannot be dispensed with by the simple expedient of giving 30 days pay. Thus, it sustained the award of backwages to respondents, and ordered petitioner to pay each of them P20,000 as nominal damages, plus 5% attorney's fees. [11]

Petitioner now comes to us contending that:

> I.
>
> THE PETITION BROUGHT BY THE RESPONDENTS TO THE HONORABLE COURT OF APPEALS WAS A SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65. HOWEVER, ON THE SUBSTANCE OF THE PETITION, IT SHOULD NOT HAVE BEEN GIVEN DUE COURSE BY THE HONORABLE COURT OF APPEALS AS THERE WAS NO ACT COMMITTED BY THE HONORABLE FOURTH DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH WAS WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE RETRENCHMENT PROGRAM OF THE PETITIONER WAS LEGAL, AS THE SAID RULING WAS BASED ON CASES THAT WERE DECIDED BY THIS HONORABLE SUPREME COURT.
>
> II.
>
> THE PETITION FOR CERTIORARI OF THE RESPONDENTS BEFORE THE COURT OF APPEALS SHOULD HAVE NOT ... BEEN GIVEN DUE COURSE FOR BEING DEFECTIVE IN FORM.
>
> III.
>
> THE [COURT OF APPEALS ERRED IN INCLUDING] RESPONDENT ANTONIO MONTECILLO, JR. IN THE AWARD FOR BACKWAGES IN [ITS] DECISION... THE DECISION OF THE REGIONAL ARBITRATION BRANCH VII OF THE NATIONAL LABOR RELATIONS COMMISSION GAVE AN

> AWARD FOR BACKWAGES TO RESPONDENTS CHRISTOPHER DALIGDIG, ALAN DEMECILLO, MARCIANO SUAREZ AND MANUELITO SUSON ONLY. [12]

Briefly, the key issues are: (1) whether the retrenchment was valid; (2) whether the appellate court erred in giving due course to the petition for certiorari filed by respondents; and (3) whether the award of backwages to Montecillo was proper.

Petitioner argues that it need not substantiate losses because by jurisprudence, the validity of retrenchment is presumed when an employee consents or voluntarily applies for it. As regards the notice requirement, it is petitioner's view that payment of 30 days salary in lieu of notice constituted substantial compliance with the law. Even more, respondents were given one month pay for every year of service instead of just one-half month pay for every year of service. Petitioner also faults the appellate court for giving due course to the petition for certiorari filed by respondents. It stressed that the petition neither named the petitioners therein nor impleaded the NLRC as a nominal party. Petitioner finally disputes the award of backwages to Montecillo as he did not amend his complaint to include a claim for illegal dismissal.

Respondents for their part, deny that they volunteered for inclusion in the retrenchment program, much less knew about the financial status of the company. They aver that petitioner's failure to submit an independent and externally audited financial statement strongly indicates the absence of an authorized cause for dismissal. Respondents likewise agree with the appellate court that petitioner could not substitute the 30-day notice by paying 30 days salary. Thus, they believe that the award of nominal damages and attorney's fees was only fitting considering the swift manner by which they were laid off. While further admitting that Montecillo did not allege illegal dismissal in his complaint, respondents reason that he nevertheless claimed the same in the position paper. [13] Hence, the award of backwages in his favor was proper.

The resolution of this case rests on the determination of the validity of respondents' retrenchment by petitioner. Retrenchment is the termination of employment initiated by the employer through no fault of the employees and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. [14] It is a management prerogative resorted to by employers to avoid or minimize business losses. [15]

For retrenchment to be valid, the following requisites under Article 283 [16] of the Labor Code must concur: (1) necessity of retrenchment to prevent losses and proof of such losses; (2) written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher. [17]

To justify the employees' termination of service, the losses must be serious, actual and real, and they must be supported by sufficient and convincing evidence. [18]Petitioner cites International Hardware, Inc. v. NLRC [19] as its authority in disputing its obligation to prove losses. In that case, we held that:

> ...if an employee consented to his retrenchment or voluntarily applied for retrenchment with the employer due to the installation of labor-saving devices, redundancy, closure or cessation of operation or to prevent financial losses to the business of the employer, the required previous notice to the DOLE is not necessary as the employee thereby acknowledged the existence of a valid cause for termination of his employment. [20]

However, apart from petitioner's bare assertion of reduced orders from Japan, the only evidence it presented were the letters of voluntary acceptance of retrenchment, and waivers and quitclaims signed by respondents. To our

mind, these were insufficient to show that petitioner indeed suffered business losses so serious as to necessitate the reduction of personnel. [21] We have constantly ruled that financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company. [22] Any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees. [23] Petitioner submitted none. Further, let it be clarified that our ruling in International Hardware, Inc. v. NLRC [24] did not dispense with the responsibility of the employer to substantiate losses. It merely exempts the latter from giving notice of retrenchment to its employees and DOLE.

Settled is the rule that the employer bears the burden of proving an allegation of the existence or imminence of substantial losses, which by its nature is an affirmative defense. It is the duty of the employer to prove with clear and satisfactory evidence that legitimate business reasons exist to justify retrenchment. Failure to do so inevitably results in a finding that the dismissal is unjustified. [25] Accordingly, where the retrenchment is illegal and of no effect, as in this case, the quitclaims were therefore not voluntarily entered into by the workers. Their consent had been vitiated by mistake or fraud. [26]

For a valid termination due to retrenchment, the law also requires that written notices of the intended retrenchment be served by the employer on the worker and on the DOLE at least one month before the actual date of the retrenchment. The purpose of this requirement is to give employees time to prepare for the eventual loss of their jobs, as well as to give DOLE the opportunity to ascertain the veracity of the alleged cause of termination. [27] In this case, petitioner insists that the payment of 30 days salary to respondents in place of notice was sufficient compliance with the 30-day notice rule. We cannot agree. Nothing in the law gives petitioner the option to substitute the required prior written notice with payment of 30 days salary. Indeed, a job is more than the salary it carries. Payment of 30 days salary cannot compensate for the psychological effect or the stigma of immediately finding one's self laid off from work. It cannot be a fully effective substitute for the 30 days' written notice requirement by law, especially when, as in this case, no notice was given to the DOLE. [28] Even as the letters of voluntary acceptance were dated July 25, 1998, the notices of termination given on July 23, 1998 were effective the following day. In essence, respondents had already been dismissed before they signed the letters of voluntary acceptance. Clearly, petitioner deprived respondents of their right to statutory due process. For this, we affirm the appellate court's award of nominal damages to respondents. But, consistent with our ruling in Agabon v. National Labor Relations Commission, [29] the amount of nominal damages should be P30,000. We also sustain the award of attorney's fees as it is sanctioned by law. [30]

As regards the second issue, suffice it to say that technical rules of procedure should be used to promote, not frustrate, justice. [31] Although respondents' full names were not stated in the title of their petition before the Court of Appeals as petitioners, the same appeared in the verification where they specifically identified themselves as the petitioners in the case. Such omission, including the omission to implead the NLRC as nominal party, is not such a defect as to render the petition before the appellate court fatally defective considering the merits of respondents' case. Petitioner cannot harp on procedural technicalities in its bid to defeat substantial justice.

Finally, as regards the third issue, respondents invoke the case of Development Bank of the Philippines v. NLRC [32] to justify the award of backwages to Montecillo. Unfortunately, their reliance on the said case is misplaced. In Development Bank of the Philippines v. NLRC, the Court affirmed the grant by the NLRC of benefits prayed for by the respondents therein in their position paper even if the same were not included as part of the original claim. Significantly, no new party intervened to seek additional relief from the Commission.

Quite the opposite, in this case, respondent Montecillo was a party, only in the suit for non-payment of benefits. He did not amend his complaint to reflect a charge of illegal dismissal against petitioner. It was not surprising,

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therefore, that Montecillo was not among those who were awarded backwages by the Regional Arbitration Branch of the NLRC in its May 24, 1999 Decision.

By express provision of Section 3, par. (2) [33] Rule V of The New Rules of Procedure of the NLRC on the proceedings before the labor arbiter, verified position papers shall cover only those claims and causes of action raised in the complaint save those that may have been amicably settled. They shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. Thereafter, the parties shall not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.

Since respondent Montecillo failed to allege illegal dismissal in his complaint, he cannot subsequently incorporate such claim in his position paper. It follows that the Court of Appeals never acquired jurisdiction to rule on the validity of his termination. Thus, we find the appellate court's award of backwages in Montecillo's favor without legal basis.

WHEREFORE the instant petition is DENIED. The Decision dated July 4, 2005 of the Court of Appeals in C.A.-G.R. S.P. No. 78023 is hereby AFFIRMED with the MODIFICATION that (1) the nominal damages to be paid to each respondent shall be P30,000, and (2) the award of backwages to Antonio Montecillo, Jr. is deleted. Other awards are hereby sustained. For the prompt execution hereof, this case is hereby remanded to the Labor Arbiter for the purpose of computing the exact amount of award to each respondent pursuant to this decision.

SO ORDERED.

Quisumbing, Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Rollo, pp. 334-343. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr. concurring.

[2] Id. at 517-523.

[3] Id. at 545-551.

[4] Id. at 334.

[5] Id. at 39-43.

[6] Id. at 44-46.

[7] Id. at 550-551.

[8] Id. at 522.

[9] Id. at 343.

[10] Id. at 87-94.

[11] Id. at 342.

[12] Id. at 18-20.

[13] Id. at 47-58.

[14] Polymart Paper Industries, Inc. v. NLRC, G.R. No. 118973, August 12, 1998, 294 SCRA 159, 166.

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[15] Oriental Petroleum and Minerals Corporation v. Fuentes, G.R. No. 151818, October 14, 2005, 473 SCRA 106, 115.

[16] 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 to 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.

[17] Guerrero v. National Labor Relations Commission, G.R. No. 119842, August 30, 1996, 261 SCRA 301, 305.

[18] Id. at 306.

[19] G.R. No. 80770, August 10, 1989, 176 SCRA 256.

[20] Id. at 260.

[21] Balasbas v. National Labor Relations Commission, G.R. No. 85286, August 24, 1992, 212 SCRA 803, 808.

[22] F.F. Marine Corporation v. National Labor Relations Commission, Second Division, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 168.

[23] Oriental Petroleum and Minerals Corporation v. Fuentes, supra note 15, at 116.

[24] Supra note 19.

[25] Polymart Paper Industries, Inc. v. NLRC, supra note 14, at 170.

[26] EMCO Plywood Corporation v. Abelgas, G.R. No. 148532, April 14, 2004, 427 SCRA 496, 515.

[27] Id. at 512.

[28] Serrano v. National Labor Relations Commission, G.R. No. 117040, May 4, 2000, 331 SCRA 331, 340.

[29] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616-617.

[30] CIVIL CODE OF THE PHILIPPINES,

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(7) In actions for the recovery of wages of ... laborers and skilled workers;

x x x x

[31] Cusi-Hernandez v. Sps. Diaz, 390 Phil. 1245, 1252 (2000).

[32] G.R. Nos. 100376-77, June 17, 1994, 233 SCRA 250.

[33] II C.A. AZUCENA, JR., THE LABOR CODE WITH COMMENTS AND CASES 818, 822 (4[th] ed., 1999).

SEC. 3. Submission of Position Papers/Memorandum.-...

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof. Promulgated on August 31, 1990 and took effect on October 9, 1990.

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