

**RUBEN L. ANDRADA, BERNALDO V. DELOS SANTOS, JOVEN M. PABUSTAN, FILAMER ALFONSO, VICENTE A. MANTALA, JR., HARVEY D. CAYETANO, AND JOVENCIO L. POBLETE, PETITIONERS, VS. NATIONAL L...**

*G.R. No. 173231. December 28, 2007*

Ponente: VELASCO JR., J.

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**VELASCO JR., J.:**

To provide full protection to labor, the employers' prerogative to bring down labor costs through retrenchment must be exercised carefully and essentially as a measure of last resort. So should managements' prerogative to declare the employees' services redundant not be used a weapon to frustrate labor. This case brings to fore the continuing labor-management struggle for mutual survival.

Petitioners Ruben Andrada, Jovencio Poblete, Filamer Alfonso, Harvey Cayetano, Vicente Mantala, Jr., Bernaldo delos Santos, and Joven Pabustan were hired on various dates from 1995 up to 1997 and worked as architects, draftsmen, operators, engineers, and surveyors in the Subic Legend Resorts and Casino, Inc. (Legend) Project Development Division on various projects. Hwa Puay, Flordeliza Maria Reyes Rayel, and other corporate officers are impleaded in this case in their official capacities as officers of Legend.

On January 6, 1998, Legend sent notice to the Department of Labor and Employment of its intention to retrench and terminate the employment of thirty-four (34) of its employees, which include petitioners, in the Project Development Division. Legend explained that it would be retrenching its employees on a last-in-first-out basis on the strength of the updated status report of its Project Development Division, as follows: (1) shelving of the condotel project until economic conditions in the Philippines improve; (2) completion of the temporary casino in Cubi by mid-February 1998; (3) subcontracting the super structure work of Grand Legend to a third party; (4) completion of most of the rectification work at the Legenda Hotel; (5) completion of the temporary casino in Cubi; and (6) abolition of the Personnel and Administrative Department of the Project Development Division and transfer of its function back to Legend's Human Resources Department.

The following day, on January 7, 1998, Legend sent the 34 employees their respective notices of retrenchment, stating the same reasons for their retrenchment. It also offered the employees the following options, to wit:

- Temporary retrenchment/lay-off for a period not to exceed six months within which we shall explore your possible reassignment to other departments or affiliates, after six months and redeployment and/or matching are unsuccessful, permanent retrenchment takes place and separation pay is released.
- Permanent retrenchment and payment of separation pay and other benefits after the thirty (30) days notice has lapsed; or
- Immediate retrenchment and payment of separation pay, benefits and one month's salary in lieu of notice to allow you to look for other employment opportunities.[1]

Legend gave said employees a period of one week or until January 14, 1998 to choose their option, with option number 2 (permanent retrenchment) as the default choice in case they failed to express their preferences. After the employees made their choices, they also expressed their reservation that their choice should not be deemed as waiver of their rights granted under the Labor Code or their right to question the validity of their retrenchment should their separation benefits not be settled by January 30, 1998.

Curiously, on the same day, the Labor and Employment Center of the Subic Bay Metropolitan Authority advertised that Legend International Resorts, Inc. was in need of employees for positions similar to those vacated by petitioners.[2]

Afterwards, on February 6, 1998, Legend informed the retrenched employees of their permanent retrenchment and/or their options. Legend paid the retrenched employees their salaries up to February 6, 1998, separation pay, pro-rated 13th-month pay, ex-gratia, meal allowance, unused vacation leave credits, and tax refund. Petitioners, in turn, signed quitclaims but reserved their right to sue Legend.

Subsequently, on March 3, 1998, 14[3] of the 34 retrenched employees filed before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in San Fernando City, Pampanga, a complaint for illegal dismissal and money claims for the payment of their share in the service charges, unused leaves, and their salaries for the unexpired portion of their respective employment contracts, damages, and attorney's fees against Legend and its officials, Hwa Puay and Flordeliza Maria Reyes Rayel. The complaint was docketed as NLRC RAB III-03-9080-98.

Before the Labor Arbiter, complainants alleged that they were illegally dismissed because Legend, after giving retrenchment as the reason for their termination, created new positions similar to those they had just vacated. Legend, on the other hand, invoked management prerogative when it terminated the retrenched employees; and said that complainants voluntarily signed quitclaims so that they were already barred from suing Legend.

On February 7, 2000, the Labor Arbiter rendered a Decision, the fallo of which reads:

WHEREFORE, premises considered, respondents are hereby adjudged guilty of Illegal dismissal, and they are ordered to immediately reinstate the complainants without loss of seniority rights and to pay to them the following:

1.

Ruben Andrada:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P14,300.00 and the same amount every month thereafter until reinstated

----- P343,200.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same

amount every month thereafter until reinstated

-----P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P28,600.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P28,600.00

e)

Damages

----- P100,000.00

T O T A L

----- P519,600.00

2.

Darryl Bautista:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P11,200.00 and the same amount every month thereafter until reinstated

----- P268,800.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P22,400.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P22,400.00

T O T A L

-----P332,800.00

3.

Jovencio Poblete

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P12,000.00 and the same amount every month thereafter until reinstated

----- P288,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P24,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P24,000.00

e)

Damages

----- P100,000.00

T O T A L

----- P455,200.00

4)

Renato Pangilinan:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P17,000.00 and the same amount every month thereafter until reinstated

----- P408,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P408,000.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P408,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P34,000.00

T O T A L

----- P495,200.00

5)

Dario Rapada:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P10,000.00 and the same amount every month thereafter until reinstated

----- P240,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P20,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P20,000.00

T O T A L

-----P299,200.00

6)

Adrian Camacho:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P7,000.00 and the same amount every month thereafter until reinstated

----- P168,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P14,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P14,000.00

T O T A L

----- P215,200.00

7)

Marvin Samaniego:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P7,000.00 and the same amount every month thereafter until reinstated

----- P168,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P14,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P14,000.00

T O T A L

----- P215,200.00

8)

Filamer Alfonso:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P10,000.00 and the same amount every month thereafter until reinstated

----- P240,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P20,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P20,000.00

T O T A L

----- P299,200.00

9)

Milton Maravilla:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P13,000.00 and the same amount every month thereafter until reinstated

----- P312,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P26,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P26,000.00

e)

Damages

----- P100,000.00

T O T A L

----- P483,200.00

10)

Harvey Cayetano:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P8,000.00 and the same amount every month thereafter until reinstated

----- P192,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P16,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P16,000.00

e)

Damages

----- P100,000.00

T O T A L

----- P343,200.00

11)

Vicente Mantala, Jr.:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P5,500.00 and the same amount every month thereafter until reinstated

----- P132,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P11,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P11,000.00

e)

Damages

----- P100,000.00

T O T A L

----- P273,200.00

12)

Carlos Mananquil:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P30,000.00 and the same amount every month thereafter until reinstated

----- P720,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P60,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P60,000.00

e)

Damages

----- P100,000.00

T O T A L

----- P959,200.00

13)

Bernaldo delos Santos:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P18,500.00 and the same amount every month thereafter until reinstated

----- P444,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P37,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P37,000.00

e)

Damages

----- P100,000.00

f)

Service charge at P1,500.00 a month from May 15, 1996 to February 6, 2000 (44 months) and every month thereafter until reinstated

----- P72,000.00

T O T A L

----- P709,200.00

14)

Joven Pabustan:

a)

Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P10,000.00 and the same amount every month thereafter until reinstated

----- P240,000.00

b)

Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated

----- P19,200.00

c)

13[th] month pay for 2 years (1998 to 1999)

----- P20,000.00

d)

14[th] month pay for 2 years (1998 to 1999)

----- P20,000.00

e)

Damages

----- P100,000.00

T O T A L

----- P399,200.00

The respondents are further ordered to pay to the complainants attorney's fees equivalent to ten (10%) percent of the total award due the complainants. The payment of back salary, 13[th] month pay and 14[th] month pay, meal allowance and service charge shall be computed up to the date of the finality of this decision.

SO ORDERED.[4]

The Labor Arbiter stated that the documents submitted by Legend to justify the retrenchment of its personnel were insufficient because the documents failed to show that Legend was suffering from actual losses or that there was redundancy in the positions occupied by petitioners. The Labor Arbiter also attributed bad faith on the part of Legend when it advertised openings for positions similar to those occupied by the retrenched employees at the same time the retrenchment program was being implemented.

The Labor Arbiter gave no evidentiary weight to complainants' quitclaims because, according to the Labor Arbiter, these quitclaims were part of the clearance forms prepared and imposed by Legend on the retrenched employees before their clearances could be approved. The Labor Arbiter also found that in the conference held on January 28, 1998 between complainants and Legend's management, complainants inscribed their reservations at the bottom of their clearance forms, stating that they would accept Legend's offer on the condition that they reserved the option to later file their respective claims with the NLRC.

With regard to the issue of damages, the Labor Arbiter observed that complainants, who were licensed professionals, had sufficiently proven that they suffered social humiliation and mental trauma because their dismissal was clearly attended by bad faith and contrary to laws and public policy. On account of Legend's bad faith, the Labor Arbiter awarded attorney's fees equivalent to ten percent (10%) of the total amount awarded to complainants.

On April 7, 2000, Legend filed an appeal with the NLRC. Notably, its new counsel did not submit his formal substitution as counsel. Complainants consequently filed their Memorandum on Appeal with a prayer to declare the Labor Arbiter's decision final. They aver that since there was no formal substitution of counsel, Legend's new counsel had no personality to file an appeal; and because no appeal was perfected within the reglementary period, the Labor Arbiter's decision should be deemed final and executory.

After three years, the NLRC rendered its June 23, 2003 Decision which reversed the Labor Arbiter. The NLRC held that the Labor Arbiter erred when he failed to consider the numerous documents presented and submitted by Legend to prove that it was suffering from actual losses, and that there was redundancy in the work of the retrenched employees. The NLRC also gave credence to Legend's claim that it was Yap Yuen Khong, and not Legend, who asked for Subic Bay Metropolitan Authority's help in recruiting personnel for Gaehin International Inc. (Gaehin) as the sub-contractor for the construction of the Grand Legenda Hotel and Casino. The NLRC observed that Gaehin was an entity distinct and separate from Legend.

With regard to the Labor Arbiter's award of payment of service charges to Bernaldo delos Santos and Carlos Mananquil, the NLRC held that the award was improper since delos Santos and Mananquil's employment contracts did not provide for the payment of service charges. According to the NLRC, though they previously received this benefit, it was because of an error in the administrative system; and since the benefits were paid by mistake, these did not ripen into a company practice.

The NLRC likewise held that the Labor Arbiter erred when it awarded the retrenched employees 14th month pay, or ex-gratia payment. The NLRC explained that this was a one-time bonus for the year 1997 given for the

employees' hard work and contribution for the year 1997. Further, no evidence suggested that this was done in the past or subsequent years.

The NLRC also held that Legend fully and properly complied with the 30-day notice requirements to the DOLE and to the retrenched employees.

The NLRC Decision's fallo reads:

WHEREFORE, premises considered, the assailed decision is hereby reversed and set aside. Respondents are adjudged not guilty of illegal dismissal. The order of reinstatement as well as all monetary awards are deleted from the decision.

SO ORDERED.[5]

Complainants moved for the reconsideration of the NLRC's Decision, but their motion was denied by the NLRC. Consequently, 10[6] out of the 14[7] original complainants filed a Petition for Certiorari with the Court of Appeals (CA), docketed as CA-G.R. SP No. 81701. This petition was, however, denied by the CA for lack of merit in its April 28, 2006 Decision.[8]

The CA held that the retrenched employees were validly dismissed from employment due to redundancy and not retrenchment. The CA ratiocinated that Legend had validly terminated the employment of its employees since it had proven that complainants' positions were superfluous and that there was an oversupply of employees; more than what its projects needed.

On the issue of Legend's recruitment of new personnel after terminating complainants' employment, the CA held that the NLRC had sufficiently explained that it was not Legend but Gaehin, through Mr. Khong, which was recruiting for personnel.

Aggrieved by the CA Decision, seven[9] out of the 14 original complainants filed the present petition. They raise the following issues:

- Did Legend perfect its appeal before the NLRC, though it had not formally and properly substituted its counsel?
- Were complainants illegally dismissed? Corrollarily, was there a valid retrenchment? Or, did Legend prove the existence of redundancy in its Project Development Division?

Petitioners argue that the Labor Arbiter's decision should be deemed final and executory since Legend failed to formally substitute its counsel, and, thus, failed to perfect its appeal.

Legend, on the other hand, relies heavily on the CA's ruling, which held that lack of proper substitution is not a sufficient ground to arrive at a finding of grave abuse of discretion. Even without substitution, private respondent's new lawyer could still be considered a collaborating counsel. A party may have two or more lawyers working in collaboration in a given litigation.

We rule for Legend.

The CA correctly held in this case that Legend perfected its appeal, albeit, through a new counsel. It has long been settled that the NLRC is not bound by the strict technical rules of procedure of the Rules of Court. The CA had correctly held that as a general rule, our policy towards invocation of the right to appeal has been one of liberality, since it is an essential part of the judicial system. In line with this principle, courts have been advised to proceed with caution so as not to deprive a party of the right to appeal. Every party litigant should be given the amplest opportunity for the proper and just disposition of his/her cause freed from the constraints of technicalities. Thus, the NLRC did not commit grave abuse of discretion when it decided the case on the merits instead of dismissing

the appeal on a mere technicality.

With regard to the issue of the legality of the dismissals, petitioners argue that Legend failed to prove the legal and factual existence of the cause for dismissal, and that it failed to comply with the requirements for the implementation of retrenchment. Petitioners further argue that the CA abused its discretion in ruling that the employees were validly dismissed not because of retrenchment but for redundancy. Legend, in contrast, relies on its management prerogative to justify the termination of petitioners' employment. Legend also relies on the CA's ruling that Legend sufficiently proved the existence of redundancy that justified petitioners' dismissal from service.

On this issue, we rule for petitioners.

A company's exercise of its management prerogatives is not absolute. It cannot exercise its prerogative in a cruel, repressive, or despotic manner. We held in *F.F. Marine Corp. v. NLRC*:

This Court is not oblivious of the significant role played by the corporate sector in the country's economic and social progress. Implicit in turn in the success of the corporate form in doing business is the ethos of business autonomy which allows freedom of business determination with minimal governmental intrusion to ensure economic independence and development in terms defined by businessmen. Yet, this vast expanse of management choices cannot be an unbridled prerogative that can rise above the constitutional protection to labor. Employment is not merely a lifestyle choice to stave off boredom. Employment to the common man is his very life and blood, which must be protected against concocted causes to legitimize an otherwise irregular termination of employment. Imagined or undocumented business losses present the least propitious scenario to justify retrenchment.[10]

Under the Labor Code, retrenchment and redundancy are authorized causes for separation from service. However, to protect labor, dismissals due to retrenchment or redundancy are subject to strict requirements under Article 283 of the Labor Code, to wit:

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 establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title by serving a written notice on the worker 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 separation pay equivalent to at least his one (1) month pay or 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 as one (1) whole year.

Retrenchment is an exercise of management's prerogative to terminate the employment of its employees -en masse, to either minimize or prevent losses, or when the company is about to close or cease operations for causes not due to business losses.

In *Lopez Sugar Corporation v. Federation of Free Workers*,<sup>[11]</sup> this Court had the opportunity to lay down the following standards that a company must meet to justify retrenchment to prevent abuse by employers:

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 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 other 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 *Ariola v. Philex Mining Corporation*,<sup>[12]</sup> the Court summarized the requirements for retrenchment, as follows:

Thus, the requirements for retrenchment are: (1) it is undertaken to prevent losses, which 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) the employer serves written notice both to the employees and the DOLE at least one month prior to the intended date of retrenchment; and (3) 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. The Court later added the requirements that the employer must use fair and reasonable criteria in ascertaining who would be dismissed and x x x retained among the employees and that the retrenchment must be undertaken in good faith. Except for the written notice to the affected employees and the DOLE, non-compliance with any of these requirements render[s] the retrenchment illegal.

In the present case, Legend glaringly failed to show its financial condition prior to and at the time it enforced its retrenchment program. It failed to submit audited financial statements regarding its alleged financial losses. Though Legend complied with the notice requirements and the payment of separation benefits to the retrenched employees, its failure to establish the basis for the retrenchment of its employees constrains us to declare the retrenchment illegal.

However, the CA in its decision ruled that the petitioners were validly dismissed not for retrenchment but for redundancy. The CA explained that Legend mistakenly used the term retrenchment when all its reasons and justifications for the dismissal of its employees point to redundancy.

Were petitioners' positions redundant? Had Legend sufficiently established the fact of redundancy?

Petitioners claim that the CA erred in concluding that Legend substantially established redundancy as the authorized cause underlying their dismissal from service. They aver that retrenchment and redundancy are not interchangeable, and both were not proven by Legend to justify their dismissal.

Legend, on the other hand, claims that petitioners never refuted the causes for termination contained in the notice of retrenchment. It further explains that it really had intended redundancy as the basis for the termination of the employees, as seen in its arguments before the Labor Arbiter, NLRC, and CA, where it claimed that before the retrenched employees were actually dismissed, the retrenched employees were not doing any work; that the work of the Project Development Division had already been completed and accomplished; and that the Engineering

Services Division and the Project Development Division performed overlapping functions. Legend points out that it had really intended redundancy as the basis for the termination of the employees, that is why it had paid one month's pay instead of one-half month's pay for every year of service.

We rule that Legend failed to establish redundancy.

Retrenchment and redundancy are two different concepts; they are not synonymous and therefore should not be used interchangeably. This Court explained in detail the difference between the two concepts in *Sebuguero v. NLRC*:<sup>[13]</sup>

Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as over hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.

Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is the termination of employment initiated by the employer through no fault of the employee's 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. Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.

Thus, simply put, redundancy exists when the number of employees is in excess of what is reasonably necessary to operate the business. The declaration of redundant positions is a management prerogative. The determination that the employee's services are no longer necessary or sustainable and therefore properly terminable is an exercise of business judgment by the employer. The wisdom or soundness of this judgment is not subject to the discretionary review of the Labor Arbiter and NLRC.<sup>[14]</sup>

It is however not enough for a company to merely declare that positions have become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.<sup>[15]</sup> In *Panlilio v. NLRC*,<sup>[16]</sup> we said that the following evidence may be proffered to substantiate redundancy: "the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring." In another case, it was held that the company sufficiently established the fact of redundancy through "affidavits executed by the officers of the respondent PLDT, explaining the reasons and necessities for the implementation of the redundancy program."<sup>[17]</sup>

According to the CA, Legend proved the existence of redundancy when it submitted a status review of its project division where it reported that the 78-man personnel exceeded the needs of the company. The report further stated that there was duplication of functions and positions, or an over supply of employees, especially among architects, engineers, draftsmen, and interior designers.

We cannot agree with the conclusion of the CA.

The pieces of evidence submitted by Legend are mere allegations and conclusions not supported by other evidence. Legend did not even bother to illustrate or explain in detail how and why it considered petitioners' positions superfluous or unnecessary. The CA puts too much weight on petitioners' failure to refute Legend's allegations contained in the document it submitted. However, it must be remembered that the employer bears the burden of proving the cause or causes for termination. Its failure to do so would necessarily lead to a judgment of

illegal dismissal.

Again, it bears stressing that substantial evidence is the question of evidence required to establish a fact in cases before administrative and quasi-judicial bodies. Substantial evidence, as amply explained in numerous cases, is that amount of "relevant evidence which a reasonable mind might accept as adequate to support a conclusion." [18]

Thus, in the same way, we held that the basis for retrenchment was not established by substantial evidence, we also rule that Legend failed to establish by the same quantum of proof the fact of redundancy; hence, petitioners' termination from employment was illegal.

WHEREFORE, the petition is GRANTED. The April 28, 2006 Decision of the CA in CA-G.R. SP No. 81701 and the June 23, 2003 Decision of the NLRC in NLRC NCR CA No. 024306-2000 are hereby REVERSED and SET ASIDE. The February 7, 2000 Decision of Labor Arbiter Elias H. Salinas in NLRC RAB III-03-9080-98 is hereby REINSTATED with the MODIFICATION that the award for 14th-month pay or ex-gratia payment to all complainants in NLRC RAB III-03-9080-98 and the award for service charges to Bernaldo delos Santos and Carlos Mananquil are hereby DELETED.

**SO ORDERED.**

Quisumbing, (Chairperson), Carpio Morales, and Tinga, JJ., concur.  
Carpio, J., On leave.

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[1] Rollo, pp. 52-53.

[2] Id. at 67-69.

[3] Ruben Andrada, Bernaldo delos Santos, Carlos R. Mananquil, Darryl Bautista, Jovencio Poblete, Renato Pangilinan, Dario Rapada, Marvin Samaniego, Joven Pabustan, Harvey Cayetano, Milton Maravilla, Adrian Camacho, Vicente Mantala, Jr., and Filamer Alfonso.

[4] Rollo, pp. 87-94.

[5] Id. at 118.

[6] Ruben Andrada, Bernaldo delos Santos, Carlos Mananquil, Jovencio Poblete, Dario Rapada, Joven Pabustan, Harvey Cayetano, Milton Maravilla, Vicente Mantala, Jr., and Filamer Alfonso.

[7] Darryl Bautista, Renato Pangilinan, Marvin Samaniego, and Adrian Camacho were unavailable at the time the petition for certiorari was filed before the CA.

[8] Rollo, pp. 50-64. Penned by Presiding Justice Ruben T. Reyes (now a member of this Court) and concurred in by Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman.

[9] Ruben Andrada, Bernaldo delos Santos, Jovencio Poblete, Joven Pabustan, Harvey Cayetano, Vicente Mantala, Jr., and Filamer Alfonso.

[10] G.R. No. 152039, April 8, 2005, 455 SCRA 154, 164.

[11] G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-187; citations omitted.

[12] G.R. No. 147756, August 9, 2005, 466 SCRA 152, 170-171.

[13] G.R. No. 115394, September 27, 1995, 248 SCRA 532, 542.

[14] *San Miguel Corporation v. Del Rosario*, G.R. Nos. 168194 & 168603, December 13, 2005, 477 SCRA 604, 614.

[15] *Id.* at 614-615.

[16] G.R. No. 117459, October 17, 1997, 281 SCRA 53, 56.

[17] *Soriano v. NLRC*, G.R. No. 165594, April 23, 2007.

[18] *Reno Foods, Inc. v. NLRC*, G.R. No. 116462, October 18, 1995, 249 SCRA 379, 385.

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