

**CAFFCO INTERNATIONAL LIMITED (PHILIPPINES BRANCH) HEREIN
REPRESENTED BY ITS GENERAL-MANAGER, JOSEPH C.K. TANG,
PETITIONER, VS. OFFICE OF THE MINISTER-MINISTRY OF LABOR
& EMPLOY-...**

G.R. No. 76966. August 07, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari with preliminary injunction and/or restraining order questioning the order of public respondent the then Office of the Minister of Labor and Employment (MOLE) dated December 22, 1986, which required petitioner to pay retrenched employees "at least his one month pay or to at least one (1) month pay for every year of service, whichever is higher".

The facts of the case are not disputed.

Petitioner is an export-oriented corporation registered with the Export Processing Zone Authority engaged in the manufacture of artificial flowers for which it employs 400 employees.

Due to losses it was suffering, petitioner contemplated on the possible retrenchment of employees. It submitted queries to that effect to the MOLE Office in La Union, and the latter replied that it was the company's prerogative to do so. Thus, petitioner informed the MOLE Office in Region I that the Vinyl Section would be phased out due to shortage of orders and stiff competition. On August 11, 1986, petitioner filed with the MOLE, Baguio City District Office, a retrenchment program, for the phase-out of different sections of the company. The retrenchment policy was supposed to have taken effect on September 10, 1986. Petitioner submitted to the MOLE a list consisting of 130 employees to be retrenched. Of the 130 employees sought to be retrenched, 4 were union officers and more than a majority were union members.

On September 1, 1986, private respondent union filed a notice of strike for unfair labor practice on the part of petitioner, consisting of dismissal of union members, discrimination and coercion of employees. The following day, private respondent union staged a strike. The strikers formed stationary pickets, barricading all gates and entrances, preventing ingress and egress to the company premises.

On September 4, 1986, petitioner filed a petition with the MOLE for the latter to assume jurisdiction over the strike. It grounded its petition on then Article 264 paragraph 9 of the Labor Code, which covers labor disputes affecting the national interest.

In an Order dated September 16, 1986, the MOLE assumed jurisdiction over the labor dispute and directed the workers to return to work, while petitioner was on the other hand directed to accept the returning workers under the same terms and conditions prevailing previous to the work stoppage. At the same time, management was told to hold in abeyance its intended retrenchment measures. The same order likewise created a committee composed of representatives from the MOLE, the Ministry (now Department) of Trade and Industry, the Export Processing

Zone Authority, labor, and management, to formulate guidelines for the retrenchment program.

On October 29, 1986, the committee submitted its findings and recommendations to the effect that a departmental-wide retrenchment based on the "first in, last out policy" be adopted.

In its decision dated November 24, 1986, the MOLE adopted the recommendation of the Committee in en toto.

On December 9, 1986, respondent CAFFCO Employees Union-Association of Democratic Labor Organizations (CEU-ADLO) filed a Motion for Reconsideration of the MOLE decision, alleging that the real purpose for the retrenchment was union-busting.

Petitioner filed an Opposition to the Motion for Reconsideration, reiterating that retrenchment was necessary in order to avoid further losses.

In an Order dated December 22, 1986, the MOLE modified its decision dated November 24, 1986, by ruling that the closure of the Vinyl Department partakes of redundancy, and that petitioner did not substantiate its claim that it was continuously losing in its other departments. Hence, it authorized petitioner to implement its retrenchment program only with respect to the Vinyl Department effective December 31, 1986. It further ordered petitioner to award a separation pay to workers adversely affected by the retrenchment program "equivalent to 1 month pay for every year of service, a fraction of at least six (6) months being considered one whole year".

On December 16, 1986, the private respondents went on strike anew, barricading and blocking all gates and entrances to and from the company's premises as in the first strike staged on September 7, 1986.

As a consequence of the two strikes, petitioner entered into an Agreement with private respondent on January 7, 1987. In the said agreement, the petitioner agreed to get back all retrenched employees of the Vinyl Department, provided they reported back to work on January 12, 1987. All returning retrenched employees were, before reporting for work, to return the separation pay received by them from the company. If an employee did not do so, he was to be considered to have accepted retrenchment. Further, petitioner was to dismiss all cases filed with the NLRC and with the Labor Arbiters. A lucky money of P10, 000.00 was to be given by petitioner to all employees, to be divided equally among all of them.

Since not all retrenched employees went back to work on January 12, 1987, petitioner claims that it will be constrained to pay one (1) month pay for every year of service to those who did not report back to work if the MOLE decision dated December 22, 1986 becomes final. Hence, petitioner opted to file the instant petition on January 16, 1987, alleging that the award of one (1) month pay for every year of service to retrenched employees is without basis in fact and in law, and is tantamount to grave abuse of discretion on the part of the MOLE. Citing Article 284 (now Article 283) of the Labor Code, petitioner argues that in case of closure of an establishment and the consequent reduction of personnel to prevent losses, the law awards only 1/2 month pay for every year of service, and not 1 month pay for every year of service. Petitioner contends that said article does not require a showing that the company actually suffered losses, rather, it is enough that the company acts to prevent the losses to itself. Anent the pronouncement made by the MOLE that the retrenchment program of petitioner is in the nature of "redundancy", petitioner averred that it was not so, since it has not installed nor resorted to any labor-saving devices.

In a Resolution dated January 26, 1987, this Court, without giving due course to the petition, ordered respondents to file their Comment, and at the same time issued a temporary restraining order enjoining the enforcement of the MOLE Order dated December 22, 1986, insofar as it requires petitioner to pay retrenched employees one month pay for every year of service.

Private respondent Union filed its Comment on February 27, 1987, while public respondent filed its Comment on April 15, 1987.

In a Resolution dated May 25, 1987, this Court gave due course to the petition, and required the parties to file their respective memoranda. However, both parties opted to submit the case for resolution on the basis of the pleadings (Petition and Comments) filed in lieu of memoranda.

The sole issue in the case at bar is whether or not the separation from service of the workers in petitioner's company is a result of retrenchment (and not redundancy). The resolution of this issue would determine the amount the workers adversely affected should be entitled to receive as severance pay.

We hold that the petitioner's company was exercising its prerogative of retrenchment in order to minimize business losses.

When an employer decides to reduce the number of its personnel in order to prevent further losses, he is exercising his right to retrench employees to prevent losses in his business operations. On the other hand, where for purposes of economy, a company decides to reorganize its departments by imposing on employees of one department the duties performed by the employees of the other department, thus rendering unnecessary the job of the latter, the services of the employees whose functions are now being performed by the others, may be validly terminated on the ground of redundancy.

Business enterprises today are faced with the pressures of economic recession, stiff competition, and labor unrest. Thus, businessmen are always pressured to adopt certain changes and programs in order to enhance their profits and protect their investments. Such changes may take various forms. Management may even choose to close a branch, a department, a plant, or a shop (*Phil. Engineering Corp. vs. CIR*, 41 SCRA 89 [1971]).

Article 283 of the Labor Code (as amended by RA 6715, 6725, and 6727) allows the employer to terminate the employment of any worker, thus:

"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 (Department) of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or 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". (underscoring supplied).

Under the aforequoted provision of the Labor Code, three (3) requirements are necessary for a valid cessation of business operations, namely: (a) service of a written notice to the employees and to the MOLE at least one (1) month before the bona fide in character; and (c) payment to the employees of termination pay amounting to at least one-half (1/2) month pay for every year of service, or one (1) month pay, whichever is higher (*Mobil Employees Association et al vs. NLRC et al*, 183 SCRA 737 [1990]).

The termination of employees will be valid if the intent of the employer in undertaking the change in operations is economic in relation either to profitability or protection of its investment (*Phil. American Embroideries vs. Embroidery and Garment Workers Union*, 26 SCRA 634 [1969]). However, if the employer's intent is to

discharge its employees for union activity, or to break an existing union, the proposed change shall be construed as an unfair labor practice (Phil. Engineering Corp. vs. CIR, *supra*).

In the case at bar, the facts disclose that the change in operation intended by the petitioner, having complied with the three (3) requirements specified by law, is a valid retrenchment of the employees in the Vinyl Department to prevent losses.

As a matter of fact, in his comment dated April 15, 1987, the Solicitor General as counsel for public respondent admitted that the latter erred in its conclusions that the retrenchment program of the Vinyl Department of petitioner "partakes that of redundancy," being contrary to the evidence on record. On the contrary, said retrenchment program is supported by "hard and concrete evidence confirmed by the findings of the Inter-Agency Committee and is authorized by law. In fact there is no showing that petitioner installed any labor-saving devices in the company." Consequently, the Solicitor General recommends that the errors of public respondent in its Order dated December 22, 1986 be corrected by a finding that the retrenchment program of petitioner's Vinyl Department be considered a "retrenchment to prevent losses" and the computation of retrenchment pay be likewise corrected by awarding them instead, effective December 31, 1986, the separation pay provided for in Article 284 of the Labor Code (Rollo, pp. 116-118).

As early as March, 1986, the plan for a retrenchment was already being thought of. In a Resolution adopted in the Special Meeting of the Directors of CAFFCO International, (Rollo, p. 51), the directors of the said corporation broached the idea of transferring the vinyl factory from the Philippines to the People's Republic of China, because the prices of its vinyl Christmas decors produced in the Philippines were not competitive and this resulted in the sales in the Atlanta Wholesalers Show in January 1986, being cut in half from the sales in 1985. And then in a Resolution adopted by the Directors of CAFFCO International in a meeting held on September 10, 1986, (Rollo, pp. 52-53), the Chairman reported that it was establishing its first phase of the China factory immediately after October 1, 1986, for the following reasons: the use of the land for the factory site was rent-free for 12 years; there was to be no income tax to be imposed for the 12-year period; the cost of shipping raw materials to China is cheaper than the cost to ship to the Philippines; the cost of labor in China is only 40% as high as that in the Philippines; the political atmosphere in the Philippines is not favorable to foreign investment because of the alleged "encouragement" of labor unions and the right of employees to strike. As proof that it was suffering losses in its operations, petitioner submitted its balance sheets and statements of income and deficits, (Rollo, pp. 13-17), as prepared by the Joaquin Cunanan and Company. Petitioner incurred a gain in its operations of P548,010 in 1985, and a loss of P3,188,843 in 1986 (Rollo, p. 15).

There was no showing that the retrenchment was resorted to by petitioner in bad faith. As a matter of fact, private respondent union, in its Addendum to Motion for Reconsideration agrees that indeed the Vinyl Department was closed due to losses, when it alleged that: "It may be true that the Vinyl Department of CAFFCO is already closed due to losses, x x x."

Thus, the retrenchment of the employees in the Vinyl Department was legal, and under the aforementioned provision of the Labor Code, they are entitled to a separation pay equivalent to one month pay or at least one-half (1/2) month pay for every year of service, whichever is higher, and not, one (1) month pay for every year of service, as erroneously ruled by the MOLE in its Order dated December 22, 1987.

In view of the agreement dated January 7, 1987 entered into by petitioner and private respondent Union, most of the employees who were to be affected by the retrenchment program returned to work on or before the agreed date, or on January 12, 1987. Only five (5) failed to return (Rollo, p. 86). It is these employees who did not return to work who are deemed to have availed of the retrenchment. They are thus entitled to the aforesaid severance pay

equivalent to one-half (1/2) month pay per year of service, as provided for by law.

WHEREFORE, the order of the Minister (now Secretary) of Labor and Employment dated December 22, 1987, is hereby MODIFIED in that CAFFCO is ordered to pay those workers adversely affected by the retrenchment program severance compensation equivalent to one-half (1/2) month pay for every year of service.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Davide, Jr., and Romero, JJ., concur.

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