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SECOND DIVISION

[G.R. NO. 152039, April 08, 2005]

F.F. MARINE CORPORATION AND/OR MR. ERIC A. CRUZ, PETITIONERS, VS. THE HONORABLE SECOND DIVISION NATIONAL LABOR RELATIONS COMMISSION AND RICARDO M. MAGNO, RESPONDENTS.

D E C I S I O N

TINGA, J.:

Before this Court is a Rule 45 petition assailing the Decision[1] dated 31 January 2002 of the Court of Appeals which affirmed the *Resolution*[2] dated 11 October 2000 of the National Labor Relations Commission (NLRC) that in turn reversed the *Decision*[3] dated 6 August 1999 of Labor Arbiter Salimathar V. Nambi. The Labor Arbiter had upheld the validity of the retrenchment program undertaken by petitioner corporation.

The factual antecedents of the case follow.

Petitioner F.F. Marine Corporation (FFMC) is a corporation duly organized and existing under Philippine laws, with Eric A. Cruz as its president. It is engaged in ship-repair, dry-docking and dredging services, and has a total of 419 employees including private respondent Ricardo M. Magno (Magno).[4] Magno, who began working for FFMC on 7 February 1990, was eventually assigned as Lead Electrician at the Marine Dredging with a monthly salary of P8,500.00.

On 26 October 1998, petitioners filed with the Department of Labor and Employment (DOLE) a notice that petitioner corporation was undertaking a retrenchment program to curb the serious business reverses brought about by the Asian economic crisis.[5] Petitioners likewise stated in the notice that they had already closed down their dry docking and ship repair division on 30 August 1998 and that their dredging services were heavily affected by the economic slowdown being experienced by the construction industry.[6] They manifested that the retrenchment program would start on 1 November 1998.[7] The affected employees were to remain employed only until 16 December 1998.[8]

Pursuant to the retrenchment program, petitioners served the affected employees a personal notice of retrenchment, stating that their employment would end at the close of business hours of 16 December 1998. However, petitioners paid them in advance of their payroll from 16 November to 16 December 1998 to spare them from reporting for work during the period. They were also paid separation pay equivalent to one-half (1/2) month basic pay per year of service, plus the proportionate 13th month pay.

On 11 December 1998 and in compliance with its notice to the DOLE dated 26 October 1998, petitioners filed with the DOLE, an "Establishment Termination Report" for the retrenchment of twenty-one (21) affected employees, including Magno.

In view of the retrenchment, Magno received his separation pay equivalent to nine (9) years and proportionate 13th month pay in the total amount of P46,182.41. After receiving the above separation pay, Magno executed a release and quitclaim in favor of petitioners.[9]

However, on 12 January 1999, Magno filed a complaint for illegal dismissal, moral and exemplary damages and attorney's fees, with prayer for reinstatement and payment of backwages against petitioners.[10] Magno claimed that he was beguiled into accepting the separation pay since petitioners terminated his services on the pretext that the dredging machine where he was assigned was temporarily stalled in Zambales. Magno eventually learned that the company had been adducing to others a different reason for retrenchment, primarily the Asian financial crisis.[11]

On 6 August 1999, after the contending parties submitted their responsive pleadings, Labor Arbiter Salimathar V. Nambi promulgated a *Decision* upholding the validity of retrenchment.[12] The dispositive portion thereof reads:

> WHEREFORE, premises considered, the complaint for illegal dismissal is hereby DISMISSED for lack of merit. Consequently, complainant's claim for backwages, separation pay differential, damages and attorney's fees [is] likewise dismissed.
>
> SO ORDERED.[13]

Magno appealed the Labor Arbiter's *Decision* to the NLRC which, on 11 October 2000, issued a *Resolution* reversing the findings and conclusions of the Labor Arbiter.[14] The NLRC deemed the petitioners as having been unable to establish proof of actual losses, due to the absence of financial reports of independent external auditors that would confirm the losses sustained for the years 1996 and 1997.[15] The decretal text of the issuance reads:

> WHEREFORE, premises considered, Complainant's appeal is GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby ANNULLED and SET ASIDE. A new one is entered declaring Complainant's dismissal as illegal.
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> Respondent F.F. Marine Corporation is ordered to pay Complainant:
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> 1. full backwages from December 16, 1998 up to the finality of this decision;
>
> 2. separation pay equivalent to Complainant's one (1) month pay for every year of service, computed from his first day of employment on February 7, 1990 up to the finality of this decision, the total amount from which shall be deducted his advanced separation pay

of P38,250.00; and

3. attorney's fees equivalent to ten percent (10%) of his total monetary award.

SO ORDERED.[16]

After the denial of their *Motion for Reconsideration*, petitioners elevated the case to the Court of Appeals by way of *Petition for Certiorari*. Before the appellate court, petitioners presented financial reports prepared by independent external auditors Banaria, Banaria and Company, auditing FFMC's balance sheets and income statements for the years 1996 and 1997. Petitioners alleged that these reports could not be submitted earlier as they had not been completed during the pendency of the proceedings before the Labor Arbiter.[17]

The appellate court eventually dismissed the petition and affirmed the resolution of the NLRC. Material to the resolution of the case was the issue of admissibility and competency as evidence of the *31 December 1997 and 1996 Financial Statements* of petitioners. The Court of Appeals noted that these financial statements were submitted to it only and at that on the pretext that they had not yet been completed by the independent auditor when the case was still pending before the Labor Arbiter. However, the appellate court ruled that a perusal of the certification issued by Banaria, Banaria and Company regarding the *Financial Statements* reveals that the same were executed on 30 March 1998 or nine (9) months prior to the filing of the complaint for illegal dismissal on 12 January 1999. Thus, the financial statements could have been offered as evidence before the Labor Arbiter and the NLRC. Thus, the Court of Appeals reproached petitioners for having suppressed material evidence.

Accordingly, the appellate court found that petitioners failed to substantiate the substantive requirements of a valid retrenchment.[18] The fact that Magno executed a quitclaim in favor of petitioners, according to the Court of Appeals, did not bar him from filing the instant complaint for illegal dismissal.[19]

Aggrieved by the decision of the appellate court, petitioners went to this Court via the present petition for review.

As grounds for appeal, petitioners allege that the appellate court gravely erred in: (a) finding that petitioners failed to substantiate the substantive requirements of a valid retrenchment and (b) affirming the NLRC's award of separation pay and attorney's fees to Magno.[20]

Petitioners argue that retrenchment programs undertaken by corporations are purely business decisions properly within the reasonable exercise of management prerogative. As a recognized management prerogative, petitioners' assessment of the necessity of retrenchment cannot be substituted with the NLRC's own perception, much less opinion, as to the thrust and direction of petitioners' business. It is only subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.[21] They assert that they complied with both the substantive and procedural requirements of a valid retrenchment as they were able to show that the expected losses were not merely

de *minimis* but substantial and imminent.[22] They point out that in 1994 and 1995, they earned minimal profits of only P77,609.79 and P155,339.96, respectively.[23]

They further stress that the corporation had been beset with financial problems as early as 1996 when the company had incurred losses in the amount of P18,005,918.08. On the other hand, the losses for the years 1997 and 1998 are P21,316,072.89 and P21,234,582.25, respectively.[24] These losses resulted to a total deficit of P39,146,167.82 in 1997 and continued to increase.[25] Thus, petitioners insist that the retrenchment program was necessary to prevent additional losses. Petitioners also allege that the corporation initially explored ways of minimizing its losses by taking necessary measures to cut operational expenses. [26]

They also contend that the appellate court gravely erred in placing too much emphasis on the late presentation of the *1996-1997 Financial Statements* so as to completely disregard other documentary evidence submitted by petitioners. The documentary evidence submitted by petitioners before the Labor Arbiter, consisting of the *Statements of Retained Earnings and Balance Sheets* for the periods covering 1993 to 1997, were sufficient to prove that petitioner corporation was experiencing losses prior to the retrenchment program.[27] They also allege that having freely entered into the subject quitclaim, Magno was bound by the terms thereof and may not later be disowned simply because of change of mind. Thus, they should not be held liable for the claims of Magno for backwages, separation pay, damages nor attorney's fees.[28]

The petition suffers from lack of merit.

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.

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.[29] Retrenchment is a valid management prerogative. It is, however, subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.

There are three (3) basic requisites for a valid retrenchment to exist, to wit: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written

notice to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.[30]

Jurisprudential standards to justify retrenchment have been reiterated by this Court in a long line of cases to forestall management abuse of this prerogative, *viz*:

> . . . . 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 *bonafide* nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes", can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, ***the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means***-*e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc.-have been tried and found wanting.
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> 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.[31] (emphasis supplied)

Retrenchment is one of the economic grounds to dismiss employees. It is resorted to by an employer primarily to avoid or minimize business losses. The law recognizes this under Article 283[32] of the Labor Code. However, the employer bears the burden to prove his allegation of economic or business reverses. The employer's failure to prove it necessarily means that the employee's dismissal was not justified.[33]

In the case at bar, petitioners seek to justify the retrenchment on the ground of serious business losses brought about by the Asian economic crisis. To prove their claim, petitioners adduced before the Labor Arbiter the 1994 and 1995 *Financial Statements*. Said *Financial Statements*, however, were prepared only by petitioners'