SUPREME COURT
FIRST DIVISION

JOSE L. GARCIA, EDUARDO ALAS, NOEL APAYA, RICARDO ARMAMENTO, MARCOS AVEJERO REYNALDO BANTIGUE, ROMEO BORRAS, MARGARITO CABICUELAS, ROLANDO CAMUA, JOSE DENNIS CASTILLO, DICOROSO CARBO, FELIPE COSCULLA, EDUARDO DE GUZMAN, SEVILLA DEMLO, DIONALDO TEODOLFO, ADEMAR DUPINO, JOSE ESCOBAR, REYNALDO FLORES, DELFIN GARCIA, FEDERICO GATDULA, FELOMINO GUTIERREZ, HILARIO EUGENIO, EUGENIO ILANO, JR., WILFREDO JALLA, RAMON LASQUITE, CESARIANO LIM, AUGUSTO LUMBANG, SALVADOR MACARAEG, ERNESTO MARQUEZ, LAURO MIRAVALLES, FRED ONIA, REYNALDO ORTIZ, LEONIZA PALALIMPA, ALFREDO ROMEO, LECERIO ROSARIO, ARMANDO SABIDURIA, RONILO SACE, REGONDOLA SANTOS, ERNESTO SALVATUS, ENRICO SANDOVAL, EUFEMIO SATURAY, VIRGILIO TINAMISAN, MACARIO VALDEZ, JOSE VILLARICA, SANTOS VIRAY, FLORENDO LOPEZ, JOSE SEGISMUNDO, DIZON GERONIMO, RUPERTO CLAVIO, JR., SEFARIN

DYTIOCO, FIDEL TAGULAM, and EDITHA R. JUAN,
***Petitioners*,**

-versus-

G.R. No. 110518
August 1, 1994

NATIONAL LABOR RELATIONS COMMISSION and NATIONAL SERVICE CORPORATION,
***Respondents*.**
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D E C I S I O N

CRUZ, *J.*:

The main issue before the Court in this Petition for *Certiorari* is the validity of the retrenchment of the fifty-one petitioners by private respondent National Service Corporation (NASECO) as upheld by the Labor Arbiter and later by the National Labor Relations Commission.

NASECO is a government-owned or controlled corporation engaged in providing manpower services such as security guards, radio operators, janitors and clerks, principally for the Philippine National Bank.

The petitioners were its employees who were either members of the NASECO Employees Union (NASECO — EU) or of the Alliance of Concerned Workers of NASECO (ACW — NASECO). On November 19, 1988, they were among those who staged a strike and picketed the premises of the PNB.

On November 21, 1988, the PNB filed a complaint for damages with preliminary injunction against the labor unions with the Regional

Trial Court of Manila. It was docketed as Civil Case No. 88-46938 in Branch 22. On December 5, 1988, the court granted the application for a preliminary injunction and issued the writ ordering the lifting of the picket.

NASECO also filed on November 21, 1988, a petition with the National Labor Relations Commission to declare the strike illegal. This was docketed as NLRC Case No. 00-11-04766-88. On February 17, 1989, the NLRC rendered its decision sustaining NASECO.[1] The union officers who knowingly and actively participated in the strike, as well as the members of the respondent union who committed illegal acts in the course of the strike, were deemed to have legally lost their employment status.

The rest of the striking members, including the herein fifty-one petitioners, were ordered to report for work immediately.

The complaint of the labor union against the PNB for unfair labor practice and illegal lockout was dismissed on the ground that there was no employer-employee relationship between the PNB and the labor unions.[2]

On March 1, 1989, the petitioners reported for work at the NASECO office but they could not be given assignments because the PNB had meanwhile contracted with another company to fill the positions formerly held by the petitioners.

NASECO inquired from the PNB whether or not the petitioners could still be accepted to their former positions in light of the Service Agreement between NASECO and the PNB giving the latter the right to reject or replace any and all of NASECO's employers assigned to it, for inefficiency or other valid reasons.

In reply, the PNB manifested that it was no longer accepting the petitioners back to their former positions as these were no longer vacant.

NASECO then sought new assignments for the petitioners with its other clients, but the petitioners insisted on their reassignment to the PNB. In the meantime, starting April 1, 1989, NASECO paid the

salaries and other benefits of the petitioners although they were not actually working.[3]

On October 13, 1989, the petitioners received notice of separation from NASECO, effective thirty days thereafter. The reason given was the financial losses NASECO was incurring at that time due mainly to the salaries being paid to the employees who could not be posted despite efforts to place them.[4]

Conformably to Art. 283 of the Labor Code, the Department of Labor and Employment was likewise given a 30-day notice of the intended retrenchment.

The management of NASECO even offered a better separation package equivalent to three-fourths of the estimated new basic monthly salary for every year of service, compared to the statutory requirement of only ½ month pay for every year of service.[5]

The petitioners refused to acknowledge receipt of the notice and instead, on October 26, 1989, filed with NLRC a complaint against NASECO for unfair labor practice, illegal dismissal, non-payment of wages and damages.[6]

On November 13, 1989, NASECO sent notice to the petitioners that their termination from the service would take effect not on November 16, 1989, but on November 30, 1989, for humanitarian considerations. The effective date was again extended to December 15, 1989, and finally to December 31, 1989.

On June 22, 1990, Labor Arbiter Potenciano Canizares Jr. rendered a decision finding that the petitioners had been "fairly discharged by the respondent (NASECO) in a valid act of simple retrenchment."[7]

On July 11, 1990, the petitioners appealed to the NLRC. On September 11, 1992, they filed a manifestation that the private respondent had been hiring new personnel, but not proof was offered to support the charge.

On December 21, 1992, the NLRC issued a resolution affirming the decision of the labor arbiter.[8] A motion for reconsideration filed by

the petitioners on January 15, 1993, was denied by the NLRC on February 10, 1993.[9]

It is now asserted in this petition that the NLRC gravely abused its discretion in holding that the petitioners were validly dismissed on the ground of retrenchment; that NASECO is not guilty of unfair labor practice; and that their monetary claims for increases under Republic Acts 6640 and 6727, as well as for moral and exemplary damages and attorney's fees, should be denied.

On the first two issues, the petitioners fault the NLRC fir completely disregarding the requisites of a valid retrenchment as laid down in Lopez Sugar Corporation vs. Federation of Free Workers.[10]

The requisites are: 1) the losses expected should be substantial and not merely de minimis in extent; 2) the substantial losses apprehended must be reasonably imminent; 3) the retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and 4) the alleged losses, if already incurred, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.

The petitioners assert that NASECO failed to show with convincing evidence that the incurred losses, if any, were substantial. The claimed losses were belied by the fact that NASECO hired new personnel before and after the dismissal of the petitioners. NASECO also failed to pursue other measures to forestall losses, short of dismissing the petitioners. It did not follow the "first in, last out" rule that in cases of retrenchment, employees with long years of service with the company, like the petitioners, should not be the first to be retrenched. They attribute their dismissal to their participation in the strike of November 19, 1988. Thus, their dismissal was an act of unfair labor practice for being discriminatory and violative of their rights to self-organization and to engage in concerted activities.

We have to disagree.

The losses incurred by NASECO for the year 1989 amounted to P1,457,700.42 and were adequately proved by it.[11] These losses were directly caused by the salaries and other benefits paid to the

petitioners during the period from April 1 to December 31, 1989. The amount of these payments is not insubstantial in light of the economic difficulties of the country during that year when several coups d' etat adversely affected the nation's economic growth.

It is also not true that respondent NASECO did not look for other measures to cut back on its losses. NASECO had in fact tried to place the petitioners with its other clients but it was the petitioners themselves who refused reassignment.

The particular facts of this case preclude application of the "first in, last out" rule in the retrenchment of employees. There was no discrimination against the petitioners. NASECO could not compel the PNB to take the petitioners back to their former positions in view of its contractual right to reject any employee of NASECO for inefficiency and other valid reasons. The PNB had already filled the vacated positions of the petitioners during the strike, to ensure the continued operation of its business.

The monetary claim under RA 6640 and RA 6727 is another matter. RA 6640, which took effect on December 14, 1987, and RA 6727, which took effect on July 1, 1989, provide for P10.00 and a P25.00 increases respectively in the minimum wage of laborers. The NLRC denied this claim on the ground that the petitioners had failed to include it in their basic complaint. This contention is not acceptable because the claim was clearly included and prayed for in their position paper.

The Revised Rules of the NLRC provide under Sec. 3, Rule V, that parties should not be allowed to allege facts not referred to or included in the complaint, or position paper, affivadits and other documents. This would mean that although not contained in the complaint, any claim can still be averred in the position paper, as was done by the petitioners, or in an affidavit or other documents.

We also hold that the increases in the petitioners' minimum wage under RA 6640 and RA 6720 should be granted since they became effective before the petitioners' retrenchment. Said increases should be considered in the computation of their separation pay in accordance with Art. 283 of the Labor Code.

Moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy.[12] Exemplary damages may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner.[13] None of these grounds has been proven. However, the Court will grant the claim for attorney's fees in an amount equivalent to 10% of the total amount awarded to the petitioner as authorized by the Labor Code.[14]

The constitutional policy of providing full protection to labor is not intended to oppress or destroy management. The employer cannot be compelled to retain employees it no longer needs, to be paid for work unreasonably refused and not actually performed. NASECO bent over backward and exerted every effort to help the petitioners look for other work, postponed the effective date of their separation, and offered them a generous termination pay package. The unflagging commitment of this Court to the cause of labor will not prevent us from sustaining the employer when it is in the right, as in this case.

WHEREFORE, the Decision of the Labor Arbiter dated June 22, 1990, and the resolutions of the NLRC dated December 21, 1992, and February 10, 1993, are **AFFIRMED**, with the modification that the monetary claim under RA 6640 and RA 6720, and for attorney's fees, should be and is hereby granted. The award of moral and exemplary damages is disallowed.

SO ORDERED.

Davide, Jr., Quiason and Kapunan, *JJ.*, concur.
Bellosillo, *J.*, is on leave.

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[1] Rollo, pp. 364-365.
[2] Ibid.
[3] Rollo, p. 341.
[4] Ibid, p. 343.
[5] Id.
[6] Rollo, p. 3.

[7] Rollo, pp. 336-348.
[8] Rollo, pp. 361-373.
[9] Annex G, Rollo, p. 378.
[10] 189 SCRA 179.
[11] Rollo, pp. 342-343.
[12] Spartan Security & Detective Agency, Inc. vs. NLRC, 213 SCRA 528 citing Art. 1701 in. relation to Art. 21 of the Civil Code of the Phil., and Primero vs. IAC, 156 SCRA 435.
[13] Ibid., citing Art. 2232 of the Civil Code of the Phil., and NASECO vs. NLRC, 168 SCRA 122.
[14] Art. III.