SUPREME COURT
SECOND DIVISION

POLYMART PAPER INDUSTRIES, INC. and CAYETANO TAGLE,
***Petitioners*,**

-versus-

G.R. No. 118973
August 12, 1998

NATIONAL LABOR RELATIONS COMMISSION, RICARDO ADVINCULA, LAURENCE MEREN, GERARDO ALCARAZ, NORBERTO DIAVARRA, NELSON MALANA, DANILO PAPA, RICARDO BULAWAN and ALBERTO LOSALA,
***Respondents*.**
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D E C I S I O N

MARTINEZ, *J.*:

Retrenchment is a management prerogative, a means to protect and preserve the employer's viability and ensure his survival.[1] It is one of the economic grounds to dismiss an employee resorted to by an employer primarily to avoid or minimize business losses.[2] In this regard, the employer bears the burden to prove his allegation of

economic or business reverses,[3] otherwise, it necessarily means that the dismissal of an employee was not justified.[4]

We apply this precept in the present case where herein private respondents,[5] employees of petitioner Polymart Paper Industries, Inc. (Polymart), were dismissed on July 4, 1992 on the ground of retrenchment.

Polymart notified all its weekly and monthly employees on the proposed retrenchment due to serious financial losses in a memorandum[6] dated June 4, 1992 which was posted on the bulletin board of the factory and signed by Cayetano Tagle, its General Manager. In another memorandum[7] dated July 2, 1992 posted also on the bulletin board of the factory, the names of private respondents and two (2) others were included in the list of employees to be retrenched. Copies of said memorandum were allegedly served on private respondents but they refused to accept it.

Private respondents were the officers of the National Mines and Allied Worker's Union (NAMAWU) at Local 137 of Polymart. NAMAWU filed a notice of strike which did not materialize for failure to obtain a favorable strike vote. Two (2)[8] out of the ten (10) retrenched employees accepted their separation pay. Private respondents were targeted to be the first batch of employees to be retrenched by Polymart because of their previous misdemeanors. Thus, on August 11, 1992, private respondents filed before the Labor Arbiter a complaint for illegal dismissal and unfair labor practice against Polymart.

In a Decision[9] dated March 12, 1993, Labor Arbiter Jose G. De Vera found that the dismissal of private respondents was valid on the ground of retrenchment and ruled out any unfair labor practice by Polymart. While private respondents' prayer for reinstatement was denied, the Labor Arbiter, however, granted them separation pay,[10] disposing the case in this manner:

> "WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit without prejudice to the complainants' separation pay computed at the total of P63,336.00 which the respondent

company is hereby ordered to pay. The separation pay of complainant Nelson Malana shall be computed upon proof of his latest salary and length of service.

SO ORDERED."[11]

On appeal, the National Labor Relations Commission (NLRC) set aside the Labor Arbiter's decision and directed the reinstatement of respondents. Thus,

"WHEREFORE, the appealed decision is hereby set aside. The respondents are hereby directed to reinstate the complainants to their former positions last held with full backwages from the time their wages were withheld up to the time they are actually reinstated.

SO ORDERED."[12]

The motion for reconsideration having been denied by the NLRC,[13] Polymart now seeks the nullification thereof and prays that private respondents be enjoined from executing the assailed NLRC decision.

In a Resolution[14] by this Court, a Temporary Restraining Order[15] was issued in favor of Polymart enjoining respondents from enforcing the challenged decision.

It is the task of this Court to resolve the validity of private respondents' dismissal on the ground of retrenchment.

We rule in the negative.

We defined retrenchment or "lay-off" in layman's parlance as 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[16] 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.[17]

Article 283 of the Labor Code, as amended,[18] recognizes retrenchment as a mode of terminating an employment relationship.

Under this provision, there are three basic requisites for a valid retrenchment. These are: (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 month prior to the intended date of retrenchment, and (c) payment of separation pay equivalent to one month pay or at least one-half (½) month's pay for every year of service, whichever is higher.[19]

To justify retrenchment, the "loss" referred to in Art. 283 cannot be just any kind or amount of loss; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees. To guard against this possibility of abuse, the Court has laid down the following standard which a company must meet to justify retrenchment:[20]

> "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 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.
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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."[21]

Polymart claims that it suffered huge financial losses in 1992 due to unsold inventories of finished products amounting to P6 million compounded by continuous and long brownouts, as shown in an affidavit[22] executed by Benjamin Gan, assistant to petitioner Cayetano Tagle, the General Manager.

The nebulous claim of Polymart that it incurred business losses in terms of production hours was not amply supported by the evidence on record. The affidavit of Benjamin Gan is self-serving evidence. There was no proof of such substantial and imminent loss that would be incurred in the event that the retrenchment of respondents were not enjoined. It could have at least presented financial statements by independent auditors on the possible business reverses as basis for terminating respondents which is reasonably necessary to forestall the expected losses. We reiterate the principle that "not every loss incurred or expected to be incurred by a company will justify retrenchment. The losses must be substantial and the retrenchment must be reasonably necessary to avert such losses."[23] Retrenchment is only "a measure of last resort when other less drastic means have been tried and found to be inadequate."[24]

The bare assertion of Polymart that it suffered total shutdown hours of 45.16% for the entire period from January 1, 1992 to November 18, 1992, which is more than 4 months of the 10 months and 18 days production period, would not constitute sufficient and convincing evidence in the absence of any proof to that effect. Besides, it failed to show that cost reduction measures were taken before retrenchment was effected. A convenient reliance on previous misdemeanors of respondents as an additional ground for easing them out of Polymart is not proper.

In a Resolution[25] dated August 9, 1995, this Court required Polymart to submit its corporate secretary's certificate of authorized signatory and a sworn statement of assets and liabilities. After forwarding the Certification,[26] Polymart submitted its audited Balance Sheet[27] ending as of August 31, 1995. The subsequent submission of balance sheet would not in any way validate its failure to present the same on an earlier date in order to establish the fact of increased losses prior to the respondents' termination.

More to the point, we do not find that the alleged losses occasioned by the power outages besieging our country at that time would reasonably necessitate retrenchment. Polymart should have adjusted its work schedule in response to the energy crises.

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.[28] Failure to do so inevitably results in a finding that the dismissal is unjustified.[29] And the determination of whether an employer has sufficiently and successfully discharged this burden of proof is essentially a question of fact for the Labor Arbiter and the NLRC to determine.[30] We agree with the respondent NLRC that the retrenchment measure undertaken was not justified.

Anent the manner by which the employment of respondents was terminated, we rule that the procedural requirements were not complied with. The facts show that all the weekly and monthly employees were notified through a memorandum dated June 4, 1992

on the proposed retrenchment which was posted on the bulletin board of the factory. It was only in the second memorandum dated July 2, 1992, also posted on the bulletin board of the factory, that respondents were named.

It is noteworthy that both memoranda specified that the retrenchment will take effect on July 4, 1992. Therefore, there was no compliance with the "one-month notice prior to the effective date of retrenchment" requirement mandated by Article 283 of the Labor Code. Even assuming that individual copies of the second memorandum were furnished the respondents on July 2, 1992, which they refused to accept, such manner of service does not negate the fact of non-compliance. It is to be stressed that the earlier memorandum dated June 4, 1992 made no mention of the names of respondents. If at all, it was merely a general information directed to all weekly and monthly employees of Polymart. Therefore, the reckoning date must be June 4, 1992 in order that a valid termination can be effected on July 4, 1992.

Incidentally, on February 1993, Polymart allegedly ceased operations due to serious financial reverses but no concrete proof was presented to substantiate its allegation.

Prescinding from all the foregoing, while it is true that retrenchment is a management prerogative, it is still subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence. Retrenchment strikes at the very core of an individual's employment, which may be the only lifeline on which he and his family depend for survival.[31]

WHEREFORE, the Petition is **DISMISSED**. The assailed Decision and Order of the NLRC are **AFFIRMED**. Respondents shall be reinstated to their former or equivalent positions without loss of seniority rights and full backwages from the time of the termination of their employment on July 4, 1992. However, if reinstatement can no longer be effected, separation pay shall be correspondingly awarded in lieu thereof.

SO ORDERED.

Regalado, Melo, Puno and Mendoza, *JJ.*, concur.

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[1] Banana Growers Collective At Puyod Farms, et al. vs. NLRC, et. al., G.R. No. 113958, July 31, 1997.
[2] Precision Electronics Corporation vs. NLRC, 178 SCRA 667 [1989].
[3] Ibid, citing Manila Hotel Corporation vs. NLRC, 141 SCRA 169 [1986].
[4] Ibid., citing Egypt Air vs. NLRC, 148 SCRA 125 [1987].
[5] Private respondents were hired on various dates according to their respective positions:

1. Ricardo Advincula — Rewinder; June 2, 1988
2. Laurence Meren — Pulper Helper; July 13, 1988
3. Gerardo Alcaraz, Jr. — Pulper Helper; December 6, 1986
4. Norberto Diavarra — Pulper Helper; December 17, 1986
5. Danilo Papa — Pulper Helper; July 7, 1988
6. Ricardo Bulawan — Boiler Operator, December 6, 1986
7. Alberto Losala — Machine Tender, December 10, 1986

* No details on position and date of hiring for Nelson Malana (Decision of Labor Arbiter, Rollo, pp. 52-53).

[6] Annex "D" of Petition; Rollo, p. 50. The memorandum states:

x x x

Retrenchment will take effect one month from date of posting of this notice. The retrenchment will be gradual until reaching 40 employees. It will be effected in accordance with law.

For those who wish to resign voluntarily, this Company will give financial assistance in this special situation but the same should not be considered as a precedent. All who may be interested will please submit your name to Mr. Virgilio Magistrado, Personnel Manager, for immediate processing."

[7] Annex "E" of Petition: Rollo, p. 51.
[8] Namely, Agustin C. Abellera for P7,000.00 and Elegio P. Salcedo for P10,000.00.
[9] NLRC NCR Case No. 00-06-03150-92.
[10] Decision of Labor Arbiter; Rollo, pp. 55-56.

"Thus, finding the retrenchment of the complainants to be just and valid, perforce this Branch has to deny the complainants' prayer for reinstatement without prejudice to their right to separation pay at the rate of one-half month pay for every year of service, a fraction of at least six (6) months equivalent to one (1) whole year. The complainants' separation pay are hereunder computed as follows:

[1] Ricardo Advincula
From June 2, 1988 up to July 4, 1992
or four [4] years at P133.20/day x 13 days x 4 years P6,926.40
[2] Laurence Meren
From July 13, 1988 up to July 4, 1992 at
P135.60/day x 13 days x 4 years 7,051.20
[3] Gerardo Alcaraz, Jr.

	From December 6, 1986 up to July 4, 1992 at P135.60/day x 13 days x 7 years	10,576.80
[4]	Norberto Diavarra From December 17, 1986 up to July 4, 1992 (same as Alcaraz, Jr.)	10,576.80
[5]	Danilo Papa From July, 1988 up to July 4, 1992 (same as Meren)	7,051.20
[6]	Ricardo Bulawan From December 6, 1986 up to July 4, 1992 (same as Alcaraz, Jr.)	10,576.80
[7]	Alberto Losala From December 10, 1986 up to July 4, 1992 (same as Alcaraz, Jr.)	10,576.80
	TOTAL	P63,336.00

This separation pay of Nelson Malana shall be computed as soon as there is proof of his length of service and actual latest salary."

[11] Decision of Labor Arbiter; Rollo, p. 57.

[12] NLRC (First Division) Resolution dated November 29, 1994, penned by Commissioner Vicente S. E. Veloso, and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Alberto R. Quimpo, Rollo, p. 44.

[13] NLRC Order dated January 30, 1995.

[14] SC Resolution dated October 25, 1995, Rollo, pp. 107-108.

[15] Rollo, pp. 109-111.

[16] Uichico vs. NLRC 273 SCRA 35, 42 G.R. No. 121434 (June 2, 1997); citing Sebuguero vs. NLRC, 248 SCRA 532, 542 [1995] which cited Jose Agaton Sibal, Philippine Legal Encyclopedia, 502 [1986]; Trendline Employees Association-Southern Philippines Federation of Labor vs. NLRC 272 SCRA 172, 179 G.R. No. 112923 (May 5, 1997).

[17] Uichico vs. NLRC, ibid., citing Sebuguero vs. NLRC, ibid., which cited LVN Pictures Employees and Workers Association vs. LVN Pictures, Inc. 35 SCRA 147 [1970]; Columbia Development Corp. vs. Minister of Labor and Employment 146 SCRA 421 [1986].

[18] "Article 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. 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."

[19] Banana Growers Collective at Puyod Farms vs. NLRC, supra.

[20] Somerville Stainless Steel Corporation vs. NLRC and Jerry Macandog Reynaldo Miranda, Roberto Tagala, et. al. G.R. No. 125887, March 11, 1998.

[21] Ibid., citing Saballa vs. NLRC, 260 SCRA 697, 709-710 (August 22, 1996), which cited Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179, 190 (August 30, 1990).

[22] A. Period: January 1, 1992 — September 9, 1992
6,048 hours & 00 min. — (total man-hours)
2,861 hours & 50 min. — (total shutdown hours) .
3,186 hours & 10 min. (remaining production hours)
(Nota Bene: Shutdown is 47.3% of the total man-hours)
B. Period: September 10, 1992 to November 18, 1992
1,680 hours & 00 min. — (total man-hours)
628 hours & 36 min. — (total shutdown hours)
1,052 hours & 24 min — (remaining production hours)
(Nota Bene: Shutdown is 37.38% of the total man-hours)
C. SUMMATION
Period: January 1, 1992-November 18, 1992
7,728 hours & 00 min. — (total production hours)
3,490 hours & 26 min. — (total shutdown hours)
4,238 hours & 14 min. — (remaining production hours)
Hence total shutdown hours is 45.16% for the entire period, or more than 4 months of the 10 months and 18 days production periods.

[23] Somerville Stainless Steel Corporation vs. NLRC and Jerry Macandog, Reynaldo Miranda, Roberto Tagala, et. al., supra., citing Guerrero vs. NLRC, 261 SCRA 301, 307, August 30, 1996.

[24] Ibid., citing Edge Apparel, Inc. vs. NLRC, Fourth Division, et. al., G.R. No. 121314, February 12, 1998.

[25] Rollo, p. 94.

[26] Rollo, p. 97.

[27] Rollo, pp. 102-106.

[28] Somerville Stainless Steel Corporation vs. NLRC and Jerry Macandog, Reynaldo Miranda, Roberto Tagala, et. al., supra. citing San Miguel Jeepney Services vs. NLRC, 265 SCRA 35, 45, November 28, 1996.

[29] Ibid., citing Sebuguero vs. NLRC 248 SCRA 532 544 September 27, 1995.

[30] Ibid., citing Trendline Employees Association-Southern Philippines Federation of Labor vs. NLRC 272 SCRA 172 May 5, 1997.

[31] Uichico vs. NLRC, supra. 42-43, citing Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC, 194 SCRA 573, 577 [1991].