SUPREME COURT
SECOND DIVISION

PRECISION ELECTRONICS CORPORATION,
***Petitioners*,**

-versus-

G.R. No. 86657
October 23, 1989

NATIONAL LABOR RELATIONS COMMISSION & DOMINADOR C. CABRERA, JR.,
***Respondents*.**
x----------x

D E C I S I O N

GRIÑO-AQUINO, *J.*:

When an employer, on the pretext of retrenching, lays off an employee with a promise to re-hire him when its economic condition improves, is the employer bound by that promise? That is the issue presented by this case.

Respondent Dominador C. Cabrera, Jr. was employed by petitioner as Accountant II-Specialist 3 on September 17, 1979. On June 15, 1984, he was notified that he would be laid off effective July 16, 1984 due to the economic situation of the company but was assured of being re-hired when its operations returned to normal. The notice to him reads:

> "We regret to inform you that effective July 16, 1984, you are hereby permanently laid-off in view of non-availability of imported raw materials brought about by the current economic conditions in the country.
>
> "Much as we would like to retain you and continue operations, economic constraints prevent us from continuing further our operations. Should in the future, the economic condition in our country improves (sic) and our operation would return to normal, you may rest assure (sic) that you will be considered a top priority in re-hiring." (p. 58, Rollo.)

Three years later, the petitioner announced in the newspapers that it was hiring additional personnel because its production and sales had increased. Cabrera applied for reemployment on May 8, 1987, but he was turned down.

On December 7, 1987, he filed a complaint against the petitioner for illegal dismissal.

On February 29, 1988, the Labor Arbiter dismissed his complaint on the ground that the "alleged violation of the assurance (that he would be re-hired)[*] cannot be a legal basis for the filing therein of a complaint."

Upon appeal by Cabrera to the National Labor Relations Commission, the latter, on September 30, 1988, reversed the Labor Arbiter and ordered the reinstatement of the respondent employee with backwages. The NLRC held:

> "We do find that the Labor Arbiter committed an abuse of discretion or a serious error in dismissing complainant's case for illegal dismissal.
>
> "It should be pointed out here that respondent spoke of 'retrenchment' as its ground for terminating the services of complainant and many other of its employees. As we all know, retrenchment is one of the economic grounds to dismiss employees, which is resorted to by an employer primarily to

avoid or minimize business losses. The law recognizes this under Article 283 of the Labor Code. However, the employer bears the burden to prove his allegation of economic or business reverses with clear and satisfactory evidence it being in the nature of an affirmative defense (Manila Hotel Corp. vs. NLRC, 141 SCRA 169). Otherwise, if the employer fails to prove it, it necessarily means that the dismissal of an employee was not justified (Egypt Air, et al. vs. NLRC, G.R. No. 63185, February 27, 1987).

"In the instant case, not even a shred of evidence was presented by respondent to prove that it suffered from economic or business reverses so as to Justify its claim of retrenchment when it terminated the services of the complainant on July 16, 1984. No financial statement of any kind for the year 1983 or immediately prior thereto was submitted by respondent or any document of probative value to prove its alleged economic difficulties. No nothing, so to speak. Thus, the obvious conclusion that the mass lay-off or dismissal of respondent's employees, including the complainant, on an unproven claim or non-existing ground of retrenchment was utterly unjustified, and in violation of the constitutional and statutory right of the dismissed employees to security of tenure.

"x x x

"Wherefore, the judgment appealed from is hereby reversed and set aside and a new one entered ordering respondent:

"1. To reinstate complainant without loss of seniority rights with backwages from the time he was illegally dismissed from the service up to the time of his reinstatement subject to the deduction mentioned above;

"2. Or to pay complainant separation pay equivalent to one month salary for every year of service in addition to backwages, if the reinstatement of complainant is no longer feasible for one reason or another as may

be determined by the Labor Arbiter concerned during the execution of this decision; and

"3. To pay the costs of the suit." (pp. 59-60, Rollo.)

In its petition for certiorari, the petitioner alleges that the NLRC gravely abused its discretion in allowing Cabrera's appeal although it was not under oath, as required under Section 13, Rule VII-A of the Implementing Rules of the Commission. No notice of appeal was sent to the petitioner and some exhibits were presented for the first time on appeal.

It will be seen that the petition is based on purely technical grounds. The petitioner did not rebut the finding of the NLRC that the dismissal of Cabrera was "utterly unjustified," hence, illegal, for the petitioner failed to present "even a shred of evidence" to prove that it suffered economic or business reverses justifying its claim that it needed to retrench. The ground for the dismissal of Cabrera was unproven and nonexistent.

Regarding the grounds of the petition, the public respondent pointed out in its comment that the lack of verification or oath in the appeal (the employee prosecuted his appeal by himself was not fatal (Del Navarro & Sons Logging Enterprises, Inc. vs. NLRC, 136 SCRA 669). Indeed, we have ruled in the past that a pleading which is required by the Rules of Court to be verified, may be given due course even without a verification if the circumstances warrant the suspension of the rules in the interest of justice (Oshita vs. Republic, 19 SCRA 700; Villasanta vs. Bautista, 36 SCRA 160; Quimpo vs. De la Victoria, 46 SCRA 139)."

Neither was Cabrera's failure to furnish the petitioner with a copy of his appeal a sufficient cause for dismissing it. He could simply have been ordered to furnish the appellee with a copy of his appeal.

The submission of additional evidence in support of Cabrera's appeal did not prejudice his employer for the latter could have submitted counter-evidence. After all, the rules of evidence prevailing in courts of law or equity are not controlling in proceedings before the Commission (Article 221, Labor Code).

WHEREFORE, finding that the NLRC committed no grave abuse of discretion in rendering its assailed decision in NLRC-NCR Case No. 00-12-04289-87, the Petition for Certiorari is **DISMISSED** for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, *JJ.*, concur.

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[*] Words in parenthesis supplied.
