SUPREME COURT
FIRST DIVISION

RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI), AND/OR HERNANI BUENO,
***Petitioners*,**

-versus-

G.R. Nos. 101181-84
June 22, 1992

NATIONAL LABOR RELATIONS COMMISSION, LUZ MENDERO, REBECCA GABATO, MERCEDES ABERILLA AND NORMA ROJO,
***Respondents*.**
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D E C I S I O N

BELLOSILLO, *J.*:

This is a Petition for *Certiorari*[1] of the Decision[2] of respondent National Labor Relations Commission affirming the Decision[3] of its Labor Arbiter, and its Order[4] denying petitioners' Motion for Reconsideration, both rendered in consolidated NLRC Cases Nos. RAB VII-0336-87M RAB VII-0370-87, RAB VII-0398-87 and RAB VII-0429-87[5] entitled "Luz Mendero, et al. vs. Radio Communications of the Philippines, Inc. (RCPI), and/or Hernani Bueno."

The Labor Arbiter in his decision of July 11, 1988, ordered petitioners to pay complainants Luz Mendero, Rebecca Gabato[6] and Mercedes Aberilla[7] P15,390.00 each, and complainant Norma Rojo,[8] P16,740.00, representing their separation pays and ECOLA differentials, and the sum of P6,291.00 as attorney's fees, or the aggregate amount of SIXTY-NINE THOUSAND TWO HUNDRED ONE PESOS (P69,201.00).

It appears that sometime in April 1987, petitioner Radio Communications of the Philippines, Inc. (RCPI), Cebu City Branch, on the ground of retrenchment occasioned by alleged severe economic losses, terminated the employment of private respondents Luz Mendero, Rebecca Gabato and Norma Rojo. Subsequently, in June 1987, private respondent Mercedes Aberilla was also retrenched.

Disputing the basis of their retrenchment, private respondents filed complaints against petitioners for illegal dismissal. On July 11, 1988, after hearing in Regional Arbitration Branch No. VII of Cebu City, the Labor Arbiter rendered a decision which was subsequently affirmed by respondent Commission. Hence, this petition.

Petitioners contend before Us that respondent NLRC acted with grave abuse of discretion amounting to lack of excess of jurisdiction in ordering them to award separation pays, ECOLA differentials and attorney's fees to private respondents when their evidence clearly shows that their retrenchment/lay-off is valid and legal; that in view of the extreme financial reverses they suffered (Annexes "A", "A-1" and "A-2" of Annex "H", and Annex "B-3" of Annex "C", Petition), petitioners had no alternative but to retrench employees, even as they closed several of their branches.

Petitioners also claim that under Article 283 of the Labor Code retrenchment is possible when it is availed of to prevent huge economic losses as in their case. They further claim that under their Collective Bargaining Agreement, retrenchment is not included as one of the grounds upon which termination pay of one (1) month could be awarded.

Of course, petitioners' contentions are devoid of merit. The retrenchment of private respondents cannot be justified because petitioners failed: (a) to serve on the Department of Labor and Employment (DOLE) a written notice of termination at least one (1) month before the intended date thereof[9] although it served notice on private respondents; (b) to observe fair and reasonable standards to effect the retrenchment of private respondents;[10] and, (c) to show that it first instituted cost reduction measures in other areas of production before undertaking retrenchment as a last resort.[11]

Considering that under the circumstances the retrenchment of private respondents is not authorized by law, it must follow that their termination is illegal. Accordingly, it has been held that where the employee is illegally dismissed, he must be reinstated to his former position without loss of seniority rights and backwages not exceeding three (3) years.[12] Separation pay may be awarded in favor of illegally dismissed employee if reinstatement is no longer feasible or appropriate.[13]

In the case before Us, the Labor Arbiter did not direct the reinstatement of private respondent because of their so-called "strained relations" with petitioners. We do not agree. as correctly observed by the Solicitor General, the filing of a complaint for illegal dismissal should not be considered the kind of "strained relations: that would make reinstatement impracticable, otherwise, the employee would be deprived of the right of security of tenure and reinstatement accorded by law the very moment he invokes such right with the filing of the complaint. In fact, the records of this case do not indicate any strained relations between petitioners and private respondents.

Quite significantly, private respondents did not appeal from the award made by the Labor Arbiter directing payment of separation pay at the rate of one (1) month for every year of service. Thus, involving the time-honored procedural rule that "a party who did not appeal cannot assign errors as are designed to have the judgment modified,"[14] public respondent disregarded the efforts of private respondents expressed through their appellees' memorandum filed with the NLRC to have the decision modified to include their reinstatement with payment of backwages.

Indeed, We find persuasive and meritorious the argument of the Solicitor General that while the rule is that no error which does not affect jurisdiction will be considered unless stated in the assignment of errors, the trend of modern-day procedure is to accord the courts broad discretionary power under which the appellate court may consider matters having some bearing on the issues submitted which the parties failed to raise, or the lower court ignored.[15] Squarely in point is Vda. de Javellana vs. Court of Appeals,[16] where We ruled:

> "The general rule is that only errors which have been stated in the assignment of errors and properly argued in the brief will be considered, except errors affecting jurisdiction over the subject-matter and plain, as well as clerical, errors.
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> But while the petitioner Javellana did not assign as error the failure of the trial court to adjudge recovery and to award damages, we feel that there is sufficient justification to set aside the judgment in this respect. For, the error is patent.
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> Besides, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error (Hernandez vs. Andal, 78 Phil. 196).
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> At any rate, the Court is clothed with authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case (Ortigas vs. Lufthansa German Airlines, 64 SCRA 610), and, we find it unfair and unjust to deprive the petitioner of the rentals on her property due to a mere technicality."

Rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tent to frustrate rather than promote substantial justice, must always be avoided.[17] Thus, substantive rights like reinstatement and award of backwages resulting from

illegal dismissal must not be prejudiced by a rigid and technical application of the rules.

In the instant case, We hold that there is sufficient justification to order the reinstatement of private respondents although they failed to bring this matter up to public respondent on appeal.[18] For it is clear that the Labor Arbiter erred in simply awarding separation pay equivalent to one (1) month salary for every year of service despite his finding that the retrenchment was not justified, and in invoking, albeit erroneously, "strained relations" for withholding reinstatement when the records fail to disclose any ill-will between the parties except perhaps what would normally go with ordinary litigations. In other words, the mere filing of a complaint by an employee for illegal dismissal should not be treated as the kind of "strained relations" that would make reinstatement "impracticable", for, he is merely exercising a right under the law. Certainly, it is unfair and unjust to deprive the private respondents of their just due by reason of a mere technicality.

Consequently, the retrenchment effected by petitioners being legally infirm, hence, ineffective, private respondents should be reinstated with payment of their backwages equivalent to their respective salaries for three (3) years, without qualification or deduction in accordance with the three-year rule.[19] Where reinstatement is no longer possible, such as when the establishment has closed or ceased operations at the time the workers should be reinstated no longer exists for reasons not attributable to the fault of the employer, the employees shall, in lieu of reinstatement, be entitled to severance compensation equivalent to at least one (1) month pay for every year of service.[20] In the computation of backwages and separation pay, account must be taken not only of the basic salary of the employee but also of her transportation and emergency allowances,[21] vacation or service incentive leaves and sick leaves,[22] and thirteenth month pay.[23]

As regards attorneys fees, We refrain from disturbing the award made by the Labor Arbiter as affirmed by public respondent. Unlike the issue of reinstatement and backwages that are necessarily intertwined with the promotion of substantial justice as to justify deviation from the rule that an unassigned error cannot be considered by an

appellate court, We find no compelling reason to modify the award of attorney's fees which has not been raised on appeal.

WHEREFORE, the Petition is dismissed for being devoid of merit.

Nonetheless, We **RESOLVE**, consistent with jurisprudence and substantial justice, to **MODIFY** the Decision of public respondent NLRC by directing petitioners to reinstate immediately private respondents Luz Mendero, Rebecca Gabato, Mercedes Aberilla and Norma Rojo, and to pay them backwages equivalent to their salaries for three (3) years without qualification or deduction. In the event that reinstatement is no longer practicable as the positions may no longer be available, petitioners are directed to pay private respondents, in addition to the backwages equivalent to three (3) years herein mentioned, separation pay equivalent to one (1) month for every year of service.

Petitioners are further directed to pay private respondents attorney's fees fixed by the Labor Arbiter in the amount of P6,291.00 and affirmed by public respondent. Costs against petitioners.

SO ORDERED.

Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Under Rule 65, Rules of Court.
[2] Annex "A", Petition, Rollo p. 14.
[3] Annex "G", Petition, Rollo p. 66.
[4] Annex "B", Petition, Rollo p. 24.
[5] Complainant Rodolfo Antolo in RAB VII-0370-87 entered into settlement with petitioners, hence, only the remaining three (3) NLRC cases, namely, RAB VII-0336-87, RAB VII-0398-87 and RAB VII-0429-87 are involved herein. See Annex "A", Petition, Rollo, pp. 14-15.
[6] Luz Mendero and Rebecca Gabato are complainants in NLRC Case No. RAB VII-0336-87.
[7] Mercedes Aberilla is complainant in NLRC Case No. RAB VII-0398-87.
[8] Norma Rojo is complainant in NLRC Case No. RAB VII-0429-87.
[9] Art. 283, Labor Code.
[10] Asiaworld Publishing House, Inc. vs. Ople, G.R. No. 56398, July 23, 1987; 152 SCRA 219.

[11] Lopez Sugar Corporation vs. Federation of Free Workers, G.R. No. 75700-01, Aug. 30, 1990; 189 SCRA 179.
[12] Gubao vs. NLRC, G.R. No. 81946, July 13, 1990; Lepanto Consolidated Mining Company vs. Encarnacion, G.R. Nos. 67002-03, April 30, 1985, 136 SCRA 256; Atlas Consolidated Mining and Development Corp. vs. National Labor Relations Commission, G.R. No. 75755, Nov. 24, 1988, 167 SCRA 758.
[13] Torillo vs. Leogardo, Jr., G.R. No. 77205, May 27, 1991; 197 SCRA 471.
[14] Dizon vs. NLRC, G.R. No. 69018, Jan. 29, 1990; 181 SCRA 472.
[15] Baquiran vs. Court of Appeals, No. L-14551, July 31, 1961; 2 SCRA 873.
[16] G.R. No. 60129, July 29, 1983; 123 SCRA 799.
[17] Piczon vs. Court of Appeals, G.R. 76378-81, Sept. 24, 1990; 190 SCRA 31.
[18] It should be noted however that private respondents in their appellees' Memorandum filed before respondent Commission prayed for the modification of the decision of the Labor Arbiter to include reinstatement with backwages as well as their other money claims. See Annex "A", Petition, Rollo, p. 17.
[19] Panday vs. National Labor Relations Commission, G.R. No. 67664, May 20, 1992; Feati University Faculty Club (Paflu) vs. Feati University, No. L-31508, August 15, 1974, 58 SCRA 395; Lepanto Consolidated Mining Company vs. Encarnacion, G.R. Nos. 67002-03, April 30, 1985, 136 SCRA 56; Mariners Polytechnic School vs. Leogardo, G.R. No. (4271, March 31, 1989, 171 SCRA 597; see also concurring and dissenting opinion of Teehankee, J., in Mercury Drug Co., Inc. vs. Court of Industrial Relations, No. L-23357, April 30, 1974; 56 SCRA 694.
[20] Sec 4(b), Rule 1, Book VI, Implementing Rules and Regulations; Tajonera vs. Lamaroza, Nos. L48907 & 49035, December 19, 1981, 110 SCRA 438.
[21] Santos vs. NLRC, G.R. No. 76721, September 21, 1987, 154 SCRA 166; Soriano vs. NLRC, G.R. No. 75510, October 27, 1987, 155 SCRA 124.
[22] St. Louis College of Tuguegarao vs. NLRC, G.R. No. 74214, August 31, 1989; 177 SCRA 151.
[23] Paramount Vinyl Products Corporation vs. NLRC, G.R. No. 81200, October 17, 1990; 190 SCRA 525.