SUPREME COURT
THIRD DIVISION

JUAN SABALLA, LAILANI J. MIRANDA, NELIA I. IBARRIENTOS, HELEN G. QUIAMBAO, WILBERTO D. AMPARADO and FIDEL S. MANAOG,
***Petitioners*,**

-versus-

G.R. Nos. 102472-84
August 22, 1996

NATIONAL LABOR RELATIONS COMMISSION and CAMARINES SUR III ELECTRIC COOPERATIVE, INC.,
***Respondents*.**
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D E C I S I O N

PANGANIBAN, *J.*:

In the instant case, the Court reiterates the requirements which must be observed before a retrenchment due to business reverses may be validly undertaken, and the sanctions for their non-observance.

Assailed in this petition are the Decision[1] promulgated June 28, 1991 by the respondent Commission[2] which overturned the Decision[3] dated February 9, 1990 of the Labor Arbiter[4] in RAB V Case No. 05-11-00262-88 (and 121 companion cases), as well as the respondent

Commission's Resolution[5] which denied the petitioners' motion for reconsideration.

The Facts

On April 23, 1988, Arturo Margallo, General Manager of the Camarines Sur III Electric Cooperative, Inc. (private respondent herein), issued Memorandum No. 24-88 providing for "austerity measures (retrenchment)".[6] The said memorandum reads:

"The Coop is presently experiencing liquidity problems due to economic difficulties being felt in our coverage area. For the last several months, coop records indicate that our consumers of all types find hardship in paying their power bills on time. This is aggravated by the inability of some of our industrial and commercial consumers to pay in full their bills, hence our financial capacity to meet our obligations especially with the NPC, NEA and other creditors are critically endangered.

In view hereof, in consonance with NEA guidelines and pursuant to the provisions of Article 281 and Article 282, Labor Code of the Philippines, series of 1987, CASURECO III (private respondent) is hereby strictly instituting the following cost-saving measures to avert any further decline of our financial resources and to meet our obligations.

I. REDUCTION OF THE NUMBER OF EMPLOYEES (RETRENCHMENT) — The present number of Coop employees will be reduced to the minimum. The manner and the priorities to be followed shall be:

	Category	***Priority***	***Effective Date***
1.	LABORERS (Construction Aides)	1st Priority	April 25, 1988
2.	Emergency Employees	2nd Priority	May 1, 1988
3.	Contractual & Casual (not in Plantilla)	3rd Priority	June 1, 1988

4. Regular Employees with derogatory records — 4th Priority — June 1, 1988

5. Voluntary resignations — Upon Application — After 1 month

6. Retireables/Serious Illness — -do- — -do-

II. NEW CONSTRUCTION — Suspended. Except on-going projects in Iriga and Buhi.

III. PROCUREMENTS:

1. Office Supplies — To barest minimum.

2. Office furniture & Equipment — suspended.

3. Field technical & Special equipment — only those extremely necessary for normal operation and maintenance.

IV. HIRING OF NEW EMPLOYEES — Suspended for the entire 1988.

V. INFORMATION DRIVES — Only the scheduled mini-conventions and through DZAL.

VI. CASH ADVANCES — To be granted on extreme emergency cases only.

These cost-saving measures shall complement other aspects of cost-saving devices which shall be implemented such as controlling gasoline and other administrative expenses.

For your information and guidance."

On the same date, private respondent filed with the Department of Labor and Employment's Regional Office No. V in Legaspi City a Notice of Retrenchment covering some thirty (30) employees on the basis of the guidelines and priorities specified in the abovementioned memorandum.

The Regional Director in his Resolution[7] dated June 6, 1988 granted authority to terminate the employment of the said 30 employees "pursuant to the categories, priorities and effective dates under Memo No. 24-88".

On June 20, 1988, Margallo issued Memorandum No. 60-88[8] declaring some fifty-two (52) employees, including herein petitioners Juan Saballa, Lailani Miranda, Nelia Ibarrientos, Helen Quiambao, Wilberto Amparado and Fidel Manaog, on "forced leave without pay for a period of three (3) months", effective five (5) days after receipt by the employees concerned. Such "forced leave" was purportedly part of the cost-saving measures instituted to enable the Coop "to meet (its) financial obligations especially with NPC and NEA". The memo assured the subject employees of rehiring "as soon as the Coop shall have financially recovered/regained its financial viability expected within the above specified period." A copy of said memorandum was furnished the Regional Office of the DOLE in Legaspi City on June 23, 1988.

On September 15, 1988, private respondent informed the Regional Office of the DOLE that it was extending the period of forced leave of the fifty-two employees,[9] as it was still operating on a deficit throughout the first half of said year, but the said office denied the request, and its Regional Director, in a letter dated September 21, 1988 addressed to private respondent, said:[10]

> "It will be recalled that we approved management's decision to retrench about thirty (30) employees only because of your pledge that by such action the Cooperative would be able to save and recover losses. Moreover, this Cooperative's action was with the consent and approval of the union members. Then without even directing your communication to this Office you implemented the "forced leave" of additional employees for a period of three (3) months starting July this year for the same reason and the usual justification that such actions are based on the NEA guidelines.
>
> From reports reaching this Office we learned that the employees under "forced leave" have already suffered tremendous financial difficulties and anxieties. They anticipate(d) that after three (3)

> months they will be returned to work. Extending their "forced leave" to February 1989 will be too much for them to bear.
>
> We therefore advice (sic) you to do away with anything that will worsen their suffering. What is detestable is making promises/pledges that impossible of realization. It is therefore advised that you have them reinstated the day after the expiration of their three (3) months forced leave without delay."

Instead of reinstatement, the private respondent applied to the Regional Office for the retrenchment of the employees on "forced leave."[11] On October 15, 1988, despite the expiration of the period of the "forced leave", Margallo issued Memorandum No. 95-88[12] directing the cooperative's department heads, area supervisors, division and sections chiefs not to accept any of the 52 employees who might try to report back to work.

On November 4, 1988 and December 2, 1988, the affected employees filed illegal dismissal cases against the private respondent. The Labor Arbiter ruled in favor of the complainants, saying that the Labor Code does not authorize any employer to declare any employee under "forced leave", temporary or otherwise. He found that Memorandum No. 24-88 did not apply to the complainants because they were regular employees without derogatory records, and hence did not come within the scope and coverage of the six priority categories for retrenchment set forth in the abovementioned memorandum. Furthermore, as admitted by private respondent, out of the twelve previously retrenched employees, who were recalled to duty or re-hired by private respondent, six (6) were either contractual, casual or probationary employees. This fact disproved the private respondent's allegation of retrenching employees in good faith due to business reverses and in order to prevent losses. The dispositive portion of the arbiter's February 9, 1990 Decision[13] stated in relevant part:

> "WHEREFORE, the forced leave imposed upon complainants in July, 1988 and complainants' termination from employment due to retrenchment in October, 1988, are hereby declared illegal.

> (Private respondent) is hereby ordered to immediately reinstate complainants to their former positions without loss of seniority rights. Respondent is likewise ordered to pay the said complainants their backwages computed from July, 1988 up to the time of their reinstatement subject however to further computation upon actual reinstatement of the complainants.
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> x x x

Private respondent appealed the arbiter's decision to the respondent Commission, which modified the arbiter's ruling thus:[14]

> "We lend credence to respondent's evidence supporting the fact that indeed it suffered financial reverses (pp. 118-136). Hence, complainants' separation is valid, due to retrenchment.
>
> However, respondent's implementation of forced leave without pay which was already tantamount to dismissal as subsequently herein complainants were dismissed did not comply with (the) requisite thirty day notice on DOLE and complainants. Under the circumstances, complainants are entitled to an additional one month pay as indemnification for lack of notice (AHS vs. NLRC, 149 SCRA 5).
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> PREMISES CONSIDERED, the Decision of February 9, 1990 is hereby MODIFIED. Respondent are directed to pay complainants separation pay of one month per year of service in addition to one month salary for lack of notice. Respondents, however, are enjoined to give priority to complainants in the event of rehiring."

Hence, this petition for certiorari. The Solicitor General manifested that he was unable to sustain the position taken by public respondent and moved that the latter be ordered to file its own Comment. The public respondent filed its own Comment, which the private respondent adopted. Subsequently, the parties submitted their respective memoranda.

The Issue

The petitioners raised the lone issue of whether or not:

> "RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, DESPITE THE OVERWHELMING EVIDENCE TO THE CONTRARY, IT DECLARED THE RETRENCHMENT OF PETITIONERS VALID AND LEGAL."

Petitioners argue that while the NLRC claimed to disagree with the factual findings/conclusions of the arbiter, it did not state what particular findings and conclusions it could not go along with; and while the Decision purports to apply the requisites for a valid retrenchment, the public respondent did not specify what those were. Further, citing Lopez Sugar Corporation vs. Federation of Free Workers,[15] petitioners claim that private respondent failed to show by convincing proof the concurrence of the requirements for valid retrenchment, and among other things, failed to show that the losses sought to be prevented were substantial and reasonably imminent. On the contrary, according to petitioners, the evidence on record clearly shows that the enforcement of the retrenchment program was attended by bad faith.

The Court's Ruling

NLRC Decision Arbitrary

The petition is meritorious.

The Court has previously held that judges and arbiters should draw up their decisions and resolutions with due care, and make certain that they truly and accurately reflect their conclusions and their final dispositions.[16] A decision should faithfully comply with Section 14, Article VIII of the Constitution which provides that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts of the case and the law on which it is based. If such decision had to be completely overturned or set aside, upon the filing of a motion for reconsideration, in a subsequent action via a resolution or modified decision, such resolution or decision should

likewise state the factual and legal foundation relied upon. The reason for this is obvious: aside from being required by the Constitution, the court should be able to justify such a sudden change of course; it must be able to convincingly explain the taking back of its solemn conclusions and pronouncements in the earlier Decision.[17] The same thing goes for the findings of fact made by the NLRC, as it is a settled rule that such findings are entitled to great respect and even finality when supported by substantial evidence; otherwise, they shall be struck down for being whimsical and capricious and arrived at with grave abuse of discretion.[18] It is a requirement of due process and fair play that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[19]

Based on the foregoing considerations, we find the assailed Decision arbitrary in its naked assertion that: "(A)pplying the requisites (for valid retrenchment) to the instant case, we lent credence to respondent's evidence supporting the fact that it was suffering financial reverses (pp. 118-136). Hence, complainant's separation is valid, due to retrenchment."

The Decision does not indicate the specific bases for such crucial holding. While it enumerated some of the factors that supposedly weighed in favor of private respondent's position, i.e., the NEA's foreclosure letter; the NPC's disconnection letter; private respondent's Income Statement; the fact that the employees' union agreed to the "forced leave" policy instead of the drastic measure of retrenchment; and the impossibility of reinstating the petitioners "considering the financial losses for 1988 alone not to mention the losses incurred for 1989 and wage increases imposed by the government (pp. 113-141, rollo)", the public respondent nevertheless did not bother to explain how it came to the conclusion that private respondent was experiencing business reversals, nor did it specify which particular data and document it based such conclusion upon. This can only be because the private respondent failed to show convincingly by substantial evidence the fact of its failing financial

health, and that such retrenchment was justified. Our observation is bolstered further by the Comment of the public respondent where it tried to rationalize its ruling by saying:

> "It is to be noted that private respondent is a big and reputable company and for them to admit that it is in distress is a bitter pill to swallow, yet they must accept the sad situation that they are in. This representation believes in the veracity of respondent's position."

Even resorting to the records does not help. The termination letter dated October 18, 1988[20] stated that the reason for the retrenchment was "to avoid Coop financial losses." However, the imminent loss sought to be forestalled by the retrenchment of petitioners was not actually indicated or specified. Page 118 of the records is the demand letter of NEA for payment of private respondent's arrearages as of June 30, 1988. It warned that the account in the amount of approximately P8.5 million should be settled within 30 days otherwise NEA will exercise its right to foreclose. But the records do not show that any property of private respondent was ever foreclosed nor that the savings from the salaries of the retrenched petitioners were to be used to pay for the arrearages; neither was it show that private respondent did not have the resources to pay said obligation. Page 119 of the records is a Notice of Disconnection stating that the private respondent was required to pay twenty five percent of its outstanding bill to the NEA or face power disconnection on July 29, 1988. But private respondent did not show that such disconnection was effected then nor that the allotment for petitioners' salaries was to be used to pay for this bill. The private respondent in its motion for reconsideration asked that the labor arbiter take judicial notice that NPC eventually disconnected its power supply on April 10, 1989, but this only means that the private respondent must have been able to pay up and settle its account on or about July 29, 1988, as it was not disconnected until April 10, 1989. By October 18, 1988, the losses, if any, sought to be proven by these documents would already have been sustained, so there could not have been any imminent loss which was to have been forestalled by the retrenchment of petitioners effected at that time. In other words, these abovementioned documents did not show any expected loss which made the retrenchment reasonably necessary, nor that such retrenchment was

likely to prevent the expected loss. We do not deny that the private respondent would suffer losses as a result of a foreclosure or power disconnection, however, it failed to show how these threatened events eventually affected the cooperative's financial health, if they ever happened at all. Besides, they are irrelevant because the imminent loss was supposed to come after October 18, 1988, months after these incidents.

Moreover, pages 120-136 of the records (referred to in the assailed Decision) are the financial statements of the private respondent which are unaudited by independent external auditors and are without accompanying explanations. This Court has previously held that financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company.[21] And since private respondent insists that its critical financial condition was the central and pivotal reason for its retrenchment and forced leave programs, we therefore fail to see why it should neglect or refuse to submit such audited financial statements. Apart from that, we noted that the said unaudited statements were filled with erasures; some entries were even handwritten, and different typewriters were used. There is therefore serious ground to doubt the correctness and accuracy of said statements. Additionally, these statements require further explanations before the accounting procedures of private respondent can be understood. Thus, the Court is wary of according them any probative value, especially since respondent Commission seems to have treated them in a similar fashion by not discussing them in its Decision.

In brief, we hold that public respondent gravely its discretion in rendering the challenged Decision without adequate explaining its factual and legal bases.

Retrenchment Illegal

In Lopez Sugar Corporation vs. Federation of Free Workers,[22] this Court stated:

> "We consider it may be useful to sketch the general standards in terms of which the acts of petitioner employer must be

> appraised. 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.
>
> 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."

Given the preceding discussion, it is indisputable that private respondent failed to meet the abovestated requirements for a valid retrenchment due to imminent business losses, since (1) the expected

losses were not proven to be substantial; (2) the expected losses were not shown to be imminent as private respondent was able to afford re-hiring of some of the none-tenurial employees on "forced leave"; and (3) the retrenchment was not shown to be reasonably necessary and likely to effectively prevent the expected losses. And, neither the losses already realized nor the imminent losses sought to be forestalled were proven by sufficient and convincing evidence.

Moreover, the private respondent admitted but failed to explain why it rehired previously retrenched employees who were even non-tenurial, during the pendency of the complainants for illegal dismissal, when there were still a number of regular employees in the same situation. Petitioners also alleged that, immediately after their termination, private respondent hired replacements to fill their positions. This allegation, supported by the affidavit[23] of petitioners' witness Marlene Cerillo, remained unrebutted and uncontroverted by private respondent. This militates strongly against private respondent's claim of good faith in implementing reductions of its work force to reduce costs. And, although Memorandum No. 24-88 set out the priorities/categories to be observed in implementing the personnel reduction program, the same was not applied to the petitioners, who, being regular employees, did not fall under any of the categories mentioned in said memorandum, and who therefore ought not have been retrenched — at least not under said memorandum.

This Court has repeatedly enjoined employers to adopt and observe fair and reasonable standards to effect retrenchment.[24] The private respondent adopted in its Memo. No. 24-88 a set of criteria in retrenching employees in accordance with its cost-reduction program, but discarded these self-imposed criteria when it came to the retrenchment of petitioners, thus rendering its action arbitrary. Further, it is undisputed that Sec. 1, Article XI of the Collective Bargaining Agreement of September 13, 1988 between private respondent and the employees' union stipulates that "seniority in service to the company shall be considered in lay-off or reduction of working force."[25] Thus, the subject retrenchment is violative of this stipulation as well. The private respondent's demonstrated arbitrariness in the selection of which of its employees to retrench is further proof of the illegality of the subject retrenchment, not to

mention private respondent's bad faith. And lastly, we note that the termination was made effective five (5) days after receipt of notice.[26] The lack of the thirty (30) days notice prior to retrenchment as required under Article 283 of the Labor Code further bolster the conclusion that the subject retrenchment was illegal.

Thus, it is ineludible that we should agree with petitioners' contention that, contrary to the public respondent's finding, the retrenchment of petitioners by private respondent constituted illegal dismissal.

Reinstatement Not Impossible

Inasmuch as petitioners were illegally dismissed they are therefore entitled to reinstatement[27] and backwages.[28]

In public respondent's Comment[29] (adopted by private respondent as its own), reiteration is made of the allegations in private respondent's Manifestation on Compliance,[30] to the effect that petitioners' reinstatement is no longer feasible because there is no vacancy available, that its present financial position renders such reinstatement impossible, and that, as a result of the assumption by NEA of the management of private respondent, the latter's plantilla positions were reduced to only 183, which is 41 less than the 224 actual number of employees, not including petitioners. These claims scant attention. These are factual allegations which ought not be pleaded in a petition for certiorari, where only questions of jurisdiction or grave abuse of discretion may be raised and resolved. And in any event, if private respondent can re-hire 12 previously retrenched personnel, 6 of whom were contractual, casual or probationary employees, it can certainly reinstate the petitioners herein.

As the illegal dismissal occurred prior to March 21, 1989, the date of the effectivity of Republic Act 6715, the award of backwages shall cover only a period of three (3) years without qualification and deduction.[31]

WHEREFORE, the petition is hereby **GRANTED**, the assailed Decision is herewith **REVERSED** and **SET ASIDE** and, the private respondent is ordered to reinstate the petitioners and to pay them

backwages for three (3) years without deduction or qualification. Costs against private respondent.

SO ORDERED.

Narvasa, *C. J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Rollo, pp. 35-43.
[2] Third Division, composed of Presiding Commissioner Lourdes C. Javier, ponente, and Commissioners Ireneo B. Bernardo and Rogelio I. Rayala, concurring.
[3] Rollo, pp. 24-33.
[4] Dominador B. Medroso, Jr.
[5] Promulgated September 16, 1991; rollo, pp. 45-46.
[6] Rollo, pp. 47-48.
[7] Rollo, p. 51.
[8] Rollo, p. 52.
[9] Rollo, p. 56.
[10] Rollo, p. 57.
[11] Rollo, p. 58.
[12] Rollo, p. 59.
[13] Rollo, pp. 31-33.
[14] Rollo, p. 42.
[15] 189 SCRA 179, August 30, 1990.
[16] LBC Aircargo, Inc. vs. NLRC, 190 SCRA 274, 279, October 3, 1990.
[17] Mangalen vs. Court of Appeals, 215 SCRA 230, 241, October 29, 1992.
[18] San Miguel Corporation vs. NLRC, 209 SCRA 494, 499, June 2, 1992.
[19] Nicos Industrial Corporation vs. Court of Appeals, 206 SCRA 127, 132, February 11, 1992.
[20] Records, p. 59.
[21] Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179, 190, August 30, 1990.
[22] supra., at pp. 186-187.
[23] Annex "S" to the Petition; rollo, pp. 81-81.
[24] Radio Communications of the Philippines, Inc. vs. National Labor Relations Commission, 210 SCRA 222, 225, June 25, 1992 and Asiaworld Publishing House, Inc. vs. Ople, 152 SCRA 219, 225, July 23, 1987.
[25] Rollo, p. 64.
[26] Records, p. 59.
[27] Radio Communications of the Philippines, Inc. vs. National Labor Relations Commission, supra, p. 225; Manipon, Jr. vs. National Labor Relations Commission, 239 SCRA 451, 457, December 27, 1994.
[28] Sigma Personnel Services vs. National Labor Relations Commission, 224 SCRA 181, 188, June 30, 1993.

[29] Rollo, pp. 110-119.
[30] Filed by herein private respondent with the labor arbiter prior to taking appeal to the respondent Commission; records, pp. 206-207.
[31] C. Alcantara & Sons, Inc., vs. National Labor Relations Commission, 229 SCRA 109, 115, January 5, 1994.