SUPREME COURT
FIRST DIVISION

FE S. SEBUGUERO, CARLOS ONG, NENE MANAOG, JUANITO CUSTODIO, CRISANTA LACSAM, SATURNINO GURAL, WILMA BALDERA, LEONILA VALDEZ, FATIMA POTESTAD, EVANGELINE AGNADO, RESTITUTO GLORIOSO, JANESE DE LOS REYES, RODOLFO SANCHEZ, WILMA ORBELLO, DAISY PASCUA, and ALEX MASAYA,

***Petitioners*,**

-versus-

G.R. No. 115394
September 27, 1995

NATIONAL LABOR RELATIONS COMMISSION, G.T.I. SPORTS-WEAR CORPORATION and/or BENEDICTO YUJUICO,

***Respondents*.**

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D E C I S I O N

DAVIDE, JR., *J.*:

This is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court to set aside for having been rendered with grave abuse of discretion the Decision of 29 November 1993[1] and Resolution of 9 February 1994[2] of public respondent National Labor Relations Commission (NLRC) in NLRC NCR CA Case No. 004673-93. The former modified the Decision of 26 February 1993 of the Labor Arbiter[3] by setting aside the award of back wages, proportionate 13th month pay for 1991 and attorney's fees, while the latter denied the motion to reconsider the former.

The antecedent facts as disclosed by the decisions of the Labor Arbiter and the NLRC, as well as by the pleadings of the parties, are not complicated.

The petitioners were among the thirty-eight (38) regular employees of private respondent GTI Sportswear Corporation (hereinafter GTI), a corporation engaged in the manufacture and export of ready-to-wear garments, who were given temporary lay-off" notices by the latter on 22 January 1991 due to alleged lack of work and heavy losses caused by the cancellation of orders from abroad and by the garments embargo of 1990.

Believing that their "temporary lay-off" was a ploy to dismiss them, resorted to because of their union activities and was in violation of their right to security of tenure since there was no valid ground therefor, the 38 laid-off employees filed with the Labor Arbiter's office in the National Capital Region complaints for illegal dismissal, unfair labor practice, underpayment of wages under Wage Orders Nos. 01 and 02, and non payment of overtime pay and 13th month pay.[4]

Private respondent GTI denied the claim of illegal dismissal and asserted that it was its prerogative to lay-off its employees temporarily for a period not exceeding six months to prevent losses due to lack of work or job orders from abroad, and that the lay-off

affected both union and non-union members. It justified its failure to recall the 38 laid-off employees after the lapse of six months because of the subsequent cancellation of job order made by its foreign principal, a fact which was communicated to the petitioners and the other complainants who were all offered severance pay. Twenty-two (22) of the 38 complainants accepted the separation pay. The petitioners herein did not.

The cases then involving those who accepted the separation pay were pro tanto dismissed with prejudice.

In his Decision of 26 February 1993 with respect to the claims of the petitioners, Labor Arbiter Pablo C. Espiritu, Jr. found for them and disposed as follows:

> "WHEREFORE, above premises considered, judgment is hereby rendered finding Respondent, G.T.I. Sportswear Corporation, liable for constructive dismissal, underpayment of wages under NCR 01 and 02, and 13th-month pay differentials and concomitantly, Respondent corporation is hereby ordered:
>
> a. To pay the following complainants backwages from the time of their constructive dismissal (July 22, 1991) till promulgation considering that reinstated is no longer decreed;
>
> b. To pay complainants separation pay of ½ month for every year of service in lieu of reinstatement in the following amounts;
>
> c. To pay complainants 13th-month pay differentials arising out of underpayment of wages and proportionate 13th-month pay for 1991 in the following amounts;
>
> d. To pay complainants underpayment of wages under NCR Wage 01 and NCR Wage 02 in the following amounts;

e. To pay complainants the amount of P120,618.87 representing 10% attorney's fees based on the total judgment award of P1,326,807.63."

The claims for unfair labor practice, nonpayment of overtime pay, moral damages, and exemplary damages are hereby denied for lack of merit.

SO ORDERED.[5]

In support of the disposition, the Labor Arbiter made the following ratiocinations:

On the validity of the temporary lay-off, this Arbitration Branch finds that there was ample justification on the part of Respondent company to lay-off temporarily some of its employees to prevent losses as a result of the reduction of the garment quota allocated to Respondent company due to the garment embargo of 1990. In fact, in the months of March, April, and May of 1991 respondent company received several messages/correspondence from its foreign principals informing them (Respondent) that they are cancelling/transferring some of their quotas/orders to other countries. The evidence presented by Respondent company proves this fact (Exhibits "12", "13", "14", "15", "15-A", "16", "17" and Annexes "5", "6", "7", showing the different documentary evidence on cancellation of orders and forced leave schedules of workers due to lack of work). This is sustainable, as in this case, where the Respondent found it unnecessary to continue employing some of its workers because of business recession, lack of materials to work on due to government controls (garments embargo) and due to the lack of the demand for export quota from its principal foreign buyers.

Although, as a general rule, Respondent company has the prerogative and right to resort to temporary lay-off, such right is likewise limited to a period of six (6) months applying Art. 286 of the Labor Code on suspension of employer-employee relationship not exceeding six (6) months.

In this case, respondent company was justified in the temporary lay-off of some of its employees. However, Respondent company should have recalled them after the end of the six month period or at the least reasonably informed them (complainants) that the Respondent company is still not in a position to recall them due to the continuous drop of demand in the export market (locally or internationally), thereby extending temporary lay-off with a definite period of recall and if the same cannot be met, then the company should implement retrenchment and pay its employees separation pay. Failing in this regard, respondent company chose the not to recall nor send notice to the complainants after the lapse of the six (6) month period. Hence, there is in this complaint a clear case of constructive dismissal. While there is a valid reason for the temporary lay-off, the same is also limited to a duration of six months. Thereafter the employees, complainants herein, are entitled under the law (Art. 286) to be recalled back to work. As result thereof, the temporary lay-off of the complainants from January 22, 1991 (date of lay-off) to July 22, 1991 is valid, however, thereafter complainants are already entitled to backwages, in view of constructive dismissal, due to the fact that they were no longer recalled back to work. Complainants cannot be placed on temporary lay-off forever. The limited period of six (6) months is based provisionally to prevent circumvention on the right to security of tenure and to prevent grave abuse of discretion on the part of the employer. However, since during the trial it was proven, as testified by the Vice-President for marketing and personnel manager, that the lack of work and selection of personnel continued to persist and considering the antagonism and hostility displayed by both litigants, as observed by this Arbiter, during the trial of this case and in view of the strained relations between the parties, reinstatement of the complainants would not be prudent. (Divine Word High School vs. NLRC, G.R. 72207, 6 Aug. 1986; Esmalin vs. NLRC, G.R. 67880, 15 Sept. 1989; Hernandez vs. NLRC, G.R. 34302, 10 Aug. 1989). Hence, separation pay of ½ month for every year of service in lieu of reinstatement is in order.

> On the issue of monetary claims this Arbitration Branch finds that Respondent is liable for underpayment of wages under NCR Wage Order 01 and 02 considering that respondent failed to rebut the claims of the complainants. Respondent failed to show proof by means of payrolls to disprove the claim of the complainants. Complainants are also entitled to their proportionate 13th-month pay differentials as a result of the underpayment of wages under NCR-01 and 02 and likewise to their proportionate 13th-month pay for 1991 for the month of January 1991.
>
> However, complainants are entitled to reasonable attorney's fees considering they were forced to engage the services of counsel in order to fully ventilate their rights and grievances in accordance with the Labor Code as amended.[6]

The Labor Arbiter found no sufficient evidence to prove the petitioners' charges of unfair labor practice, overtime pay, and moral and exemplary damages.

Private respondent GTI seasonably appealed the aforesaid decision to the NLRC, which docketed the appeal as NLRC N Case No. 004673-93.

In its challenged decision, the NLRC concurred with the findings of the Labor Arbiter that there was a valid lay-off of the petitioners due to lack of work, but disagreed with the latter's ruling granting back wages after 22 July 1991. The NLRC justified its postulation as follows:

> However, we cannot sustain the findings of the Labor Arbiter in awarding the complainants backwages after July 22, 1991 in view of constructive dismissal, it being acknowledged by him that "during the trial it was proven, as testified by the Vice-President for marketing and personnel manager, that the lack of work and selection of personnel continued to persist." Besides, it was not denied by the complainants that during the proceeding of the case, the respondents conveyed to the complainants the impossibility of having them recalled in view of the continued unavailability of work as the economic

> recession of the respondent's principal market persisted. In fact, the respondent company offered to complainants payment of their separation pay which offer was accepted by 22 out of 38 complainants.

Having established lack of work, it necessarily follow[s] that retrenchment did take place and not constructive dismissal. Dismissal by its term, presuppose that there was still work available and that the employer terminated the services of the employee therefrom. The same cannot be said of the case at bar. The complainants did not question the evidence of lack of work on account of reduction of government quota or cancellation of orders.

Art. 286 of the Labor Code is precised (sic) in this regards when it provided that:

> "ARTICLE 286. When employment not deemed terminated. — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, shall not terminate employment."

It is only after the six months period that the employee can be presumed to have been terminated.[7]

It thus set aside the awards for back wages, proportionate 13th month pay for 1991, and for attorney's fees which it found to be without basis, and disposed as follows:

> WHEREFORE, premises considered the decision of the Labor Arbiter dated February 26, 1993 is hereby modified by deleting the award of backwages, the proportionate 13th month pay for 1991 and attorney's fees for lack of legal basis and direct, the payment of separation pay equal to one-half month salary for every year of service as of July 22, 1991.[8]

Unable to accept the NLRC judgment, the petitioners filed this special civil action for *certiorari*. They contend that the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion when it: (a) ruled that there was a valid and legal reduction of business and in sustaining the theory of redundancy in justifying the dismissal of the

petitioners; (b) failed to apply in full the provisions of law and of jurisprudence as to the full payment of back wages in cases of illegal dismissal; and (c) deleted the award of attorney's fees.

We gave due course to this petition after the filing of the separate comments to the petition by the public and private respondents and the petitioners' reply to the public respondent's comment.

The petitioners first contention is based on a wrong premise or on a miscomprehension of the statement of the NLRC. What the NLRC sustained and affirmed is not redundancy, but retrenchment as aground for termination of employment. They are not synonymous but distinct and separate grounds under Article 283 of the Labor Code, as amended.[9]

Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.[10]

Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is 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.[11] 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.[12]

Article 283 of the Labor Code which covers retrenchment, reads as follows:

> 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 the closing is for the purpose of circumventing the provisions of this Title, by servicing a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent loses and in cases of closure 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 (½) 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.

This provision, however, speaks of a permanent retrenchment as opposed to a temporary lay-off as is the case here. There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a period or duration therefor. These employees cannot forever be temporarily laid-off. To remedy this situation or fill the hiatus, Article 286 may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status.[13] Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. The temporary lay-off wherein the employees likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.

To determine, therefore, whether the petitioners were validly retrenched or were illegally dismissed, we must determine whether there was compliance with the law regarding a valid retrenchment at anytime within the six month-period that they were temporarily laid-off.

Under the aforequoted Article 283 of the Labor Code, there are three basic requisites for a valid retrenchment:

(1) the retrenchment is necessary to prevent losses and such losses are proven;

(2) written notice to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; and

(3) payment of separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher.

As for the first requisite, whether or not an employer would imminently suffer serious or substantial losses for economic reasons is essentially a question of fact for the Labor Arbiter and the NLRC to determine.[14] Here, both the Labor Arbiter and the NLRC found that the private respondent was suffering and would continue to suffer serious losses, thereby justifying the retrenchment of some of its employees, including he petitioners. We are not prepared to disregard this finding of fact. It is settled that findings of quasi-judicial agencies which have acquired expertise in the matters entrusted to their jurisdiction are accorded by this Court not only with respect but with finality if they are supported by substantial evidence. [15] The latter means that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[16] In the instant case, no claim was made by any of the parties that such a finding was not supported by substantial evidence. Furthermore, the petitioners did not appeal the finding of the Labor Arbiter that their temporary lay-off to prevent losses was amply justified. They cannot now question this finding that there is a valid ground to lay-off or retrench them.

The requirement of notice to both the employees concerned and the Department of Labor and Employment (DOLE) is and must be written and given at least one month before the intended date of retrenchment. In this case, it is undisputed that the petitioners were given notice of the temporary lay-off. There is, however, no evidence that any written notice to permanently retrench them was given at least one month prior to the date of the intended retrenchment. The NLRC found that GTI conveyed to the petitioners the impossibility of recalling them due to the continued unavailability of work.[17] But what the law requires is a written notice to the employees concerned and that requirement is mandatory.[18] The notice must also be given at least one month in advance of the intended date of retrenchment to enable the employees to look for other means of employment an therefore to ease the impact of the loss of their jobs and the corresponding income.[19] That they were already on temporary lay-off at the time notice should have been given to them is not an excuse to forego the one-month written notice because by this time, their lay-off is to become permanent and they were definitely losing their employment.

There is also nothing in the records to prove that a written notice was ever given to the DOLE as required by law. GTI's position paper,[20] offer of exhibits,[21] Comment to the Petition,[22] and Memorandum[23] in this case do not mention of any such written notice. The law requires two notices — one to the employee/s concerned and another to the DOLE — not just one. The notice to the DOLE is essential because the right to retrench is not an absolute prerogative of an employer but is subject to the requirement of law that retrenchment be done to prevent losses. The DOLE is the agency that will determine whether the planned retrenchment is justified and adequately supported by facts.[24]

With respect to the payment of separation pay, the NLRC found that GTI offered to give the petitioners their separation pay but that the latter rejected such offer which was accepted only by 22 out of the 38 original complainants in this case.[25] As to when this offer was made was not, however, proven. All that the parties, the Labor Arbiter and the NLRC stated in their respective pleadings and decisions was that the offer and payment were made during the pendency of the illegal dismissal case with the Labor Arbiter. But with or without this offer of

separation pay, our conclusion would remain the same: that the retrenchment of the petitioners is defective in the face of our finding that the required notices to both the petitioners and the DOLE were not given.

The lack of written notice to the petitioners and to the DOLE does not, however, make the petitioners' retrenchment illegal such that they are entitled to the payment of back wages and separation pay in lieu of reinstatement as they contend. Their retrenchment, for not having been effected with the required notices, is merely defective. In those cases where we found the retrenchment to be illegal and ordered the employees' reinstatement and the payment of back wages, the validity of the cause for retrenchment, that is the existence of imminent or actual serious or substantial losses, was not proven.[26] But here, such a cause is present as found by both the Labor Arbiter and the NLRC. There is only a violation by GTI of the procedure prescribed in Article 283 of the Labor Code in effecting the retrenchment of the petitioners.

It is now settled that where the dismissal of an employee is act for a just and valid cause and is so proven to be but he is not accorded his right to due process, i.e., he was not furnished the twin requirements of notice and the opportunity to be heard, the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of or for failure to observe due process. The sanction, in the nature of indemnification or penalty, depends on the facts of each case and the gravity of the omission committed by the employer and has ranged from P1,000.00 as in the cases of Wenphil vs. National Labor Relations Commission,[27] Seahorse Maritime Corp. vs. National Labor Relations Commission,[28] Shoemart, Inc. vs. National Labor Relations Commission,[29] Rubberworld (Phils.), Inc. vs. National Labor Relations Commission,[30] Pacific Mills, Inc. vs. Alonzo,[31] and Aurelio vs. National Labor Relations Commission[32] to P10,000.00 in Reta vs. National Labor Relations Commission[33] and Alhambra Industries, Inc. vs. National Labor Relations Commission.[34] More recently, in Worldwide Papermills, Inc. vs. National Labor Relations Commission,[35] the sum of P5,000.00 was awarded to the employee as indemnification for the employer's failure to comply with the requirements of procedural due process.

Accordingly, we affirm the deletion by the NLRC of the award of back wages. But because the required notices of the petitioners' retrenchment were not served upon the petitioners and the DOLE, GTI must be sanctioned for such failure and thereby required to indemnify each of the petitioners the sum of P2,000.00 which we find to be just and reasonable under the circumstances of this case.

As for the award of the 13th-month pay made by the Labor Arbiter and deleted by the NLRC, we do not find anything in the decision of the NLRC to support the deletion of this award other than its opinion that there is lack of legal basis to support such an award, without, however, furnishing any explanation for this finding. Thus, the award of the 13th-month pay made and sufficiently justified by the Labor Arbiter must be reinstated as prayed for by the petitioners.

Also, the petitioners are entitled to an award for attorney's fees pursuant to paragraph 7, Article 2208 of the Civil Code which must, however, be reasonable. The award of P120,618.87, which is equivalent to ten percent (10%) of the amounts recovered, as attorney' s fees should be reduced to P25,000.00, an amount we find to be reasonable. The ten percent (10%) attorney's fees provided for in Article 111 of the Labor Code and Section 11, Rule VIII, Book III of the Implementing Rules is the maximum; hence, any amount less than that may be awarded as the circumstances of the case may warrant.

WHEREFORE, the instant Petition is partially **GRANTED** and the challenged Decision of public respondent National Labor Relations Commission in NLRC NCR CA Case No. 004673-93 is modified by reversing and setting aside its deletion of the awards in the Labor Arbiter's decision of proportionate 13th month pay for 1991 and attorney's fees, the latter being reduced to P25,000.00. Separation pay equivalent to one-half (½) month pay for every year of service shall be computed from the dates of the commencement of the petitioners' respective employment until the end of their six-month temporary lay-off which is 22 July 1991. In addition, private respondent G.T.I. sportswear Corporation is ordered to pay each of the petitioners the sum of P2,000,00 as indemnification for its failure to observe due process in effecting the retrenchment.

SO ORDERED.

Padilla, Bellosillo and Kapunan, *JJ.*, concur.
Hermosisima, Jr., *J.*, is on leave.

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[1] Rollo, 156-165. Per Commissioner Rayala R., with the concurrences of Presiding Commissioner Bonto-Perez, E., and Commissioner Zapanta, D.
[2] Id., 178.
[3] Id., 132-143.
[4] These were docketed as cases nos. NLRC-NCR-00-22-00697-91; NLRC-NCR-00-02-00760-91; NLRC-NCR-00-02-01018-91; NLRC-NCR-00-02-01103-91; NLRC-NCR-00-02-01125-91; NLRC-NCR-00-03-01485-91; NLRC-NCR-00-04-02242-91; and NLRC-NCR-00-05-02973-91.
[5] Rollo, 141-143.
[6] Rollo, 138-141.
[7] Rollo, 163-164.
[8] Rollo, 165.
[9] P.D. No. 442.
[10] Tierra International Construction Corp. vs. NLRC, 221 SCRA 73 [1992]; Escareal vs. NLRC, 213 SCRA 472 [1992]; De Ocampo vs. NLRC, 213 SCRA 652 [1992]; Almodiel vs. NLRC, 223 SCRA 341 [1993].
[11] JOSE AGATON SIBAL, Philippine Legal Encyclopedia 502 [1986]
[12] See 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].
[13] Said Articles read:
ART. 286. When employment not deemed terminated. — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the presumption of operations of his employer or form his relief from the military or civic duty.
[14] Lopez Sugar Corp. vs. Federation of Free Workers, 189 SCRA 179 [1990].
[15] Tiu vs. NLRC, 215 SCRA 540 [1992].
[16] Section 5, Rule 133, Rules of Court.
[17] Rollo, 163-164.
[18] See Union of Filipino Workers vs. NLRC, 221 SCRA 267 [1993].
[19] See Coca-Cola Bottlers (Phils.), Inc. vs. 194 SCRA 592 [1991].
[20] Rollo, 65-69.
[21] Id., 127-130.
[22] Id., 191-204.
[23] Id., 246-258.

[24] See International Hardware, Inc. vs. NLRC, 176 SCRA 256 [1989]; Wiltshire File Co., Inc. vs. NLRC, 193 SCRA 665 [1991].
[25] Rollo, 164.
[26] See eg., Lopez Sugar Corp. vs. Federation of Free Workers, supra note 14; Radio Communication of the Philippines vs. NLRC, 210 SCRA 222 [1992]; Balasbas vs. NLRC, 212 SCRA 803 [1992].
[27] 170 SCRA 69 [1989].
[28] 173 SCRA 390 [1989].
[29] 176 SCRA 385 [1989].
[30] 183 SCRA 421 [1990].
[31] 199 SCRA 617 [1991].
[32] 221 SCRA 432 [1993].
[33] 232 SCRA 613 [1994].
[34] 238 SCRA 232 [1994].
[35] G.R. No. 113081, 12 May 1995.