SUPREME COURT
FIRST DIVISION

SOMERVILLE STAINLESS STEEL CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 125887
March 11, 1998

NATIONAL LABOR RELATIONS COMMISSION AND JERRY MACANDOG, REYNALDO MIRANDA, ROBERTO TAGALA, ET AL.,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Not every loss incurred or expected to be incurred by an employer can justify retrenchment. The employer must prove, among others, that the losses are substantial and that the retrenchment is reasonably necessary to avert such losses.

Statement of the Case

This principle is applied by this Court in resolving this Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the

Resolutions of the National Labor Relations Commission[1] (NLRC) promulgated on May 9, 1996[2] and on July 18, 1996[3] in NLRC NCR CA No. 008064-94.[4] Public respondent's assailed Decision affirmed Labor Arbiter Cornelio L. Linsangan's Decision[5] dated November 14, 1994, but deleted the award in favor of Amando Baldevia, Rolando Eusebia, Ma.. Rosita Paradero-Arevara and Marilou Libres, who withdrew their complaints and waived all claims against the petitioner, Somerville Stainless Steel Corporation (SSSC).[6] The labor arbiter, in his decision, disposed as follows:

> "The separation pay and proportionate 13th-month due the complainants as per computation of the Research and Information Office, this Arbitration Branch, which computation is hereby approved and adopted as Annex "A" of this Decision, are as follows:

Name of Complainants	Separation	Proportionate 13th month pay
1. Jerry Macandog	P58,870.00	P2,102.50
2. Reynaldo Miranda	17,030.00	1,703.00
3. Roberto Tagala	13,520.00	1,690.00
4. Johnny Mirano	44,928.00	1,872.00
5. Antonio Decasiro	30,000.00	1,534.00
6. Domingo Sumigaya	17,030.00	1,703 00
7. Ma. Rosita Paradero	23,400.00	1,950.00
8. Reynaldo Nevado	10,200.00	1,700.00
9. Albert Parafina	10,770.00	1,795.00
10. Johnny Mosquero	30,000.00	1,872.00
11. Nonalito Nicolas	47,658.00	1,833.00
12. Mario Clet	44,658.00	1,846.00
13. Jeanne Esteves	37,620.00	2,090.00
14. Rosalinda Ramos	74,240.00	2,320.00
15. Marilou Libres	14,960.00	1,870.00
16. Ruby dela Cruz	10,770.00	1,795.00
17. Amando Baldevia	34,040.00	2,127.50
18. Rolando Eusebio	33,720.00	2,107.50
19. Rectolino Esteves	21,060.00	1,755.00
20. Reynato Nicerio	26,180.00	1,870.00
21. Roberto Goce	45,100.00	2,050.00
22. Renato Yape	17,160.00	1,716.00

23.	Almer Arboleda	17,160.00	1,716.00

WHEREFORE, judgment is hereby rendered ordering the respondent company and its owners to pay each complainant the sum of Thirty Thousand Pesos (P30,000.00) as backwages and damages. In addition, the respondent company and its owners are also ordered to pay complainants separation pay and 13th month pay as indicated above.

SO ORDERED."[7]

The public respondent, in its assailed July 17, 1996 Resolution, denied petitioner's motion for reconsideration for lack of merit.

The Facts

The facts, as borne by the records, are narrated by the labor arbiter as follows:

"Somerville Stainless Steel Corporation, the company for brevity, is engaged in the business of manufacturing stainless steel kitchen equipments [sic]. On different dates, the complainants were employed by the respondent company.

The present controversy was triggered by the inability of the respondent company to pay its workers certain benefits stipulated in their collective bargaining agreement starting 16 March 1993. The CBA benefits that were withheld by management are rice subsidy, incentive leave pay, hospitalization, t-shirts and safety shoes and incentive bonus.

Complainants allege that on 09 April 1993 their union, represented by their president and vice-president, communicated with respondents for a renegotiation of their CBA but the same was rejected by the latter. They aver that on 19 April 1993 their union filed a notice of strike with the Department of Labor and Employment for unfair labor practice. Complainants claim that on the pay day of 31 May 1994 Jerry Macandog, Antonio de Castro, Jr., Ma. Rosita Paradero, Reynaldo Nevado, Roberto Tagala, Johnny Miranda, Domingo

Sumigaya, Nonalito Nicolas, Mario Clet, Johnny Mosquera, Renato Yape, among others, were surprised to receive a notice of retrenchment which was inserted in their pay envelopes. Complainants contend that most of the retrenched employees were union officers. They explain that only the union secretary was not terminated. Complainants stress that their dismissal was without just cause and in utter disregard of their right to due process. They assert that the true intention of management was to bust their union which was very insistent on the renegotiation and renewal of their CBA with the respondent company. Complainants explain further that while the notice of their retrenchment specifically states that its effectivity is 30 June 1993, the retrenched employees were no longer allowed to enter the company premises starting 16 June 1993, thus forcing the retrenched employees to stage a picket in front of the company premises.

Stressing further their charges of unfair labor practice, complainants state that the respondents, led by Messrs. Prigg and Dante Reyes, caused the removal of company equipments [sic], files and other movable properties and transferred them to another site.

Complainants likewise claim that management never discussed with their union their retrenchment and that there was no retrenchment program presented to them. Moreover, they allege that they were never advised of the basis or criteria as to who were to be retrenched.

Respondents reiterated their contention in their motion to dismiss in that individual respondents Leigh Anthony Prigg and Dante Reyes are not parties in interest and therefore the complaint should be dismissed insofar as they are concerned.

The foregoing contention is partly correct. There is no clear showing that respondent Prigg is the president of respondent company. It does not also appear that he had a hand in the termination or retrenchment of complainants. With regard to respondent Dante Reyes, it is admitted that he was designated officer-in-charge of the respondent company. Among the

> powers given him is the power to administer the affairs of the respondent company. Contrary to the pretensions of respondents, the power of respondent Dante Reyes is not limited but very broad. In any case, the complaint against him can not likewise be given to do [sic] with the retrenchment of complainants. It was former general of the company William Doland, Jr. who retrenched the complainants."[8]

Adopting the labor arbiter's factual findings, the NLRC adds:

> "Contravening the allegations of the complainants, the respondent company avers that it was experiencing serious business losses due to the effects of the economic and power crisis which the nation was then experiencing. The company alleges that Mr. William Donald Somerville met with the company's employees and informed them of the difficulties it was undergoing and that the withdrawal of employee benefits was to be only temporary until the company recovers from its financial debacle. The respondent explains that the union sought to be more adversarial rather than conciliatory which only added to the further deterioration of the company's financial condition. This, the respondent claims, served as the impetus for its undertaking the disputed retrenchment program. The respondent recounts that the union declared a strike and conducted a picket at midnight of 15 June 1993."[9]

As earlier stated, the NLRC substantially affirmed the labor arbiter's decision. Undaunted, petitioner lodged this petition with this Court.[10]

The Issues

The petitioner presents the following issues:

> "A. Whether the retrenchment undertaken is valid.
>
> B. Whether the retrenchment is attended with good faith.
>
> C. Whether the finding of facts is contrary to the evidence in record.

D. Whether private respondent Roberto Goce should be included in the award judgment."[11]

In the main, these issues boil down to this question: Was petitioner's retrenchment of private respondents justified?

The Court's Ruling

The petition is not meritorious.

Main Issue: Retrenchment Unjustified

Retrenchment is one of the "authorized" causes for the dismissal of employees. Resorted to by an employer to avoid or minimize business losses,[12] it is recognized under Art. 283 of the Labor Code:

> "ART. 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 serving a written notice on the worker 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 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 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 (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year."

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:

> "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.
>
> 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."[13]

In a nutshell, the law recognizes a company's right to retrench employees when "made necessary or compelled by economic factors that would otherwise endanger its stability or existence."[14] Unarguably, retrenchment is only "a measure of last resort when other less drastic means have been tried and found to be inadequate."[15]

Petitioner SSSC contends that the retrenchment it carried out, which resulted in the private respondents' termination from employment, measures up to this standard. Petitioner claims that it "did not only expect substantial losses but had already and have [sic] actually suffered the same."[16] It points out that, as of December 31, 1992, it has accumulated losses amounting to P392,996.36, which constitutes 98.25 percent of the stockholder's equity of P400,000.[17] Hence, petitioner bewails the public respondent's finding that, for the fiscal year 1992, its loss of P106,641.67 was "not substantial to impair its operation,"[18] and that "said loss [was] not substantial"[19] compared to its income of P7,451,981.35 in the same year. In the main, petitioner argues that the NLRC "acted capriciously and whimsically in disregarding the evidence on record and rendering [the decision] that the retrenchment [was] invalid."[20]

The Court is not persuaded. Considering the severe consequences occasioned by retrenchment on the livelihood of the employee(s) to be dismissed, and the avowed policy of the State — under Sec. 3, Art. XIII of the Constitution, and Art. 3 of the Labor Code — to afford full protection to labor and to assure the employee's right to enjoy security of tenure, the Court reiterates 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."[21] Settled is the rule that the employer bears the burden of proving this 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.[22] Failure to do so "inevitably results in a finding that the dismissal is unjustified."[23] 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."[24]

In the case at bar, the Court notes that both the labor arbiter and the NLRC, which possess administrative expertise in the specific matter of labor law, found the retrenchment effected by the SSSC unnecessary, for petitioner has not incurred any substantial loss(es) or exhausted all other less drastic economic measures to avert business losses.[25] These concurring factual findings and conclusions are entitled not only to respect but even finality on review before this Court, unless the public respondent's decision is found tainted with grave abuse of discretion.[26] Thus, petitioner must prove that the NLRC "acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of *certiorari* will lie."[27]

After a thorough review of the case, we find that the NLRC's assailed decision was based on the extant evidence. It was not tainted with abuse of discretion; much less, grave abuse of discretion. Clearly, petitioner failed to discharge its burden of proving (1) substantial losses and (2) the reasonable necessity of retrenchment.

Insufficient Proof of Substantial Losses

To prove its loss, petitioner presented only its financial statements for the fiscal year that ended on December 31, 1992.[28] These financial statements show that the petitioner's gross income was P7,451,981.35 and — deducting therefrom the cost of goods sold, which was P4,843,787.87, and the operating expenses of P2,714,835.15 — the net loss was P106,641.67. This net loss plus the deficit as of January 1, 1992, which was P286,354.71, resulted in the total loss of P392,996.38 as of the end of 1992.

These, however, fall far short of the stringent requirement of the law that the employer prove sufficiently and convincingly its allegation of substantial losses. The failure of petitioner to show its income or loss for the immediately preceding years or to prove that it expected no abatement of such losses in the coming years bespeaks the weakness of its cause. The financial statement for 1992, by itself, does not

sufficiently prove petitioner's allegation that it "already suffered actual serious losses,"[29] because it does not show whether its losses increased or decreased. Although petitioner posted a loss for 1992, it is also possible that such loss was considerably less than those previously incurred, thereby indicating the company's improving condition.[30]

Hence, in AG & P,[31] the employer sufficiently proved its case when it presented proof that its income continuously decreased from P205 million in 1984, P175 million in 1985, to P101 million in 1986 and, eventually, to a loss of P34 million in 1987 prior to the retrenchment it effected in 1988. Afterwards, it submitted to the NLRC further evidence showing that it incurred a loss of P176 million in 1990. All these proofs showed that its losses were substantial and urgent enough to justify retrenchment. In North Davao Mining Corporation,[32] the employer presented proof that it suffered net losses averaging three billion pesos (P3,000,000,000) a year for five years prior to its closure. In the instant case, petitioner insists that its total deficit or accumulated losses as of December 31, 1992 were exactly 98.25% of the stockholder's equity for the same year. This percentage by itself does not conclusively prove that the petitioner could have avoided substantial losses only through retrenchment.

Indeed, in the analysis of financial statements, "(o)ne particular percentage or relationship may not be too significant in itself"; that is, it may not suffice to point out those unfavorable characteristics of the company that would require immediate or even drastic action.[33] In view of petitioner's failure to prove that its alleged losses were substantial, continuing and without any immediate prospect of abating, the bona fide nature of the retrenchment appears to be seriously in question.[34]

No Reasonable Necessity for Retrenchment

The retrenchment is likewise unjustified because petitioner failed to show its reasonable necessity. Significantly, petitioner admits that it "could have continued its operation despite the losses it suffered."[35] It stated, however, that the notice of strike filed by private respondents indicated that they were unwilling to help save the business.[36] It assumed that the planned strike would result in

substantial losses, necessitating retrenchment. For this reason alone, petitioner concluded that it "cannot afford to continue operating and suffer more losses." Thus, it decided to undertake "the disputed retrenchment measure."[37]

We emphasize, however, that petitioner's mere speculation about the impact on its income of the notice of strike — or even the strike itself — is neither a proof that it actually sustained substantial losses nor an indication of the reasonable necessity of retrenchment. In Guerrero,[38] the Court rejected the "company's contention that it was not necessary to present proof of severity of losses it sustained since [the dismissed employees] were aware of the strike and its adverse effects on the company.

Neither do the alleged losses occasioned by the power crisis hounding the country at the time show the reasonable necessity of retrenchment. On the contrary, petitioner had already implemented a response to the energy crisis by adjusting the company's work schedule to 11:00 a.m. to 7:00 p.m. to avoid the scheduled power failure from 4:00 a.m. to 10:00 a.m.[39] It has not demonstrated the inadequacy of this response. In any event, it failed to show the futility of resorting to less drastic measures — for example, cost reduction, faster collection on customer accounts, and reducing investment on raw materials — to avoid serious financial and economic problems. As aptly found and stated by the labor arbiter:

> "In the instant case, it appears that the respondent company failed to observe fair and reasonable standards in effecting the dismissal of complainants. In fact, the respondents had no program of retrenchment setting the standards to be observed in selecting those to be retrenched.
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> It likewise appears that respondents failed to show that it first instituted cost production measures in other areas of production. It will be observed that based from [sic] the statement of loss for the year 1992 submitted by respondents (Annex '2-C', supplemental position paper), cost production measures could have easily been instituted by management to avoid incurring losses. It will be noted that for the year 1992 the company allegedly incurred a net loss of P106,641.67. This loss

> could have been easily avoided by reducing some of the operating expenses enumerated in the statement of loss. For instance, the transportation and travelling expenses and the meal allowances alone already total P204,770.16 (P106,973.60 + P97,796.56) [. A] perusal of the statement of loss reveals that there are other operating expenses that could admit little adjustments.
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> This Office is not impressed by the contention of respondents that the retrenchment under consideration was done by them in good faith for the evidence shows that it was effected after a notice of strike was filed by the complainants in view of the respondents[,] failure to pay them certain benefits in pursuance of their CBA."[40]

Clearly, petitioner had no legal basis to dismiss the private respondents as it was not able to prove the urgency and reasonable necessity of retrenchment. Indeed, the inevitable conclusion is that private respondents were illegally dismissed.[41]

Incidental Matters

Petitioner points to other cases, i.e., NLRC Case Nos. 00-09-05985-93, 00-06-04513-94, and 00-09-06029-93, which involved the same factual backdrop as that of the present case, and which were decided in favor of the employers.[42] The petitioner is clutching at straws. The only material consideration in this appeal is whether the NLRC committed grave abuse of discretion in rendering its assailed decision. Based on the foregoing discussion, it is ineludible that, in this case, Public Respondent NLRC's decision was not arbitrarily or despotically rendered, but was based on the extant evidence. In so deciding, it did not commit grave abuse of discretion, and its factual findings are perforce accorded deference and finality by this Court. We reiterate that the NLRC's evaluation of the evidence, specially that involving the factual issue of whether petitioner sufficiently proved the essential requisites of retrenchment in the case before us, is beyond the scope of our review under Rule 65 of the Rules of Court.

Finally, both parties concur that the name of Private Respondent Roberto Goce does not appear on the list of employees and, thus, is

not entitled to an award.[43] However, the solicitor general points out that, as in Goce's case, the names of Private Respondents Renato Yape and Almer Arboleda were not included in the computation of claims filed by counsel for the complainants, but that petitioner admitted that the two were its employees and, as such, included in the said list of its employees. The solicitor general further finds the following to be insufficient for determining the employment of Goce with petitioner: Goce's complaint against the petitioner, his claim to be the latter's messenger, his eventual inclusion in the computation made by the Research and Information Office of the Arbitration Branch and the grant to him of the "fourth highest award." Hence, the solicitor general recommends that Goce's case be remanded to the labor arbiter for the purpose of determining this question.[44] We agree. Justice demands that this factual question be finally threshed out in a remand of the case to the labor arbiter to finally give petitioner and Private Respondent Roberto Goce their due.

WHEREFORE, the Petition is **DISMISSED** and the assailed Resolution is hereby **AFFIRMED**, with the **MODIFICATION** that Roberto Goce's name be deleted from the award and that his complaint be remanded to the Labor Arbiter. Costs against petitioner.

SO ORDERED.

Davide, Jr., *C.J.*, *(Chairman)*, Bellosillo, Vitug and Quisumbing, *JJ.*, concur.

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[1] Second Division composed of Pres. Comm. Raul T. Aquino, ponente; and Comms. Victoriano R. Calaycay and Rogelio I. Rayala, concurring.
[2] Rollo, pp. 37-48.
[3] Ibid., p. 50.
[4] Formerly NLRC NCR 00-09-06060-93 and 10 other consolidated cases.
[5] Rollo, pp. 51-61.
[6] Decision of the NLRC, pp. 10-11; rollo, pp. 46-47.
[7] Decision of the labor arbiter, pp. 9-10; rollo, pp. 59-60.
[8] Rollo, pp. 52-55.
[9] Ibid., pp. 39-40.
[10] The case was deemed submitted for resolution on November 26, 1997 upon receipt by this Court of public respondent's memorandum. The

memorandum of petitioner was earlier received on November 17, 1997 while that of private respondent, on November 24, 1997.

[11] Petitioner's Memorandum, p. 8; rollo, p. 236.

[12] AG & P Rank and File Association vs. NLRC (First Division), 265 SCRA 159, 164, November 29, 1996; citing Precision Electronics Corporation vs. NLRC, 178 SCRA 667, October 23, 1989.

[13] Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179, 190, August 30, 1990, per Feliciano, J; cited in Saballa vs. National Labor Relations Commission, 260 SCRA 697, 709-710.

[14] Edge Apparel, Inc. vs. National Labor Relations Commission, Fourth Division, et al., G.R No. 121314, p. 11, February 12, 1998, per Vitug, J.

[15] Ibid., p. 8.

[16] Petitioner's Memorandum, p. 10; rollo, p. 238.

[17] Ibid., p. 9; rollo, p. 237.

[18] Ibid., p. 11; rollo, p. 239.

[19] Ibid.

[20] Ibid., p. 14; rollo, p. 242.

[21] Guerrero vs. National Labor Relations Commission, 261 SCRA 301, 307, August 30, 1996, per Puno, J.

[22] San Miguel Jeepney Service vs. NLRC, 265 SCRA 35, 45, November 28, 1996.

[23] Sebuguero vs. National Labor Relations Commission, 248 SCRA 532, 544, September 27, 1995, per Davide, Jr., J.

[24] Trendline Employees Association-Southern Philippines Federation of Labor (TEA-SPFL), et al. vs. National Labor Relations Commission, G.R. No. 112923, p. 6, May 5, 1997, per Romero, J.

[25] Decision of the NLRC, pp. 9-10 and Decision of the Labor Arbiter, pp. 8-9; Rollo, pp. 45-46 and 58-59.

[26] North Davao Mining Corporation vs. NLRC, 254 SCRA 721, 731, 733, March 13, 1996, per Panganiban, J.

[27] Sta Fe Cruz Co. vs. NLRC, 230 SCRA 593, 597, March 2, 1994, per Bellosillo, J.

[28] Rollo, pp. 76-83.

[29] Petitioner's memorandum, p. 12; rollo, p. 240.

[30] See Philippine School of Business Administration (PSBA Manila) vs. National Labor Relations Commission, 223 SCRA 305, June 8, 1993.

[31] Supra, p. 165.

[32] Supra, pp. 723-724.

[33] Moore, Carl L. and Jaedicke, Robert K., Managerial Accounting, p. 169 (1967).

[34] Balasbas vs. National Labor Relations Commission, 212 SCRA 803, 808, August 24, 1992, per Romero, J.

[35] Public Respondent's Memorandum, p. 15; rollo, p. 243.

[36] Ibid.

[37] Ibid., p. 16; rollo, p. 244.

[38] Supra, p. 307.

[39] Public respondent's memorandum, p. 13; rollo, p. 280; citing private respondent's supplemental position paper and/or reply, p. 159, Record.
[40] Decision of the labor arbiter, pp. 8-9; rollo, pp. 58-59.
[41] When employees are illegally dismissed, they are normally entitled to reinstatement, in addition to back wages. However, we cannot order reinstatement in this case because the private respondents did not appeal the LA's (and the NLRC's) decision omitting such relief.
[42] Petitioner's memorandum, pp. 18-20, rollo, pp. 246-248.
[43] Petitioner's memorandum, p. 20 and public respondent's memorandum, pp. 16-18; rollo, pp. 248 and 283-285.
[44] Ibid.