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THIRD DIVISION

[G.R. No. 161217. May 4, 2005]

BLUCOR MINERALS CORPORATION and DENNIS UY, *petitioners, vs.* **ALFREDO M. AMARILLA, WILFREDO C. ALDIANO and GASPAR R. PARCON,**[1] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; REDUCTION OF EMPLOYEES BECAUSE OF ACTUAL OR POTENTIAL BUSINESS LOSSES, WHEN AUTHORIZED.— Retrenchment is one of the authorized causes for dismissing employees under Article 283 of the Labor Code. The "loss" referred to in this provision, however, cannot be of just any kind or amount; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees. Before any reduction of personnel becomes legal, any claim of actual or potential business losses must satisfy the following established standards: (1) the losses incurred are substantial, not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment can be fairly regarded as necessary and likely to be effective in preventing the expected losses; and (4) sufficient and convincing evidence prove the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled are proven.

2. ID.; ID.; ID.; ID.; ID.; THE EMPLOYER BEARS THE BURDEN OF PROVING THE EXISTENCE OR THE IMMINENCE OF SUBSTANTIAL LOSSES.— It is a well-settled rule that the employer bears the burden of proving the existence or the imminence of substantial losses, a burden that is by nature an affirmative defense. It is the duty of the employer to prove with clear and satisfactory evidence that

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[1] The Petition listed the "COURT OF APPEALS" as the respondent. The CA's inclusion is inconsistent with §4 of Rule 45 of the Rules of Court. Hence, the CA is now excluded, and the three petitioners in the CA are listed as herein respondents.

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> legitimate business reasons exist to justify retrenchment; failure to do so necessarily results in a finding that the dismissal was unjustified. Innumerable times in the past, this Court has stressed that, absent any convincing evidence that the alleged losses are substantial and actual, the dismissal of employees would be unjustified.

APPEARANCES OF COUNSEL

FDC Law Firm for petitioner.
Ronald B. Javines for respondents.

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. Any claim of actual or potential business losses must satisfy the following established standards: (1) the losses incurred are substantial, not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment can be fairly regarded as necessary and likely to be effective in preventing the expected losses; and (4) sufficient and convincing evidence prove the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled. The failure of the employer to prove by convincing evidence any of the foregoing requirements will result in an illegal dismissal, as in the present case.

The Case

Before us is a Petition for Review[2] under Rule 45 of the Rules of Court, assailing the August 29, 2003 Decision[3] of the Court of Appeals (CA) in CA-GR SP No. 70729. The appellate court disposed as follows:

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[2] *Rollo*, pp. 3-8.

[3] *Id.*, pp. 45-55. Fifteenth Division. Penned by Justice Rodrigo V. Cosico (Division chair) and concurred in by Justices Sergio L. Pestaño and Rosalinda Asuncion-Vicente (members).

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"WHEREFORE, premises considered, the instant petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction is hereby GRANTED. The two assailed resolutions, dated September 14, 2001 and March 18, 2002, of public respondent NLRC in NLRC CA No. M-006506-2001 (RAB XI-12-01146-00) are hereby SET ASIDE. A new one is hereby rendered reinstating the decision, dated June 22, 2001, of Executive Labor Arbiter Antonio M. Villanueva in NLRC Case No. RAB-XI-12-01146-00."[4]

The Facts

The CA narrated the facts thus:

"[Respondent] Alfredo M. Amarilla is a regular employee of herein [Petitioner] Blucor Minerals Corporation ('Blucor,' for brevity), having worked at Blucor's mining business since January 4, 1987 and assigned in the latter's internal security force, performing, among other matters, internal security tasks and escort services for Blucor's mineral stocks and properties. Co-[respondent] Wilfredo C. Aldiano is also a regular employee of Blucor, assigned at the latter's services and engineering department as a rewinder electrician since August 9, 1995 and continued to work thereat in the course of Blucor's usual business operations. x x x Co-[respondent] Gaspar R. Parcon is likewise a regular employee of Blucor since September 10, 1998, assigned at the latter's field operation as an underground inspector.

"On July 31, 2000, Blucor notified Amarilla, Aldiano and Parcon to the effect that Blucor is terminating their employment due to retrenchment, effective August 31, 2000.

"x x x [Respondents] questioned their termination from employment by filing a complaint, docketed as NLRC Case No. RAB-XI-12-01146-00, before the arbitration branch of x x x NLRC, for illegal dismissal against Blucor Minerals Corporation and its President Dennis Uy, alleging that herein [petitioner] did not incur substantial losses in its operation so as to justify their retrenchment. [Respondents] prayed for payment of overtime pay and premiums for overtime work, claiming that they were suffered to work everyday from 7:00 a.m. to 7:00 p.m. [Respondents] also asked for payment of premiums for holiday and rest day work, 13th month pay, service incentive leave pay, and monetary value of vacation and sick leaves.

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[4] CA Decision, p. 11; *rollo*, p. 55.

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"x x x Blucor Minerals Corporation opposed the complaint, alleging that they maintained two operations called Blucor-1 and Blucor-2 and that due to the economic crisis affecting the country and the fact that the Blucor-1 operation yielded gold with low grade or quality, [Blucor] incurred serious business losses, so that it resorted to cost-reduction measures by closing the Blucor-2 operation and retrenching some workers, including herein [respondents]. In support thereof, [Blucor] presented [its] annual income tax return and financial statements showing the net loss in the amount of ₱2,038,846.10 for the year 2000.

"Regarding the money claims, Blucor averred that [respondents] were not allowed to render overtime work as they were contractual employees who worked when there were available activities for them; that [respondents] were extended allowances chargeable to the benefits provided by law; and that [respondents] were paid off their salaries, holiday pay, service incentive leave pay and 13th month pay as evidenced by the payrolls. Further, [Blucor] also averred that [respondents] should only be entitled to their separation pay equivalent to one-half month pay for every year of service since they have no existing policy granting separation pay at one month pay per year of service.

x x x x x x x x x

"After the parties x x x filed their respective pleadings, x x x Executive Labor Arbiter Antonio M. Villanueva rendered his decision, the dispositive portion of which reads:

> 'WHEREFORE, foregoing considered, judgment is hereby rendered declaring x x x Blucor Minerals Corporation and Dennis Uy guilty of illegal dismissal and ordering the same to pay complainant Wilfredo Aldiano in the amount of ₱104,811.25; Alfredo M. Amarilla of ₱210,128.33; and Gaspar R. Parcon of ₱91,311.25 as monetary award plus 10% thereof in the amount of ₱40,625.03 as attorney's fees.'
>
> 'SO ORDERED.'

x x x x x x x x x

"Labor Arbiter Villanueva also ruled that since reinstatement is no longer feasible in this case, payment of separation pay is more appropriate. The Labor Arbiter found, however, that the other monetary claims of petitioners were couched in general terms with insufficient

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proofs. In the end, the Labor Arbiter awarded the payment of moral damages and attorney's fees.

x x x x x x x x x

"On July 12, 2001, Blucor Minerals Corporation appealed to x x x NLRC, contending that the Labor Arbiter committed grave abuse of discretion in ignoring the financial statement for the year 2000 operations as adequate proof of their serious business losses warranting the retrenchment of complainants. Blucor argued that the jurisprudence, *i.e., Lopez Sugar Corporation v. Federation of Free Workers and Asian Alcohol Corporation v. NLRC*, cited by the Labor Arbiter are obsolete and no longer controlling. In fact, the closure of operation and retrenchment of employees, according to private respondent, and citing the case of *Catalista v. NLRC*, are now allowed and tolerated as long as the employees affected are thereby paid x x x their separation pay. Blucor maintained that herein petitioners were given big allowances chargeable to the benefits prescribed by law and at the most, they could only be entitled to service incentive leave pay and to proportionate 13th month pay.

x x x x x x x x x

"On September 14, 2001, x x x NLRC promulgated its assailed resolution, vacating and setting aside the decision of Labor Arbiter Villanueva, and dismissing in the main the complaint for illegal dismissal x x x

"The NLRC ruled that it has not been disputed on record that Blucor-1 operations yielded gold with low grade, thereby, entailing great reduction of sales revenue on gold. [Blucor] had to close the operations of Blucor-2 due to high costs of production and labor compounded by the economic crisis largely affecting the country. According to the NLRC, [Blucor] ably proved that it expected no abatement of its substantial losses suffered during the year 2000. The NLRC held it cannot substitute its judgment [for] that of [Blucor's] management to resort to cost reduction measures in order to protect and save its business interest. Further, the NLRC stated that [Blucor] was justified in terminating the services of [respondents] due to retrenchment under Article 283 of the Labor Code.

"In the end, the NLRC ordered [Blucor] to pay [respondents] their separation pay, service incentive leave pay and proportionate 13th month pay.

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"[Respondents] moved for the reconsideration of the September 14, 2001 resolution of the NLRC, claiming that the memorandum of appeal of [Blucor] was defective for there was no joint declaration attesting that the surety bond posted was genuine, but the same was denied in the [NLRC] resolution promulgated on March 18, 2002 x x x

x x x x x x x x x

"Alleging that the said resolutions of NLRC were issued with grave abuse of discretion amounting to lack or excess of jurisdiction, [respondents filed a Petition for *Certiorari* with the CA]."[5]

Ruling of the Court of Appeals

Reversing the National Labor Relations Commission (NLRC), the CA ruled that the dismissal was unjustified, as Blucor had failed to prove with clear and satisfactory evidence that legitimate business reasons existed to justify retrenchment. By themselves, Blucor's Income Tax Return and Audited Financial Statements for the year 2000 did not sufficiently prove the existence or the imminence of substantial losses.

The CA also found that the company had failed to show that retrenchment was reasonably necessary to avert substantial losses, or that a fair and reasonable criteria had been used in selecting the employees to be retrenched.

Hence, this Petition.[6]

Issues

In their anemic 6-page Memorandum (with barely 2 pages of "arguments"), petitioners raise the following issues for the Court's consideration:

"1. Whether or not the Court of Appeals was correct in disregarding the Income Tax Return and the Audited Financial Statements

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[5] *Id.*, pp. 2-8 & 46-52.

[6] The Petition was deemed submitted for decision on January 27, 2005, upon the Court's receipt of petitioners' Memorandum, signed by Atty. Oscar A. Carcedo. Respondents' Memorandum, received on January 5, 2005, was signed by Atty. Ronald B. Javines.

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of the herein petitioners as basis for retrenchment due to serious business losses; and

"2. Whether or not the Court of Appeals was correct in its finding that herein petitioners failed to submit their memoranda."[7]

The Court's Ruling

The Petition has no merit.

Main Issue:
Unjustified Retrenchment

Retrenchment is one of the authorized causes for dismissing employees under Article 283 of the Labor Code.[8] The "loss" referred to in this provision, however, cannot be of just any kind or amount; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees.[9]

Before any reduction of personnel becomes legal, any claim of actual or potential business losses must satisfy the following

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[7] Petitioners' Memorandum, p. 4; *rollo*, p. 127.

[8] Article 283 of the Labor Code, as amended, provides:

"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 (1/2) 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."

[9] *EMCO Plywood Corporation v. Abelgas*, 427 SCRA 496, April 14, 2004; *Lopez Sugar Corporation v. Federation of Free Workers*, 189 SCRA 179, August 30, 1990.

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established standards: (1) the losses incurred are substantial, not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment can be fairly regarded as necessary and likely to be effective in preventing the expected losses; and (4) sufficient and convincing evidence prove the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled are proven.[10]

Petitioners contend that, contrary to the findings of the labor arbiter and the CA, Blucor's Income Tax Return and Audited Financial Statements for the year 2000 sufficiently prove that the corporation had suffered substantial losses. They assert that these tax returns and financial statements constitute the normal, reliable method to prove profit or loss performance. Petitioners point out that Blucor incurred a net loss of ₱2,038,846.10 in 2000, thus compelling it to retrench private respondents.

The Court is not persuaded. It is a well-settled rule that the employer bears the burden of proving the existence or the imminence of substantial losses, a burden that is by nature 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; failure to do so necessarily results in a finding that the dismissal was unjustified.[11]

Innumerable times in the past, this Court has stressed that, absent any convincing evidence that the alleged losses are substantial and actual, the dismissal of employees would be unjustified. The latest reiteration of this iron-clad doctrine is in *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*,[12] in which the Court ruled as follows:

"Basic is the rule in termination cases that the employer bears the burden of showing that the dismissal was for a just or authorized

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[10] *Tanjuan v. Philippine Postal Savings Bank, Inc*., 411 SCRA 168, September 16, 2003; *Lopez Sugar Corporation v. Federation of Free Workers, supra*.

[11] *Polymart Paper Industries, Inc. v. NLRC*, 355 Phil. 592, August 12, 1998.

[12] G.R. No. 156292, January 11, 2005, per Panganiban, *J*.

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cause. Otherwise, the dismissal is deemed unjustified. Apropos this responsibility, petitioner corporation should have presented clear and convincing evidence of imminent economic or business reversals as a form of affirmative defense in the proceedings before the labor arbiter or, under justifiable circumstances, even on appeal with the NLRC."

To prove that it incurred losses, petitioners presented its Income Tax Return and Audited Financial Statements for the year 2000 *alone*. Previously, however, the company had admittedly enjoyed profitable initial years of operation. This situation falls short of the stringent requirement of the law that the employer must sufficiently and convincingly prove its allegation of substantial losses.

The failure of petitioners 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. It is necessary to show that the losses increased through a period of time, and that the condition of the company is not likely to improve in the near future.[13]

It is interesting to note that while petitioners admit that the company began to incur losses only in 2000, Blucor effectively terminated respondents' services on August 31 of that *same year*. When respondents requested copies of the company's financial statement to see for themselves the state of Blucor's finances, petitioners informed them that their request was premature. The latter would now have this Court decide that the corporation indeed suffered substantial losses necessitating retrenchment, based solely on the tax returns and financial statements for the year 2000. At the time respondents were retrenched, what then was the basis for the conclusion of petitioners that their dismissal was necessary to prevent existing or imminent losses?

Petitioners likewise failed to show any reasonable necessity for the retrenchment. Although the law recognizes it as a valid

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[13] *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912, March 25, 1999; *Somerville Stainless Steel Corporation v. NLRC, 350* Phil. 859, March 11, 1998.

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means to avert substantial losses, retrenchment must be exercised as a "measure of last resort when other less drastic means have been tried and found to be inadequate."[14]

In view of the foregoing discussion on the merits, this Court finds it unnecessary to discuss the issue of non-submission to the CA of petitioners' Memorandum.

WHEREFORE, the Petition is *DENIED* and the assailed Decision ***AFFIRMED***. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and *Garcia, JJ.,* concur.

EN BANC

[A.M. No. MTJ-01-1362. May 6, 2005]
(Formerly A.M. No. 01-2-49-RTC)

JUDGE NAPOLEON INOTURAN, Regional Trial Court, Branch 133, Makati City, *complainant, vs.* **JUDGE MANUEL Q. LIMSIACO, JR., Municipal Circuit Trial Court, Valladolid-San Enrique-Pulupandan, Negros Occidental,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; COMMITTED BY JUDGE IN CASE AT BAR FOR BLATANTLY DISREGARDING THE RULES AND SETTLED JURISPRUDENCE ON BAIL; CASE AT BAR.— Bail, as defined in Section 1, Rule 114 of the Revised Rules

[14] *EMCO Plywood Corporation v. Abelgas, supra,* p. 508, per Panganiban, *J.* (citing *Edge Apparel, Inc. v. NLRC,* 349 Phil. 972, 983, February 12,1998, per Vitug. *J.*).