Supreme Court E-Library

WHEREFORE, the petition is *DENIED*. The decision of the Court of Appeals is *AFFIRMED* with *MODIFICATION* as above indicated. The case is *REMANDED* to the Regional Trial Court of Balanga, Bataan acting as a Special Agrarian Court for the determination of just compensation in accordance with Section 17 of Republic Act No. 6657.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 172363. March 7, 2008]

JUVY M. MANATAD, *petitioner, vs.* **PHILIPPINE TELEGRAPH AND TELEPHONE CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL; RETRENCHMENT; NATURE. — Retrenchment 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, 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 automation. Retrenchment is a valid management prerogative. It is, however, subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.

Supreme Court E-Library

In the discharge of these requirements, it is the employer who bears the *onus,* being in the nature of affirmative defense.

2. ID.; ID.; ID.; ID.; ID.; ELEMENTS. — For a valid retrenchment, the following requisites must be complied with: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.

3. ID.; ID.; ID.; ID.; ID.; LOSSES WHICH MAY JUSTIFY RETRENCHMENT, EXPLAINED. — Jurisprudential standards for the losses which may justify retrenchment have been reiterated by this Court in a long line of cases to forestall management abuse of this prerogative, *viz:* "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,

Supreme Court E-Library

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."

4. ID.; ID.; ID.; ID.; ID.; THE CONDITION OF BUSINESS LOSSES IS SHOWN BY AUDITED FINANCIAL STATEMENTS. — The financial statements audited by independent external auditors constitute the normal method of proving the profit and loss performance of a company as enunciated in *San Miguel Corporation v. Abella*: "Normally, the condition of business losses is shown by audited financial documents like yearly balance sheets, profit and loss statements and annual income tax returns. The financial statements must be prepared and signed by independent auditors failing which they can be assailed as self-serving documents." No evidence can best attest to a company's economic status other than its financial statement. We defined the evidentiary weight accorded to audited financial statements in *Asian Alcohol Corporation v. National Labor Relations Commission*: "The condition of business losses is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. It is our ruling that financial statements must be prepared and signed by independent auditors. Unless duly audited, they can be assailed as self-serving documents. But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on a downward trend, indicating that business is picking up and retrenchment, being a drastic move, should no longer be resorted to. Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that it expected no abatement of such losses in the coming years, may bespeak the weakness of its cause. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future."

Supreme Court E-Library

5. ID.; ID.; ID.; ID.; CLOSURE OR CESSATION OF BUSINESS OPERATIONS IS ALLOWED EVEN IF THE BUSINESS IS NOT UNDERGOING ECONOMIC LOSSES. — Explicit in x x x [Article 283 of the Labor Code] is that closure or cessation of business operations is allowed even if the business is not undergoing economic losses. The owner, for any *bona fide* reason, can lawfully close shop anyone. Just as no law forces anyone to go into business, no law can compel anybody to continue in it. It would indeed be stretching the intent and spirit of the law if we were to unjustly interfere with the management's prerogative to close or cease its business operations, just because said business operations are not suffering any loss or simply to provide the worker's continued employment.

6. ID.; ID.; ID.; ID.; VALID REDUCTIONS IN THE WORK FORCE TO FORESTALL BUSINESS LOSSES, ALLOWED. — The law recognizes the right of every business entity to reduce its work force if the same is made necessary by compelling economic factors which would endanger its existence or stability. In spite of overwhelming support granted by the social justice provisions of our Constitution in favor of labor, the fundamental law itself guarantees, even during the process of tilting the scales of social justice towards workers and employees, "the right of enterprises to reasonable returns of investment and to expansion and growth." To hold otherwise would not only be oppressive and inhuman, but also counter-productive and ultimately subversive of the nation's thrust towards a resurgence in our economy which would ultimately benefit the majority of our people. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.

7. ID.; ID.; ID.; ID.; NON-MEMBERSHIP IN A UNION DOES NOT EXEMPT AN EMPLOYEE FROM THE APPLICATION OF ARTICLE 283 OF THE LABOR CODE. — Non-membership in a union does not exempt an employee from the application of Article 283 of the Labor Code which enumerates the authorized causes for terminating employment.

Supreme Court E-Library

8. ID.; ID.; ID.; BACKWAGES; GRANTED ONLY WHEN THERE IS A FINDING OF ILLEGAL DISMISSAL. — It is well settled that backwages may be granted only when there is a finding of illegal dismissal.

APPEARANCES OF COUNSEL

Cesar P. Kilaton, Jr. for petitioner.
Melchor Ella Ancheta Law Firm for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioner Juvy M. Manatad seeking the reversal and the setting aside of the Decision[2] dated 12 July 2005 and the Resolution[3] dated 22 March 2006 of the Court of Appeals in CA-G.R. SP No. 79440. The appellate court, in its assailed Decision and Resolution, reversed the Decisions[4] of the National Labor Relations Commission (NLRC) and the Labor Arbiter declaring the dismissal of Manatad from employment illegal. The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the petition is GRANTED. The Decision dated 18 September 2001 and Resolution dated 22 July 2003 of [NLRC] as well as the Decision dated 14 July 1999 of the Labor Arbiter are REVERSED and SET ASIDE. However, [herein respondent] is hereby ordered to pay [herein petitioner] Php43,5000.00 as separation pay. No costs.[5]

---

[1] *Rollo,* pp. 4-20.

[2] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr., concurring. *Rollo,* pp. 21-29.

[3] *Id.* at 30-31.

[4] *Id.* at 101-108, 109-113.

[5] *Id.* at 28.

Supreme Court E-Library

The present controversy stems from the following antecedent factual and procedural facts:

In September 1988, petitioner was employed by respondent Philippine Telegraph and Telephone Corporation (PT&T) as junior clerk with a monthly salary of ₱3,839.74. She was later promoted as Account Executive, the position she held until she was temporarily laid off from employment on 1 September 1998.

Petitioner's temporary separation from employment was pursuant to the Temporary Staff Reduction Program adopted by respondent due to serious business reverses. On 16 November 1998, petitioner received a letter from respondent inviting her to avail herself of its Staff Reduction Program Package equivalent to one-month salary for every year of service, one and one-half month salary, pro-rated 13th month pay, conversion to cash of unused vacation and sick leave credits, and Health Maintenance Organization and group life insurance coverage until full payment of the separation package. Petitioner, however, did not opt to avail herself of the said package. On 26 February 1999, petitioner received a Notice of Retrenchment from respondent permanently dismissing her from employment effective 16 February 1999.

Consequently, petitioner filed a Complaint for illegal dismissal against respondent, its Regional Director for Visayas Reynaldo Macrohon, and its President and Chief Executive Officer Marilyn Eleonor Santiago before the Labor Arbiter claiming the award of separation pay, damages and attorney's fees. In her Position Paper, petitioner mainly alleged that the retrenchment program adopted by respondent was illegal for it was gaining profits for the period of July 1997 to June 1998. In support of her allegation that respondent was obtaining profits, petitioner presented the central Visayas Operating Margin Reports[6] showing the respondent's gross revenue and net profits in the region for the period in question:

---

[6] Records, p. 15.

Supreme Court E-Library

Month	Gross Revenue	Net Profit
July 1997	₱2,496,981.31	₱775,742.82
August 1997	2,314,527.75	662,812.13
September 1997	2,308,364.14	604,924.51
October 1997	2,403,083.30	649,583.33
November 1997	1,965,446.44	367,956.48
December 1997	2,391,721.94	657,023.23
January 1998	2,649,857.35	825,581.17
February 1998	2,611,029.13	702,132.23
March 1998	2,340,166.83	488,549.78
April 1998	2,199,814.78	230,380.21
May 1998	2,186,735.40	403,416.66
June 1998	2,240,238.94	500,656.64

Petitioner further belied respondent's contention that it was suffering from serious financial reverses by presenting respondent's Special Order No. 98-21[7] granting an increase in the salaries of its employees under Job Grade 8 and 9 in the amount of ₱2,300.00 a month effective January 1998. Petitioner's evidence supposedly showed that it was still economically viable for respondent to continue its business operations without downsizing its workforce. Petitioner thus prayed for the award of separation pay in the amount of ₱107,000.00, unpaid salary, prorated 13th month pay, unpaid vacation leave benefits and attorney's fees.

On the other hand, respondent asserted that petitioner was separated from service pursuant to a valid retrenchment implemented by the company. Retrenchment is an authorized cause for the employer to terminate the services of an employee. Due to huge business losses suffered by respondent in the sum of ₱684,096,285.00 from 1995-1998, it was constrained to arrest escalating operating costs by downsizing its workforce.

---

[7] *Id*. at 30-31.

Supreme Court E-Library

Respondent claimed that it was suffering from serious financial reverses from 1995 up to 1999, as shown below:

YEAR	PROFIT	LOSSES
1995		₱ 29,868,406.00
1996		₱ 52,112,986.00
1997	₱1,491,532.00	
1998		₱ 557,892,627.00
1999		₱ 770,552,970.00[8]

To support its claim, respondent submitted its financial statements for the fiscal period of 30 June 1996 to 30 June 1998 audited by independent auditors. Independent public accountants, Sycip Gorres Velayo (SGV) & Co., reported that respondent incurred a substantial loss of about ₱558 Million which resulted in a deficit of about ₱574 Million as of 30 June 1998. Respondent has been negotiating with its creditors for the suspension of payments until the completion of an acceptable restructuring plan.[9]

On 14 January 1999, the Labor Arbiter rendered a Decision in favor of petitioner ruling that the retrenchment program implemented by respondent was invalid. According to the Labor Arbiter, respondent failed to prove that it was suffering from serious financial reverses warranting the implementation of a retrenchment program. Mere comparative statements of income submitted by respondent was not a conclusive proof of serious business losses, more so when their authenticity was suspected for lack of signature of the one who prepared it. Consequently, petitioner's separation from employment effected pursuant to an unjustified retrenchment program, was illegal. The dispositive portion of the Labor Arbiter's Decision reads:

---

[8] *Id*. at 79.

[9] *Id*. at 169.

Supreme Court E-Library

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Philippine Telephone and Telegraph Corp. (PT&T) to pay the complainant Juvy Manatad the following:

1. Separation pay	—	₱107,000.00
2. Backwages	—	₱ 42,800.00
3. Unpaid wages	—	₱ 50,850.00
4. Vacation and sick leave pay	—	₱ 13,563.00
5. Proportionate 13th month pay	—	₱ 1,335.00
6. Attorney's fee	—	₱ 21,554.00

TOTAL	—	₱ 237,102.00
Less Advances	—	₱ 13,050.00

		₱ 224,050.00

The other claims and the case against respondents Reynaldo Machoron and Marilyn Santiago are dismissed for lack of merit.[10]

Dissatisfied, petitioner appealed to the NLRC arguing that the Labor Arbiter gravely abused its discretion in sustaining the illegality of petitioner's dismissal. In ruling that respondent's retrenchment program was unjustified, the Labor Arbiter disregarded the financial statements submitted by the respondent which were audited by independent auditors showing that it was in dire financial distress.

On 18 September 2001, the NLRC rendered a Decision[11] affirming with modification the Labor Arbiter Decision. The NLRC sustained the Labor Arbiter's findings with respect to respondent's failure to substantiate its claim of financial reverses. It further noted that the Department of Labor and Employment (DOLE) was not notified by the respondent of its retrenchment program as required by law. The NLRC Decision thus decreed:

WHEREFORE, the Decision of the Labor Arbiter dated July 14, 1999 is *affirmed* with the modification that respondents Reynaldo

---

[10] *Rollo,* p. 107.

[11] Records, pp. 329-333.

Supreme Court E-Library

Macrohon and Marilyn Santiago are also ordered jointly and severally liable with PT&T, for the payment of the judgment award.[12]

The Motion for Reconsideration filed by respondent was denied by the NLRC in its Resolution dated 22 June 2002.

On *Certiorari*, the Court of Appeals reversed the NLRC and the Labor Arbiter Decisions and upheld the validity of respondent's retrenchment program.[13] The appellate court was fully persuaded that the respondent was besieged by a continuing downtrend in its business operations and severe financial losses which justified its immediate drastic reduction of personnel.[14] The financial standing of respondent cannot be determined by the performance of a single branch or unit alone but by the performance of all its branches integrated as a whole. In addition, the comparative statements of income prepared by independent auditors constitute a normal method of proving the profit and loss performance of a business company. Finally, the Court of Appeals also observed that respondent duly complied with the requirement of service of notice to the employee one month before the intended date of retrenchment.

Similarly ill-fated was petitioner's Motion for Reconsideration which was denied by the Court of Appeals in a Resolution[15] dated 22 March 2006.

Petitioner is now before this Court *via* the Petition at bar raising the following issues:

I.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN DECLARING THAT PETITIONER WAS NOT ILLEGALLY DISMISSED;

---

[12] *Rollo*, p. 113.

[13] *Id*. at 21-28.

[14] *Id*. at 26.

[15] *Id*. at 30-31.

Supreme Court E-Library

II.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN FINDING THAT THE RETRENCHMENT MADE BY PRIVATE RESPONDENT WAS VALID AND LEGAL WHEN PETITIONER DID NOT GIVE CONSENT;

III.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN NOT DECLARING THAT THE ALLEGED LOSSES OF PRIVATE RESPONDENT WAS ALTERED TO CONFORM WITH THE EVIDENCE OF PETITIONER SHOWING PROFITS IN THE CENTRAL VISAYAS OPERATIONS GROUP;

IV.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN FINDING THAT PETITIONER IS BOUND BY THE COLLECTIVE BARGAINING AGREEMENT [CBA] WHEN SHE IS NOT A UNION MEMBER;

V.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN DELETING THE AWARD OF SEPARATION PAY, BACKWAGES, UNPAID WAGES, VACATION AND SICK LEAVE PAY, PROPORTIONATE 13th MONTH PAY, AND ATTORNEY'S FEES.[16]

The present controversy hinges on the sole issue of whether or not the retrenchment program implemented by respondent was valid.

The pertinent provision of the Labor Code reads:

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 [Department] of Labor and Employment at least one (1) month before the intended date

---

[16] *Id*. at 9.

Supreme Court E-Library

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 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.

Retrenchment 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, 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 automation. Retrenchment is a valid management prerogative. It is, however, subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.[17] In the discharge of these requirements, it is the employer who bears the *onus*, being in the nature of affirmative defense.[18]

For a valid retrenchment, the following requisites must be complied with: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one month prior to the

---

[17] *F.F. Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, 8 April 2005, 455 SCRA 154, 164-165.

[18] *San Miguel Corporation v. Aballa*, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 429. See also *Anino v. National Labor Relations Commission*, G.R. No. 123226, 21 May 1998, 290 SCRA 489, 502. Retrenchment is resorted to by an employer because of losses in the operation of a business occasioned by lack of work and considerable reduction in the volume of business. It is a management prerogative consistently recognized and affirmed by this Court, subject only to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence. (*Id*. at 501.)

Supreme Court E-Library

intended date of retrenchment; and (c) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.[19]

Jurisprudential standards for the losses which may justify retrenchment have been reiterated by this Court in a long line of cases to forestall management abuse of this prerogative, *viz:*

> 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:

---

[19] *F.F. Marine Corporation v. National Labor Relations Commission*, *supra* note 17 at 165.

Supreme Court E-Library

any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.[20]

In the case at bar, respondent instituted a retrenchment program to arrest its alleged escalating financial losses by downsizing its workforce. Respondent claimed that a significant portion of its operational expenses went to manpower resources constraining it to implement measures to reduce the number of employees so as to revive its fiscal condition.

In rejecting respondent's claim of economic reverses, the Labor Arbiter cast doubt on the authenticity of the financial statements submitted by respondent, since these were not signed by the person who prepared them. The Labor Arbiter likewise ruled that even if the financial statements were valid, they still did not meet the quantum of proof needed in order to establish losses. These findings were affirmed by the NLRC.

Banking on the Labor Arbiter and NLRC Decisions, petitioner now insists that respondent failed to prove that it was suffering from substantial loss that would justify the retrenchment. She asserts that respondent was in sound fiscal condition when it embarked on the reduction of its personnel, thus, making the retrenchment program invalid.

We do not agree.

The theories espoused by the opposing parties must be weighed together with the evidence adduced and in consonance with the evidentiary principles decreed by law and jurisprudence. We cannot favor the bare assertions and empty figures submitted by the petitioner over the financial statements audited by independent auditors presented by respondent without transgressing the basic rule in assessing business losses, entrenched in jurisprudence.

Upon examination of the evidence adduced by both parties, we are convinced that, indeed, respondent experienced serious financial crises as shown in the financial statements audited by

---

[20] *Id*. at 165-166.

Supreme Court E-Library

independent auditors, SGV & Co. and Alba Ledesma & Co. It is unlikely therefore that respondent was just feigning business losses in order to ease out employees. To quote the conclusion by SGV & Co. in its Report of Independent Public Accountants:

> The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. **The Company has incurred a substantial loss of about ₱558 million for the year ended June 30, 1998, which resulted to a deficit of about ₱574 million as of June 30, 1998.** As discussed in Note 1, the company has negotiated with its creditors for the suspension of payments affecting its outstanding balances as of June 30, 1998 until the completion of an acceptable restructuring plan. The suspension of payments covers a period of sixty (60) days from the signing of the Memorandum of Agreement dated August 26, 1998. The Company's ability to continue as a going concern depends, among others, on the completion of an acceptable restructuring plan. The financial statements do not include any adjustments that might result from the outcome of these uncertainties.[21] (Emphasis supplied.)

The financial statements reflect that respondent suffered substantial loss in the amount of ₱558 Million by 30 June 1998. The Report of SGV & Co. substantiates the alleged precarious financial condition of the respondent. The financial statements audited by independent external auditors constitute the normal method of proving the profit and loss performance of a company as enunciated in *San Miguel Corporation v. Abella*[22]:

> Normally, the condition of business losses is shown by audited financial documents like yearly balance sheets, profit and loss statements and annual income tax returns. The financial statements must be prepared and signed by independent auditors failing which they can be assailed as self-serving documents.

No evidence can best attest to a company's economic status other than its financial statement. We defined the evidentiary weight accorded to audited financial statements in *Asian Alcohol Corporation v. National Labor Relations Commission*[23]:

---

[21] Records, p. 169.

[22] *Supra* note 18 at 430.

[23] G.R. No. 131108, 25 March 1999, 305 SCRA 416, 430-431.

Supreme Court E-Library

The condition of business losses is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. It is our ruling that financial statements must be prepared and signed by independent auditors. Unless duly audited, they can be assailed as self-serving documents. But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on a downward trend, indicating that business is picking up and retrenchment, being a drastic move, should no longer be resorted to. Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that it expected no abatement of such losses in the coming years, may bespeak the weakness of its cause. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.

Being guided accordingly, we find that respondent was fully justified in implementing a retrenchment program since it was undergoing business reverses, not only for a single fiscal year, but for several years prior to and even after the program. In a span of six years, respondent realized profits only in one year, in 1997. We thus quote with approval the disquisition of the Court of Appeals:

As shown in the financial statements, during the years ended June 1995, 1996, 1998, 1999 and 2000, [herein respondent] incurred net losses of ₱40 million, ₱85 million, ₱555 million, ₱558 million, ₱700 million and ₱1.196 billion, respectively, resulting in a deficit of ₱2.169 billion as of June 30, 2000. We note, however, that [herein respondent] earned income in 1997 in the amount of ₱1.4 million. But it is clear that petitioner suffered a major setback when after earning ₱1.4 Million (as of June 1997), [respondent] posted an astronomical financial loss of ₱555 million in the succeeding year (as of June 1998).[24]

Even if we take into consideration the figures submitted by petitioner and accede to her position that respondent was gaining

[24] *Rollo,* pp. 25-26.

Supreme Court E-Library

substantial profits from its Central Visayas office, the said numbers, nonetheless, do not bespeak respondent's overall financial standing in light of the fact that respondent is operating nationwide and the Central Visayas office is only one of its many branches. Losses or gains of a business entity cannot be fully assessed by isolating or selecting only particular branches or offices. There are recognized accounting principles and methods by which the business firm's performance can be objectively and thoroughly evaluated at the end of every fiscal year, and the assessment accurately reported in the company's financial statement.

That the financial statements are audited by independent auditors safeguards the same from the manipulation of the figures therein to suit the company's needs. The auditing of financial reports by independent external auditors are strictly governed by national and international standards and regulations for the accounting profession. It bears to stress that the financial statements submitted by respondent were audited by reputable auditing firms. Hence, petitioner's assertion that respondent merely manipulated its financial statements to make it appear that it was suffering from business losses that would justify the retrenchment is incredible and baseless.

In addition, the fact that the financial statements were audited by independent auditors settles any doubt on the authenticity of these documents for lack of signature of the person who prepared it. As reported by SGV & Co., the financial statements presented fairly, in all material aspects, the financial position of the respondent as of 30 June 1998 and 1997, and the results of its operations and its cash flows for the years ended, in conformity with the generally accepted accounting principles.[25]

In fact, even granting *arguendo* that respondent was not experiencing losses, it is still authorized by Article 283[26] of the

---

[25] Records, p. 169.

[26] 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

Supreme Court E-Library

Labor Code to cease its business operations. Explicit in the said provision is that closure or cessation of business operations is allowed even if the business is not undergoing economic losses. The owner, for any *bona fide* reason, can lawfully close shop anyone. Just as no law forces anyone to go into business, no law can compel anybody to continue in it. It would indeed be stretching the intent and spirit of the law if we were to unjustly interfere with the management's prerogative to close or cease its business operations, just because said business operations are not suffering any loss or simply to provide the worker's continued employment.[27]

The law recognizes the right of every business entity to reduce its work force if the same is made necessary by compelling economic factors which would endanger its existence or stability. In spite of overwhelming support granted by the social justice provisions of our Constitution in favor of labor, the fundamental law itself guarantees, even during the process of tilting the scales of social justice towards workers and employees, "the right of enterprises to reasonable returns of investment and to expansion and growth." To hold otherwise would not only be oppressive and inhuman, but also counter-productive and ultimately subversive of the nation's thrust towards a resurgence in our economy which would ultimately benefit the majority of our

---

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 [Department] 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 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.

[27] *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*, 460 Phil. 583, 590 (2003).

Supreme Court E-Library

people. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[28]

We also find that the respondent complied with the requisite notices to the employee and the DOLE to effect a valid retrenchment. Petitioner failed to refute that she received the written notice of retrenchment from respondent on 16 November 1998. Although respondent failed to furnish DOLE with a formal letter notifying it of the retrenchment, it still substantially complied with the requirement. Since the National Conciliation and Mediation Board, the reconciliatory arm of DOLE, supervised the negotiation for separation package, we agree with the Court of Appeals that it would be superfluous to still require respondent to serve notice of the retrenchment to DOLE.

The separation package offered by respondent to its employees was way above the minimum requirement set by law. Aside from the separation pay equivalent to one-month salary for every year of service, respondent offered additional monetary benefits such as one and a half month salary, pro-rated 13th month pay, conversion of unused sick and vacation leave credits, and Health Maintenance Organization and group life insurance coverage until full payment of the separation package.

Petitioner's proposition that she was not a union member and, therefore, not legally bound by the terms of the Collective Bargaining Agreement, is irrelevant in the instant controversy. Non-membership in a union does not exempt an employee from the application of Article 283 of the Labor Code which enumerates the authorized causes for terminating employment. In this case, petitioner was terminated pursuant to the retrenchment program implemented by respondent. As discussed above, the respondent complied with the legal requirements for a valid retrenchment.

---

[28] *Uichico v. National Labor Relations Commission*, G.R. No. 121434, 2 June 1997, 273 SCRA 35, 41.

Supreme Court E-Library

Therefore, petitioner's separation from employment was legal and valid.

Consequently, petitioner is not entitled to backwages. It is well settled that backwages may be granted only when there is a finding of illegal dismissal.[29] Nevertheless, petitioner is entitled to separation pay as provided under respondent's Staff Reduction Program Package equivalent to one-month salary for every year of service, one and a half month salary, pro-rated 13th month pay, conversion to cash of unused vacation and sick leave credits, and Health Maintenance Organization and group life insurance coverage until full payment of the separation package.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Court of Appeals Decision dated 12 July 2005 and its Resolution dated 22 March 2006 in CA-G.R. SP No. 79440 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174045. March 7, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **LALINETH LISONDRA, TERESITA SERGIO, and THE HONORABLE COURT OF APPEALS (FORMER TWENTY-FIRST DIVISION), Cagayan de Oro City,** *respondents.*

---

[29] *Manila Water Company, Inc. v. Peña*, G.R. No. 158255, 8 July 2004, 434 SCRA 53, 64-65.