

THIRD DIVISION

[G.R. NO. 161217, May 04, 2005]

**BLUCOR MINERALS CORPORATION AND DENNIS UY,
PETITIONERS, VS. ALFREDO M. AMARILLA, WILFREDO C.
ALDIANO AND GASPAR R. PARCON,^[1] RESPONDENTS.**

DECISION

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:

"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.

"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 P2,038,846.10 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

"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 P104,811.25; Alfredo M. Amarilla of P210,128.33; and Gaspar R. Parcon of P91,311.25 as monetary award plus 10% thereof in the amount of P40,625.03 as attorney's fees."

"SO ORDERED."

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 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

"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

"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.