716 Phil. 378

SECOND DIVISION

[G.R. No. 187214, August 14, 2013]

SANOH FULTON PHILS., INC. AND MR. EDDIE JOSE, PETITIONERS, VS. EMMANUEL BERNARDO AND SAMUEL TAGHOY, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

This petition for review seeks to annul the 23 January 2008 Decision[1] and 13 March 2009 Resolution[2] of the Court of Appeals which declared that petitioner Sanoh Fulton Phils., Inc. (Sanoh) illegally dismissed respondent employees.

Sanoh is a domestic corporation engaged in the manufacture of automotive parts and wire condensers for home appliances. Its Wire Condenser Department employed 61 employees. Respondents belonged to this department.

In view of job order cancellations relating to the manufacture of wire condensers by Matsushita, Sanyo and National Panasonic, Sanoh decided to phase out the Wire Condenser Department. On 22 December 2003, the Human Resources Manager of Sanoh informed the 17 employees, 16 of whom belonged to the Wire Condenser Department, of retrenchment effective 22 January 2004. All 17 employees are union members.

A grievance conference was held where the affected employees were informed of the following grounds for retrenchment:

1) Lack of local market.

2) Competition from imported products.

3) Phasing out of Wire Condenser Department.[3]

Two succeeding conciliation conferences were likewise held but the parties failed to reach an amicable settlement. Thus, two (2) separate complaints for illegal dismissal, docketed as NLRC Case No. RAB-IV-1-18788-04-C and NLRC Case No. RAB-IV-02-18844-04-C, were filed by the following complainants:

1. Rene Dasco

2. Reynaldo Chavez

3. Joey MaQuillao

4. Jerson Mendoza

5. David Almeron

6. Nicanor Malubay

7. Alejandro Hontanosas

8. Reynaldo Abayon

9. Gerome Glor

10. Edralin Descalzota

11. Isagani Reginaldo

12. Ruelito Magtibay

13. Adonis Noo

14. Armando Nobleza

15. Emmanuel Bernardo

16. Samuel Taghoy

17. Manny Santos[4]

Sanoh on its part, filed a petition for declaration of the partial closure of its Wire Condenser Department and valid retrenchment of the 17 employees, docketed as NLRC Case No. RAB-IV-01-18762-04-C.

During the course of the proceedings before the Labor Arbiter, 14 of the 17 employees executed individual quitclaims. Hence, their interest in the cases was dismissed with prejudice. Only 3 employees, respondents Emmanuel Bernardo and Samuel Taghoy, and Manny Santos persisted.

The complainants alleged that there was no valid cause for retrenchment and in effecting retrenchment, there was a violation of the "first in-last out" and "last in-first out" (LIFO) policy embodied in the Collective Bargaining Agreement.

Sanoh, on the other hand, asserted that retrenchment was a valid exercise of management prerogative. Sanoh averred that some employees who were hired much later were either assigned to other departments or were bound by the terms of their job training agreement to stay with the company for 3 years.

On 18 July 2005, the Labor Arbiter rendered a Decision[5] dismissing the complaint for illegal dismissal. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint of RENE DASCO, ADONIS NOO, ARMANDO NOBLEZA, ISAGANI REGINALDO, JOEY MAQUILLAO, NICANOR MALUBAY, JEROME GLOR, REYNALDO ABAYON, DAVID ALMERON, RUELITO MAGTIBAY, EDRALIN DESCALZOTA, ALEJANDRO HONTANOSAS,

REYNALDO CHAVES and JERSON MENDOZA. Respondent company however is ordered to pay the separation pay of the following:

EMMANUEL BERNARDO -	P53,339.52
SAMUEL TAGHOY -	58,968.00
MANNY SANTOS -	69,120.68
GRAND TOTAL	P181,428.20[6]

On appeal, the National Labor Relations Commission (NLRC) affirmed *in toto* the decision of the Labor Arbiter in its Resolution[7] dated 23 May 2006. The NLRC held that "the retrenchment x x x was a valid exercise of management prerogative, more so, since the said decision was premised on the 'permanent lack of orders from major clients.'"[8] The NLRC found no violation of the company's LIFO policy because the employees involved were bound under a training agreement to render three (3) years of continuous service. The NLRC also sustained the award of separation pay to the three (3) employees.

Respondents filed a motion for reconsideration but the NLRC denied said motion in its 16 August 2006 Resolution.[9] Respondents filed a petition for *certiorari* before the Court of Appeals.

The appellate court summed up respondents' arguments in this wise:

(a) Their dismissal was without just cause and retrenchment was unjustified;
(b) There was no justifiable ground to retrench the employees because the retrenchment was intended to prevent losses and the company was not losing;
(c) After the retrenchment, the Wire Condenser Department was not phased out and there was no need to reduce or retrench the personnel;
(d) There has been no closure of the Wire Condenser Department and no redundancy of work.[10]

On 23 January 2008, the Court of Appeals overturned the findings of the Labor Arbiter and the NLRC, and ruled that Sanoh failed to prove the existence of substantial losses that would justify a valid retrenchment. The Court of Appeals also upheld the quitclaim executed by complainant Manny Santos, thus he was deemed to have released Sanoh from his monetary claims. The appellate court disposed as follows:

WHEREFORE, the Petition insofar as petitioner Manny Santos is dismissed. As regards petitioners Emmanuel B. Bernardo and Samuel Taghoy, respondent company is found guilty of illegal dismissal and is ordered to reinstate petitioners Emmanuel B. Bernardo and Samuel Taghoy with full backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent company is ordered to pay backwages plus, in lieu of

reinstatement, separation pay for every year of service, whichever is higher.[11]

Sanoh now questions the reversal by the Court of Appeals of the decisions of the Labor Arbiter and the NLRC. The position of the parties is unchanged.

Sanoh insists that it is the prerogative of management to effect retrenchment as long as it is done in good faith. Sanoh relies on letters from its customers showing cancellation of job orders to prove that it is suffering from serious losses. In addition, Sanoh claims that it had, in fact, closed down the Wire Condenser Department in view of serious business losses.

On the other hand, respondents argue that the Wire Condenser Department was not phased out and there was no need to retrench the personnel. Respondents point out that Sanoh even made the retained employees render substantial overtime work. Respondents refute the allegation of serious business losses by producing documentary evidence to the contrary.

The Labor Arbiter and the NLRC were one in upholding the retrenchment as a valid exercise of Sanoh's management prerogative. The NLRC further observed that the decision to retrench was premised on the permanent lack of orders from major clients.[12]

After scouring the records, we are in full accord with the decision of the Court of Appeals.

To justify retrenchment, Sanoh invokes as grounds serious business losses resulting in the closure of the Wire Condenser Department, to which respondents belonged. In the same breadth, Sanoh also contends that its decision to close the Wire Condenser Department is within its right even in the absence of business losses as long as it is done in good faith.

Sanoh's two-tiered argument rests on the application of Article 283 of the Labor Code, which 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 workers 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 to at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Retrenchment to prevent losses and closure not due to serious business losses are two separate authorized causes for terminating the services of an employee. In *J.A.T. General Services v. NLRC*,[13] the Court took the occasion to draw the distinction between retrenchment and closure, to wit:

> Closure of business, on one hand, is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business as an authorized cause for termination of employment aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. On the other hand, retrenchment is reduction of personnel usually due to poor financial returns so as to cut down on costs of operations in terms of salaries and wages to prevent bankruptcy of the company. It is sometimes also referred to as down-sizing. Retrenchment is an authorized cause for termination of employment which the law accords an employer who is not making good in its operations in order to cut back on expenses for salaries and wages by laying off some employees. The purpose of retrenchment is to save a financially ailing business establishment from eventually collapsing.[16]

The respective requirements to sustain their validity are likewise different.

For retrenchment, the three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher.[14] In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus:

> (1) the losses incurred are substantial and not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.[15]

Upon the other hand, in termination, the law authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not. However, to put a stamp to its validity, the closure/cessation of business must be *bona fide*, *i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement.[16]

In termination cases either by retrenchment or closure, the burden of proving that the termination of services is for a valid or authorized cause rests upon the employer.[17] 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.[18] And to repeat, in closures, the *bona fides* of the employer must be proven.