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SECOND DIVISION

[G.R. No. 181503, September 18, 2009]

BIO QUEST MARKETING INC. AND/OR JOSE L. CO, PETITIONER, VS. EDMUND REY, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Edmund Rey (respondent) was hired by petitioner Bio Quest Marketing, Inc. on December 1, 1997 as its Area Collector in Quezon, Batangas and all the provinces of the Bicol region. As Area Collector, he was tasked to collect payment for various veterinary products sold to feedmill companies, piggery and poultry farms within his area of assignment.

Allegedly as part of its cost cutting measures brought about by a decline in its sales receipts and collections, petitioner furnished the Department of Labor and Employment (DOLE) a copy of the retrenchment notice on September 3, 2003.[1] And by letter of August 30, 2003 which was received by respondent, petitioner terminated his services on September 29, 2003.[2]

Claiming that he was dismissed without a valid cause and the observance of due process, respondent filed a complaint for illegal dismissal against petitioner.

Petitioner averred, however, that it furnished complainant a retrenchment notice[3] in compliance with Art. 283 of the Labor Code;[4] and that it had the prerogative to retrench its employees including respondent to forestall business losses,[5] to prove which claim of business losses it submitted a comparative report of its sales and collections for 2001-2003.[6]

By Decision of March 10, 2004,[7] the Labor Arbiter found that respondent was illegally dismissed and accordingly disposed:

> **WHEREFORE**, premises considered, judgment is hereby rendered, ordering the respondents **Bio [Q]uest Marketing, Inc. and/or Jose L. Co** to:
>
> 1) reinstate complainant Edmund Rey to his former position without loss of seniority rights; and
> 2) pay complainant the amount of **ONE HUNDRED EIGHT THOUSAND & TWO HUNDRED SEVENTEEN PESOS & 20/100 (P108,217.20)** representing his backwages, holiday pay, 13th month pay and attorney's fees.

All other claims are **DISMISSED** for lack of merit.[8] (Emphasis in the original)

Except with respect to the award of holiday pay which it deleted, the NLRC affirmed the Labor Arbiter's ruling by Decision of November 23, 2005.[9] However, on petitioner's Motion for Reconsideration, the NLRC, by Decision of June 19, 2006,[10] held that petitioner was able to prove that it undertook a valid retrenchment program, as imminent and not actual losses suffices to justify such, but that "while [herein petitioner] may have exercised its sound judgment in doing away with the services of [herein respondent], the latter should be entitled to some form of reward for all the dedication, hard work and loyalty he has exhibited during his years of service with [herein petitioner]." It thus VACATED its Decision of November 23, 2005 and disposed as follows:

WHEREFORE, the respondent's Motion for Reconsideration is hereby, GRANTED. Accordingly, the decision sought to be reconsidered is hereby, VACATED and SET ASIDE. A new one is hereby entered ordering the respondent to pay the complainant separation pay equivalent to one (1) month salary for every year of service.[11] (Underscoring supplied)

Respondent thus elevated the case via Certiorari[12] to the Court of Appeals which, by Decision of September 28, 2007,[13] held that herein petitioner "failed to prove convincingly that [herein respondent] was validly terminated on account of retrenchment" and accordingly reversed and set aside the decision of the NLRC, disposing as follows:

WHEREFORE, the foregoing considered, the instant petition is **GRANTED** and the assailed Decision is **REVERSED and SET ASIDE.** Accordingly, private respondents are ordered to:

Reinstate petitioner to his former position without loss of seniority rights and if this is no longer possible, to pay him:

(a) separation pay, in addition to;

(b) backwages equivalent to one-half month pay for every year of service from the time he was illegally dismissed up to the finality of this decision;

(c) his 13th month pay in the amount of Twenty-eight Thousand Five Hundred Seven Pesos and 68/100 (P28,507.68), as computed by the Labor Arbiter.

Let this case be **REMANDED** to the Labor Arbiter for the computation of the amounts due petitioner.[14] (Emphasis in the original)

Petitioner's motion for reconsideration[15] having been denied by the appellate court by Resolution of January 23, 2008,[16] petitioner comes before this Court via petition for review on certiorari, advancing the following argument:

> THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN REVERSING AND SETTING ASIDE THE NLRC DECISION BY DECLARING THAT PETITIONER FAILED TO PROVE IT WAS SUFFERING FROM SUBSTANTIAL, ACTUAL OR IMMINENT LOSSES.

The petition is bereft of merit.

Retrenchment to avoid or minimize business losses is a justified ground to dismiss employees under Article 283 of the Labor Code. The employer, however, bears the burden to prove such ground with clear and satisfactory evidence, failing which the dismissal on such ground is unjustified.[17] In discharging its burden, the employer must satisfy certain established standards, all of which must concur,[18] *viz*:

1. That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

2. That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

3. That the employer pays the retrenched employees 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;

4. That the employer exercises its prerogative to retrench employees in goof faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

5. That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[19]

Petitioner contends that contrary to the findings of the Labor Arbiter and the appellate court, the comparative report of its sales and collections for years 2001, 2002 and 2003 sufficiently proves that it was "suffering or [was] about to suffer imminent losses due to the gap between sales and collection, and/or poor collection efforts, coupled with declining sales;"[20] and that although the report showed an increase of sales from 2001 to 2002, there was a sharp decline thereof in 2003 by more than P38 Million while collections from 2002 to 2003 decreased by almost