Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SANOH FULTON PHILS., INC. and MR. EDDIE JOSE, Petitioners,	**G.R. No. 187214**
	Present:
-versus-	CARPIO, *J.*, Chairperson, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
EMMANUEL BERNARDO and SAMUEL TAGHOY, Respondents.	Promulgated: AUG 14 2013

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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

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[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Mario L. Guariña III and Japar B. Dimaampao, concurring. *Rollo*, pp. 40-53.
[2] Id. at 55-56.

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]

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3 Records, Vol. I, p. 112.
4 *Rollo*, pp. 68-69.

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:
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> | | |
> |---|---|
> | EMMANUEL BERNARDO - | ₱53,339.52 |
> | SAMUEL TAGHOY - | 58,968.00 |
> | MANNY SANTOS - | 69,120.68 |
> | GRAND TOTAL | ₱181,428.20[6] |

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5 Penned by Labor Arbiter Renell Joseph R. Dela Cruz. Id. at 67-74.

6 Id. at 74.

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

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7 Penned by Presiding Commissioner Raul T. Aquino with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring. Id. at 76-84.
8 Id. at 82.
9 Id. at 86-88.
10 Id. at 46.

> 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:

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11 Id. at 52-53.
12 Id. at 82.

> 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)

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[13] 465 Phil. 785, 794 (2004).

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.

In this case, there was no valid retrenchment. Nor was there a closure of business.

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14 *Genuino Ice Company, Inc. v. Lava*, G.R. No. 190001, 23 March 2011, 646 SCRA 385, 389; *Manatad v. Philippine Telegraph and Telephone Corporation*, G.R. No. 172363, 7 March 2008, 548 SCRA 64, 80-81.

15 *Shimizu Phils. Contractors Inc. v. Callanta*, G.R. No. 165923, 29 September 2010, 631 SCRA 529, 540; *Alabang Country Club Inc. v. NLRC*, 503 Phil. 937, 949 (2005).

16 *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor Union-Super*, G.R. No. 166760, 22 August 2008, 563 SCRA 93, 106.

17 *Aliviado v. Procter and Gamble Phils., Inc.*, G.R. No. 160506, 9 March 2010, 614 SCRA 563, 587; *Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, 23 February 2011, 644 SCRA 76, 86-88.

18 *Legend Hotel (Manila) v. Realuyo*, G.R. No. 153511, 18 July 2012, 677 SCRA 10, 26.

We are mindful of the principle that losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business may justify an employer to reduce the work force. But a lull caused by lack of orders or shortage of materials must be of such nature as would severely affect the continued business operations of the employer to the detriment of all and sundry if not properly addressed.[19]

Sanoh asserts that cancelled orders of wire condensers led to the phasing out of the Wire Condenser Department which triggered retrenchment. Sanoh presented the letters of cancellation given by Matsushita and Sanyo as evidence of cancelled orders. The evidence presented by Sanoh barely established the connection between the cancelled orders and the projected business losses that may be incurred by Sanoh. Sanoh failed to prove that these cancelled orders would severely impact on their production of wire condensers.

We held in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira,*[20] that the losses must be supported by sufficient and convincing evidence and the normal method of discharging this is by the submission of financial statements duly audited by independent external auditors.[21] It was aptly observed by the appellate court that no financial statements or documents were presented to substantiate Sanoh's claim of loss of ₱7 million per month. And a business lull caused by lack of orders which could have justified retrenchment was not shown by petitioner. As observed once more by the Court of Appeals, petitioner failed to present proof of the extent of the reduced order and its contribution to the sustainability of its business.

On the other hand, respondents' refutations of the employer's reason for retrenchment were supported by documentary evidence. Respondents explained that Matsushita had four (4) outstanding orders of condensers of refrigerators: Model 17-20, Model 1404, Model 802 and Model 602. It was only in March 2004 that Model 17-20 and Model 1404 were phased out and only in July 2004 that Model 802 was phased out. However, Model 602 remained and the order of Matsushita had been increased from 500 to 1600 units monthly from July 2004.[22]

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19 *Edge Apparel, Inc. v. NLRC, Fourth Division,* G.R. No. 121314, 12 February 1998, 286 SCRA 302, 311-312.

20 G.R. No. 170464, 12 July 2010, 624 SCRA 705.

21 Id. at 716.

22 Records, Vol. II, p. 147.

With respect to the Sanyo account, respondent assert that Sanyo had sufficient stocks for three (3) months which explained why it did not order from Sanyo. However, beginning February 2004, Sanyo resumed making orders.[23]

Respondents added that despite the cancellation of some orders by Matsushita and Sanyo, the additional orders made by Concepcion Industries and Uni-Magma more than compensated the losses incurred on the cancelled orders.[24]

Verily, Sanoh failed to discharge its burden of submitting competent proof to show the substantial business losses it suffered warranting retrenchment. Contrarily, respondents amply proved that the cancelled orders did not seriously create a dent on Sanoh's financial standing. Respondents further presented the production target and actual production of the Wire Condenser Department for the year 2005, to prove that the department had realized income for that year.

Sanoh would then argue that it did not even have to prove business losses when it decided to close down the Wire Condenser Department because the law recognizes the right of management to cease business operations. As already stated, the burden of proving that the closure was *bona fide*, rests upon the employer. Sanoh made a categorical statement that the Wire Condenser Department was totally closed. The documentary evidence presented by respondents, however, negate Sanoh's statement. In other words, Sanoh lacked *bona fides* even in its assertion that Wire Condenser Department had closed down. Respondents disclose that this department had gone full blast in its operations, even with substantial overtime operations immediately after their dismissal was effected. Moreover, respondents assert that Sanoh still hired employees after the so-called retrenchment.

Respondents submitted the time sheets of the Wire Condenser Department for the months of January up to July 2004[25] which showed that some of the employees had been rendering overtime work after retrenchment was effected presumably to compensate the lack of manpower in that department.

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23 Id. at 148.
24 Id. at 149.
25 Records, Vol. 1, pp. 126-138 and 165-173.

As the Wire Condenser Department is still in operation and no business losses were proven by Sanoh, the dismissal of respondents was unlawful. Resultingly, respondents are entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, computed from the time the compensation was withheld up to the time of actual reinstatement. Present law says that if reinstatement is not feasible, the payment of full backwages shall be made from the date of dismissal until finality of judgment.

Verily, in this case, reinstatement is no longer practical in view of the length of time that had elapsed from the time of respondents' dismissal.[26] As held in *EDI Staff Builders International Inc. v. Magsino*, apart from backwages, respondents should be awarded separation pay.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated 23 January 2008 and its Resolution dated 13 March 2009 are hereby **AFFIRMED WITH MODIFICATION** that respondents shall be awarded backwages from the time of dismissal up to finality of this judgment, with interest at the rate of six percent (6%) *per annum* which shall be increased to twelve percent (12%) after the finality of this judgment and separation pay equivalent to one-half (1/2) month pay for every year of service.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

[26] 411 Phil. 730, 739-740 (2001) citing *Bustamante v. NLRC*, G.R. No. 111651, 28 November 1996, 265 SCRA 61, 69-70.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice