

UNION PLYWOOD CORPORATION EMPLOYEES UNION (UPCEU)-ALU-TUCP, PETITIONER, VS. UNION PLYWOOD CORPORATION AND/OR ANTONIO C. OLIZON IN HIS CAPACITY AS PRESIDENT AND CHIEF EXECUTIVE O...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This petition for review impugns the Decision dated 14 January 2013^[1] rendered by the Office of the Voluntary Arbitrator^[2] of the Department of Labor and Employment (DOLE), Regional Office No. X, Cagayan de Oro City ordering respondent Union Plywood Corporation (UPC) to pay its one hundred three (103) workers their respective separation pays equivalent to one-half month pay for every year of service instead of the workers' claim for retirement benefits under the provisions of the existing Five-Year Collective Bargaining Agreement (CBA).

Respondent UPC was engaged in the manufacturing plywood since 1984 with its plant located in El Salvador City, Misamis Oriental.^[3] On 15 June 2012, respondent UPC shut down its operation for a period of six (6) months or until 15 December 2012.^[4]

Petitioner Union, which represents all regular workers of respondent UPC, allegedly made efforts to reach the management for the resumption of its operation, but its representation did not work well as respondent UPC could only hint for an extension of its shut down or even total closure of the manufacturing plant.^[5] Thus, faced with the uncertainty of their employment, a total of 103 workers,^[6] who are members of petitioner Union, filed, as early as 22 June 2012, their respective applications for retirement benefits^[7] under the existing CBA.^[8]

Respondent UPC did not act positively on those applications.

On 09 July 2012, petitioner Union filed a Notice of Preventive Mediation with the DOLE, National Conciliation and Mediation Board (NCMB), Regional Branch No. X, Cagayan de Oro City.^[9]

On 07 August 2012, petitioner Union sent to respondent UPC a Notice to Arbitrate the issue of non-implementation of the following CBA Benefits: Article X, Section 1 on Retirement Benefits, Article VII, Section 8 on Emergency Loan, Section 16 on Perfect Attendance, Section 18 on Life Insurance, and Section 21 on Loyalty Award.^[10]

On 04 September 2012, Regional Branch Director Florido J. Akut of the DOLE-NCMB, Regional Branch No. X, Cagayan de Oro City referred the grievance to Accredited Voluntary Arbitrator Miguel M. Sabacajan.^[11]

In its Formal Response,^[12] respondent UPC insisted that it could not pay even a part of the retirement benefit or separation pay to its employees allegedly due to financial difficulties brought about by the confluence of events and circumstances beyond its control.^[13] It alleged that since the mid-part of 2011, it could not operate continuously because of the unfair competition from illegally imported (smuggled) plywood from China and the scarcity of raw materials (logs) after the issuance of Executive Order No. 23 by President Benigno S. Aquino III, which mandated the stoppage of the cutting and harvesting of timbers in the natural and residual forest.^[14]

Respondent UPC further alleged that its situation worsened since the Department of Environment and Natural Resources (DENR) did not act immediately on its renewal Application to Operate Plywood Plant,[15] instead the DENR issued a Closure Memo of all Wood Processing Plants with Expired Permit.[16] It was only on 23 July 2012 that the DENR issued the Renewal of the Wood Processing Plant Permit of the respondent UPC.[17]

In a Decision dated 14 January 2013, the Voluntary Arbitrator resolved the grievance in favor of the workers-members of petitioner Union, saying:

The undersigned Voluntary Arbitrator traversed the evidence on record. He finds nothing at all which will show that respondent UPC had closed its business operation due to serious losses or for whatever ground. What the evidence thus show [sic] is that respondent UPC merely filed a Notice of Temporary Shutdown for a period of six (6) months commencing on June 15, 2012 until December 15, 2012. These factual surroundings are not changed even if the six (6) months period of the temporary shutdown had long lapsed and the respondent [UPC] continued not to resume operation. The principles therefore of closure due to serious losses being without obligation to pay separation pay in authorized dismissal under Article 283, enunciated in the North Davao Mining Corporation and Cama cases, cannot apply to respondent company's case.

However, even assuming for the sake of argument that the company had indeed validly closed business as an authorized cause to terminate employment in Article 283, yet, its [sic] bears the burden to prove its allegation of serious economic or business losses if it has to avoid payment of separation pay following the doctrines in the North Davao Mining Corporation and Cama cases, cited above. Suffice it to say, the generalities of respondent [UPC's] submissions relative to the government's stopping the cutting of timbers and the smuggling of foreign plywood are not concrete proof of serious losses. The documents offered relative thereto just don't have any evidentiary value. Financial losses is [sic] a question of fact. It must be proved by sufficient and convincing evidence. [Lambert Pawnbrokers, et al., vs. Helen Binamira, G.R. No. 170464, July 12, 2010]. By analogy, not even the mere fact that respondent['s] establishment was razed by fire enough to prove closure due to serious losses. [Rolando Angeles et al., vs. Polytex Design, Inc., et al., G.R. No. 157673, October 15, 2007]. Culled from the prevailing jurisprudence, what are needed are financial documents is [sic] like of [sic] an Independent Auditor audited Profit and Loss Statement. Thus, in one case the Court ruled that substantial evidence of serious losses is established with the company's submission of audited financial statements showing that it continuously incurred millions in losses from 1997 up to 1999 and the various demand by notices of payments from creditor banks. [Galaxie Steel Workers Union, et al., vs. NLRC et al., G.R. No. 165757, October 17, 2006]. Unfortunately, where from the Voluntary Arbitrator's soul search no such audited financial documents are submitted to the records of the case, respondent UPC's allegation of serious losses is bereft of any factual basis.[18]

The Voluntary Arbitrator thus ordered respondent UPC to pay separation pay equivalent to One Month Pay for every year of service to its workers numbering to One Hundred Three (103), whose individual names and amount due each of them are specified in the dispositive portion of the decision.[19]

In the same decision, the Voluntary Arbitrator denied petitioner Union's claim for retirement benefits under the provisions of the Collective bargaining Agreement for lack of merit.

Dissatisfied, petitioner Union filed this petition for review on this lone ground:

THE HONORABLE VOLUNTARY ARBITRATOR COMMITTED SERIOUS ERRORS OF FACT AND LAW AND GRAVELY ABUSED HIS DISCRETION IN NOT FINDING THE WORKERS ENTITLED TO

RECEIVE THE RETIREMENT BENEFITS AS PROVIDED UNDER ARTICLE X, SECTION 1, 2 & 3 OF THE CBA.

It is important at the outset to note the distinction between separation pay and retirement benefits.

Separation pay, on one hand, is required in the cases enumerated in Articles 283 and 284 of the Labor Code, which include retrenchment. It is computed at the rate of one-half month salary for every year of service, or at least one month's salary, whichever is higher. It is a statutory right designed to provide the employee with the wherewithal during the period that he is looking for another employment.[20]

On the other hand, retirement benefits, for an employee who has reached the compulsory retirement age and who has served at least five (5) years in the establishment, is mandated under Article 287 of the Labor Code, as amended by Republic Act No. 7641, which is computed at the rate of one-half month salary for every year of service in the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, or as may be granted by agreement of the employees and their employer or as a voluntary act on the part of the employer. Retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying for his financial support, and are a form of reward for his loyalty and service to the employer.[21]

In this case, petitioner Union insists that the workers did not ask for separation pay as a consequence of closure under Article 283 or 286 of the Labor Code. It argues that the more appropriate provision under the circumstances is Article 287 of the Labor Code, which reads:

Art. 287. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

X X X.

Petitioner Union claims that the 103 workers are entitled to the agreed retirement pay under Sections 1, 2, and 3 of Article X of the CBA. And, since the workers applied for retirement as early as 22 June 2012, their individual rights to claim the retirement benefits under the CBA had already accrued and the respondent UPC's refusal to approve their application did constitute a breach of contract.

The pertinent provisions on Retirement Benefits are found in Article X of the CBA, which state:

Section 1. Any employee who has rendered continued service from six (6) years to ten (10) years may at the employee's option retire with a retirement pay of twenty (20) days for every year of service.

Section 2. Any employee who has rendered from eleven (11) to fifteen (15) years of continued service may retire with a retirement pay of thirty (30) days for every years of service to twenty (20) years, may retire with a retirement pay of thirty-two (32) days for every year of service and for those with twenty-one (21) years of service and above, may retire with a retirement pay of thirty-five (35) days for every year of service.

Section 3. Employees who have rendered less than six years of service who wish to retire shall be considered voluntarily resigned with a separation pay equivalent to fifteen (15) days for every year of service.

Section 4. Those workers who have availed of retirement pay shall no longer be entitled to separation pay and vice versa.

Section 5. The Company agrees that payment of separation pay for those who have retired and resigned shall be within one month after the approval of retirement and voluntary resignation.

Section 6. The above retirement benefits shall be for the duration of the entire Five (5) years period of this CBA.

Section 4 categorically states that the separation pay and retirement benefits are mutually exclusive of each other.

Sections 1 and 2 provide that an employee “may retire” and avail himself of the retirement benefits specified under these sections. Section 3 provides that an employee “who wish[es] to retire” would be considered voluntarily resigned with separation pay. A reading of these sections alone suggests that it is the option of the employee to retire. In the ordinary course of events, an employee retires when he reaches the retirement age. No one wants to retire as long as he or she is still able to work. Only in a few instances would an employee, still capable of working, wish to retire, such as, perhaps, where better opportunities await him/her in another job.

Article 287 of the Labor Code fixes the age of retirement at “sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age” provided that the employee “has served at least five (5) years in the establishment”. In this case, there is no mention of retirement age. Article X of the CBA, particularly Sections 1 to 3, only considers the years of service rendered by an employee in computing his or her retirement or separation pay. Since the CBA is silent on the retirement age, the provisions of the Labor Code applies. The records of this case, however, do not contain information as to the ages of the 103 workers who applied for retirement benefits under the CBA.

Besides, Section 5 of Article X of the CBA provides that the company shall pay the separation or retirement benefits within one month “after the approval of the retirement and voluntary resignation.” The records of this case reveal that respondent UPC neither approved nor acted on the applications of the 103 workers for retirement. Thus, the Voluntary Arbitrator denied petitioner Union's claim for retirement benefits in favor of the 103 workers. The Voluntary Arbitrator opined:

... the claim of the workers for the payment of retirement pay pursuant to the provisions to [sic] Sections 1 to 6 of Article X of the Collective Bargaining Agreement cannot also be given due course. Section 5 of Article X of the CBA states:

Section 5. The Company agrees that payment of separation pay for those who have retired and resigned shall be within one month after the approval of retirement and voluntary resignation.

Meticulous reading of the afore-quoted Section 5 of Article X of the CBA finds [sic] that it so expressed that the implementation of the voluntary retirement benefits in Sections 1, 2 and 3 of the same Article (X) requires the APPROVAL of the employer, UPC. In other words, the grant of the same does not depend on the unilateral act of the worker's mere filing [of] an Application for Retirement. But, it is reciprocal act of both the worker and the employer, with the former filing an Application for Retirement and for the latter to approve the same. NO such approval is seen in the records. Since there is no proof that the respondent company had approved to the retirement application of the one hundred three (103) workers, Sections 1, 2 and 3 of Article X of the CBA cannot operate to entitle them the retirement benefit under the CBA.

Indeed, the provisions of the CBA on retirement benefits are not self-executory, but they require the worker's

application for retirement which is subject to the approval of the management of company. Section 5 of Article X of the CBA categorically states that the payment of the separation or retirement benefits shall be made within one month after the approval of the retirement (under Section 1 and 2) and voluntary resignation (under Section 3).

There is no approval of the retirement applications of the 103 workers in this case. Petitioner Union admitted this fact. Respondent UPC could not be faulted for not acting on the applications for retirement since, under the circumstances, it could not have approved the applications for retirement filed by the 103 workers starting from 22 June 2012 and later simply because it was temporarily shut down on 15 June 2012. Thus, there is no legal basis for the payment of retirement benefits under the CBA.

It is even worthy to note that petitioner Union admitted that the workers applied for the retirement benefit under the CBA because of the uncertainty of their employment. Simply put, the mass retirement was due to the impending closure of the respondent UPC. Thus, the Voluntary Arbitrator correctly applied Article 283 of the Labor Code imposing upon respondent UPC the obligation to pay separation pay to its workers considering that respondent UPC has not resumed its operation after the six-month temporary shut down.

In fine, this Court finds neither error nor abuse of discretion on the part of the Voluntary Arbitrator in denying petitioner Union's claim for retirement benefits.

FOR THESE REASONS, the present petition is denied.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Lopez and Inting, JJ., concur.

[1] Rollo, pp. 20-29.

[2] AVA Miguel M. Sabacajan, Voluntary Arbitrator Accreditation No. 761.

[3] Petition; Rollo, p. 5; Formal Response to the Employees Stated Claims in the CBA; Rollo, p. 40.

[4] Decision; Rollo, p. 21 citing Notice of Temporary Shutdown dated 11 June 2012.

[5] Petition; Rollo, p. 8. See Comment to the Formal Response/Position Paper; Annex "H"; Rollo, pp. 64-71.

[6] See List of Employees-Applicants; Annex "E" to "E-3"; Rollo, pp. 34-37.

[7] Decision; Rollo, p. 21.

[8] Which commenced on 01 October 2009 and effective until 30 September 2014.

[9] Annex "B" to "B-1"; Rollo, pp. 30-31.

[10] Annex "C"; Rollo, p. 32.

[11] Letter dated 04 September 2012; Annex "C"; Rollo, p. 33.

[12] Annex "F"; Rollo, pp. 38-43.

[13] Annex “F”; Rollo, pp. 39-41.

[14] Annex “F”; Rollo, pp. 38-39.

[15] Dated 15 December 2011; Annex “F-17” to “F-18”; Rollo, pp. 55-56.

[16] Annex “F-19”; Rollo, p. 57.

[17] Annex “F-20”; Rollo, p. 58.

[18] Rollo, pp. 22-23.

[19] See Decision; Rollo, pp. 25-27.

[20] Santos v. NLRC, G.R. No. 76721, 21 September 1987 cited in Aquino et al., v. NLRC, G.R. No. 87653, 11 February 1992.

[21] Laginlin v. Workmen's Compensation Commission, G.R. No. L-45785, 21 March 1988.

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