

ESTRELLA R. BACLAS. ET AL., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) ET AL., RESPONDENTS.

SP No. 111502, July 20, 2010

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Court of Appeals

Before this Court is a Petition for Certiorari[1] under Rule 65 of 1997 Revised Rules of Civil Procedure seeking to annul and set aside the decision dated December 24, 2008, as well as the resolution dated August 28, 2009 of the National Labor Relations Commission in NLRC CA No. 048373-06 NLRC NCR CASE No. 00-04-03327-05 & 00-04-03147-05, entitled "Estrella Baclas, et al., Complainant/s, vs. Florian Laundry, Inc., et. al., Respondents.", the dispositive portions of which read:

Decision dated December 24, 2008[2]

"WHEREFORE, premises considered, respondent's (sic) appeal is hereby GRANTED. Accordingly, the award of separation pay is hereby deleted and the grant of proportionate 13[th] month pay is hereby limited to year 2005 only.

Furthermore, while respondent (sic) succeeded in proving closure due to serious business losses, he is however liable to pay each complainant the amount of P1,000.00 as penalty for non-compliance with the one-month notice requirement to the DOLE.

SO ORDERED."[3]

Resolution dated August 28, 2009[4]

"WHEREFORE, the Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.[5]"

The facts are:

On April 7, 2005, petitioner Estrella Baclas, together with her co-employees at private respondent Florian Laundry, Inc., filed a Complaint for Illegal Dismissal[6], underpayment/non-payment of salaries/ wages, overtime pay, service incentive leave, 13[th] month pay, damages, etc. against private respondents Florian Laundry, Inc. (Florian for brevity), Leandro Enriquez, Evelyn Talamayan, Carmen Roque, Ian Enriquez, Ma. Ivone Enriquez, Imeterio Medran and Sharon Michael. In their Position Paper[7], petitioners alleged that: they were hired by private respondent Florian which was engaged in steam laundry business on different dates and were posted to different positions; their tour of duty was from Monday to Saturday, with three shifts, to wit: 6:00 A.M. to 3:00 P.M. (1[st] shift), 6:00 P.M. to 9:00 P.M. 2[nd]shift and from 9:00 P.M. to 6:00 A.M. (3[rd]shift); they were not paid overtime and night differential pay; they had been working for the company for several years but they were not paid service incentive leave pay and 13[th] month pay; on April 5, 2005, they reported for work, but were surprised when in the afternoon they were informed that they should no longer report for work the following day because allegedly, the company would stop its operation due to serious business losses; despite such information, they reported for work the next day but they were not allowed to do so, although some personnel were allowed to

work; private respondent Florian also hired new workers, thus, belying its claim that it was experiencing business losses; they were terminated without just cause and were denied their right to due process; and, they suffered loss of income and were constrained to engaged the services of counsel to file and prosecute their case. They prayed that their termination be declared illegal and that private respondents be required to reinstate the petitioners to their former positions without loss of seniority rights, payment of their backwages, overtime pay, service incentive leave pay and 13[th] month pay.

In their Position Paper[8], private respondents alleged that: petitioners failed to present evidence to support their claim that they were employees of private respondent Florian; sometime in January 2003, financial woes started to beset private respondent Florian due to the dwindling number of clients and increasing number of competitors; thereafter, private respondent Florian held monthly meetings with all its employees to update them of the financial status of the company and to brainstorm ways to cut costs; private respondent Florian tried to lessen expenses by changing their suppliers to cheaper ones, cut the number of working days of the employees and lessen overtime; when these measures still did not help decrease the overhead expenses of private respondent Florian, nor improve its financial situation, it asked its employees to shorten their working days and terminated the services of casual employees; since nothing did prove effective, the management decided to cease operations due to serious financial reverses; on April 6, 2005, the management met with its employees and tried to explain the financial hardships the company was facing and how the management tried to keep the business alive, but still continued to experience losses; private respondent Florian sent notices to their employees and to the Department of Labor and Employment informing them of the business closure due to grave financial losses and the separation of the employees effective May 5, 2005; and, a few days after the said meeting with the employees, private respondent Florian received the summons and complaint in this case.

On December 27, 2006, the Labor Arbiter issued a decision[9], the dispositive portion of which reads:

"WHEREFORE, premises considered, the complaint for illegal termination is dismissed.

However, respondent Leandro Enriquez should pay the complainants their 13[th] month pays (sic) and separation pays (sic), (see Annex A)

SO ORDERED." [10]

In the computation of the judgment award of the Labor Arbiter, it appeared that private respondents were adjudged to pay a total amount of P3,910,376.40 in favor of the petitioners. Private respondents appealed the said decision to the NLRC and posted a cash bond in the amount of P50,000.00.

On December 24, 2008, the NLRC rendered the assailed decision granting the appeal, deleting the award of separation pay and reducing the proportionate 13[th] month pay to the year 2005 only. Private respondents were however ordered to pay each petitioner the amount of P1,000.00 as penalty for non-compliance with the one-month notice rule. Hence, this petition based on the following grounds:

I.

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENTS (sic) APPEAL DESPITE THE LATTER POSTED AN APPEAL BOND OF P50,000.00 WHILE THE TOTAL JUDGMENT AWARD OF THE LABOR ARBITER WAS P3,910,376.40;

II.

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN MODIFYING THE DECISION OF LABOR ARBITER GAUDENCIO DEMAISIP, JR., WHO DIRECTED

PRIVATE RESPONDENT LEANDRO ENRIQUEZ TO PAY PETITIONERS SEPARATION PAY AND 13[TH] MONTH PAY.

The petition lacks merit.

Petitioners argue that: public respondent NLRC committed grave abuse of discretion in granting private respondents' appeal despite the fact that the latter posted an appeal bond P50,000.00 while the total judgment award was P3,910,376.40; this has an effect of non-perfection of the appeal; and, the NLRC committed grave abuse of discretion in deleting the award of separation pay and 13[th] month pay.

On the other hand, private respondents argue that: the NLRC did not commit grave abuse of discretion in taking cognizance of the appeal after they filed a reduced appeal bond; and, they submitted all the requirements in perfecting an appeal including a motion for the reduction of the bond, considering the serious financial reverses it experienced leading to its closure.

This Court finds for the private respondents.

It is settled that when the closure of the business was due to serious financial losses, the payment of separation pay is no longer required for obvious reasons. Thus, in case of *Galaxie Steel Workers Union (GSWU-NAFLU-KMU), et al. vs. NLRC, et al.*[11], it was held that:

Respecting petitioners' claim for separation pay Article 283 of the Labor Code 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 Ministry 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 to a 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[12] not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) 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.

In *North Davao Mining Corporation v. National Labor Relations Commission*, this Court held that Article 283 governs the grant of separation benefits "in case of closures or cessation of operation" of business establishments "NOT due to serious business losses or financial reverses..." "Where, the closure then is due to serious business losses, the Labor Code does not impose any obligation upon the employer to pay separation benefits.

Explaining the policy distinction in Article 283 of the Labor Code, this Court, in *Cama v. Joni's Food Services, Inc.*, declared:

The Constitution, while affording full protection to labor, nonetheless, recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." In line with this protection afforded to business by the fundamental law, Article 283 of the Labor Code clearly makes a policy distinction. It is only in instances 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" that employees whose employment has been terminated as a result are entitled to separation pay. In other words, Article 283 of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to serious losses. To require an employer to be generous when it is no longer in a position to do so, in our view, would be unduly

oppressive, unjust, and unfair to the employer. Ours is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor the self-destruction of the employer.... (Emphasis supplied)

The denial of petitioners' claim for separation pay was thus in order.

The NLRC correctly ruled that the financial statements submitted by private respondents present fairly the latter's dire financial position. Such documents[12] were prepared by an independent auditor who used generally accepted auditing standards. Thus:

"Contrary thereto however, We are persuaded that based on the balance sheets as well as the establishment's income statements for the years 2003 and 2004 which were presented by the respondent, that the latter is suffering from serious business losses. The documents were attached to the latter of an independent auditor who had indicated that he (sic) has conducted an audit of the same, and in her opinion, the financial statements present fairly the financial position of the establishment as of the end of the said years.

As provided in the income statements, Florian Laundry incurred a net loss of four million four thousand eight hundred twelve pesos (P4,004,812) and five million six hundred sixteen thousand eight hundred fifteen pesos (P5,616,815.00) for the years 2003 and 2004, respectively. (Pp 121-123, record)[13]

In establishing a unilateral claim of actual or potential losses, financial statements audited by independent external auditors constitute the normal method of proof of profit and loss performance of a company. The condition of business losses justifying retrenchment is normally shown by audited financial statements like yearly balance sheets and profit and loss statements as well as annual income tax returns. Financial statements must be prepared and signed by independent auditors, otherwise, they may be assailed as self-serving. A Statement of Profit and Loss submitted to prove alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, is nothing but a self-serving document which ought to be treated as a mere scrap of paper devoid of any probative value.[14]

Thus is the case of *Mobilla Products, Inc., vs. Demecillo, et. al.*,[15] it was held that:

"*** We have constantly ruled that financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company. Any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees."

In this case, private respondents sufficiently proved their financial losses incurred for several years which then led to its closure. The audit report which was made by an independent auditor fairly reflects the dire financial situation of private respondents.

Anent the issue of the appeal bond, the same is justified considering that private respondents substantially complied with the requirements under Section 6 of the New Rules of Procedure of the NLRC. Thus in the case of *Lopez et al, vs. Quezon City Sports Club*[16], it was held that:

"Thus, the posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is

no room for construction. The filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance with the requirement renders the decision of the labor arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employers appeal. It is intended to discourage employer's from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.

However, Section 6 of the New Rules of Procedure of the NLRC also mandates, among others, that no motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award. Hence, the NLRC has the full discretion to grant or deny the motion to reduce the amount of the appeal bond.

In addition, while the bond requirement on appeals involving a monetary award has been relaxed in certain cases, this can only be done where there was substantial compliance with the Rules; or where the appellants. At the very least, exhibited willingness to pay by posting a partial bond." (*italics supplied*)

While the bond requirement on appeals involving monetary award has been relaxed in certain cases, this can only be done where there was substantial compliance with the Rules or where the appellants at the very least, exhibited willingness to pay by posting a partial bond.[17]

Record show that private respondents substantially complied with the procedural requirements as regards the posting of the cash bond of P50,000.00 together with the filling of the motion to reduce bond.[18]

To require an employer to be generous when it is no longer in a position to do so would be unduly oppressive, unjust, and unfair to the employer. Ours is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor the self-destruction of the employer.[19]

WHEREFORE, in view of the foregoing, the assailed decision dated December 24, 2008 and resolution dated August 28, 2009 of the National Labor Relations Commission in NLRC CA No. 048373-06 NLRC NCR Case No. 00-04-03327-05, 00-04-03147-05 are hereby AFFIRMED. Consequently, the petition is hereby ordered DISMISSED for lack of merit.

SO ORDERED.

Librea-Leagogo and Elbinias, JJ., concur.

Decision affirmed. Petition dismissed.

[1] Rollo p. 3

[2] Rollo p. 18

[3] Ibid.

[4] Rollo pp. 23

[5] Ibid.

[6] Rollo pp. 25-30

[7] Rollo p. 31

[8] Rollo p. 45

[9] Rollo pp. 108-11

[10] Ibid.

[11] G.R. No. 165757. October 17, 2006

[12] Rollo pp. 152-154

[13] Rollo p. 20

[14] G.R. No. 178083. July 22, 2008. Flight Attendants and Stewards Association of the Philippines (FASAP), vs. Philippine Airlines, Patria Chiong and Court of Appeals

[15] G.R. No. 170669, February 4, 2009

[16] G.R. No. 164032, January 19, 2009

[17] Colby Construction and Management Corp., et. al., vs. NLRC et. al., G.R. No. 170099, November 28, 2007

[18] Rollo p. 129 pars. 4, 5 & 6 (p. 3 of private respondents' Memorandum of Appeal filed with the NLRC)

[19] Cama vs. Joni's Food Services, Inc., 425 SCRA 259

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