

ROSE M. ANOCOL, AMOR MEIA A. MARASIGAN, CECILIA D.S. GUISADIO, DONARDO R. CAWALING AND ROBERTO M. SUMAGUE, JR., PETITIONERS, V. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISI...

Ponente: BARZA, J.

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BARZA, J.:

In this Petition for Certiorari under Rule 65 of the Rules of Court, petitioners seek to annul and set aside the Decision[1] of the public respondent NLRC dated 11 February 2011, in NLRC LAC No. 11-002855-10, affirming the Decision[2] of the Labor Arbiter dated 3 August 2010, which dismissed the petitioners' complaint for illegal dismissal against the respondents and ordering the latter to pay Separation Pay and 13[th] Month Pay to the petitioners. The subsequent Resolution[3] dated 23 May 2011 is likewise assailed for denying the petitioners' Motion for Reconsideration of the above NLRC Decision.

The facts are as follows:

Petitioners are regular employees of the private respondent company (Tateyama), which is engaged in the business of manufacture of bicycles with business address at Carmona, Cavite. Private respondents Jaw-Jaw Ueng is the President and General Manager of Tateyama, while individual respondents, Ching-Liang Chang, Kuang-Cheng Chang, Chun-Lin Huang, Chun-Ming Chang and Yi-Ting Chen are corporate officers of the Procycle Industrial, Inc.

The date of hiring, position and salary rate of the petitioners are as follows:

NAME

DATE HIRED

POSITION

SALARY RATE

ROSE M ANORCO

02/20/04

Factory Worker

P298.00

MICHAEL MELENDEZ[4]

09/03/03

Warehouse in-charge

P298.00

AMOR MEIA A. MARASIGAN

02/21/04

Welder

P298.00

CECILIA D.S. GUIADIO

02/20/04

Welder

P298.00

DONARDO R. CAWALING

02/20/04

Sample Maker

P298.00

ROBERTO M. SUMAGUE, JR.

03/04/04

Sample Maker

P298.00

As stated in their Sama-Samang Sinumpaang Salaysay[5], the petitioners started to organize themselves a workers' union which they named Tateyama Mfg., Inc. Workers Union (Union), under the National Workers Brotherhood (NWB) federation in September 2009. The Union was registered with the Department of Labor and Employment (DOLE) on 1 October 2009. On even date, the Union filed with the DOLE a Petition for Certification Election to determine the Sole and Exclusive Bargaining Agent (SEBA).

On 2 October 2009, the Executive Vice President of NWB sent a letter to Tateyama to inform them of the formation of the union, as well as the demands and proposals. On the same date, the DOLE certified the Union as a legitimate labor organization (LLO).

When respondent Edward Ueng learned of the Union, he summoned petitioners Anocol and Melendres. Petitioners were being made to admit that they were the ones responsible in the establishment of the Union. The two petitioners denied the allegation as the Certification as LLO from the DOLE has not yet been released at that time.

Later when Tateyama found out that the petitioners were the officers of the Union, each one of them were summoned and informed that they will be transferred to another assignments. They were also made to sign a blank document. On 10 October 2009, the petitioners reported to their new work assignments and made to render work not related from their regular duties and functions. As they continued with their employment with Tateyama, the petitioners learned that the company was hiring new employees to replace them in their previous assignments.

On 17 October 2009, the petitioners were informed by their line leader of their termination on the said date. Soon they found out that they have been replaced, and that Tateyama had assumed a new name, "Procycle Industrial,

Inc.”. The board members thereof are: Ching-Liang Chang, Kuang-Cheng Chang, Chun-Lin Huang, Chun-Ming Chang and Yi-Ting Chen.

After several days, Notice of Closure of Tateyama dated 20 October 2009 and signed by Edward Ueng were sent to petitioners who are active members and officers of the Union. According to the said letter, Tateyama has been incurring losses despite measures taken in order to survive. With such losses, lack of new orders, work and availability of materials, the company is left without work for the next six months. Thus, the Board of Directors decided to permanently close the business. Petitioners' employment will be terminated effective 23 November 2009, and that they will be given separation pay and other benefits upon submission of clearance requirement on the said date.

The petitioners believe that the forming of the Union was the only reason for the illegal closure of Tateyama. The alleged financial difficulties cited is bereft of factual basis. It constitutes unfair labor practice, violative of the employees' rights to self-organization and union busting. Thus, on 24 November 2009, a complaint was filed with the Labor Arbiter.

Tateyama, on the other hand, avers that while it has struggled to save its existence, things turned for the worse in 2009. The unstable Philippine economy, China being the cheap source of labor and material costs and its spiraling condition, the continued surge of oil prices and recession all over the world had taken a toll on Tateyama's business. Tateyama resorted to measures to save its business such as temporary shutdown but it did not help avert the company's economic dilemma. The company had been operating at a loss for several years. Because of this, Tateyama had to decide to permanently close the business. As proof thereof, Tateyama submitted its Financial Statements for December 31, 2008 and 2007, and Report of Independent Auditor.[6]

Tateyama further explained that the workers were required to render work not related or different from their regular duties and functions because there was no work for them at the time as there were no materials or orders from clients. However, this work given could not even be sustained by Tateyama. Tateyama also denied hiring new workers as such move is illogical considering its financial conditions.

As regards piercing the corporate veil, Tateyama argues that the corporation had a personality separate and distinct from other corporations, individuals, its officers and employees. The petitioners were not able to adduce evidence to warrant the application of the doctrine as herein private individual respondents did not act beyond their functions, but simply carried out their functions in compliance with the said law when Tateyama decided to close due to serious business losses.

On 21 October 2009, Tateyama sent a notice[7] to the Hon. Regional Director of the DOLE to inform the said office of its decision to permanently close effective 23 November 2009. Tateyama also filed its Establishment Employment Report[8] and the list of affected employees[9]. Among the employees affected by the closure are herein petitioners, to whom Tateyama sent written notices[10] dated 20 October 2009. However, instead of going to Tateyama Office on 23 November 2009 as directed, the petitioners filed the instant case before the Labor Arbiter for illegal dismissal with prayer for reinstatement and payment of full backwages, overtime pay, unfair labor practice and illegal closure. Petitioners also filed another case involving the same parties for non-payment of 13th month pay plus 10% per annum and payment of moral, actual, nominal and exemplary damages and attorney's fees.

The cases were consolidated[11] and on 3 August 2010, the Labor Arbiter rendered a decision finding that the closure of the company was justified under Art. 283 of the Labor Code. The termination of the complainants is valid except that they are entitled to separation pay equivalent to one-half (½) month salary for every year of service. The Labor Arbiter also ruled that the allegation that Tateyama continued its operation under a newly

formed corporation with “Procycle Industrial, Inc.” was not established with concrete evidence. The claim for 13[th] month pay in 2009 was granted pro rata, for lack of proof of payment.

An appeal to the NLRC was interposed by the petitioners. On 11 February 2011, the assailed NLRC decision dismissed the appeal for lack of merit and consequently, affirmed the decision of the Labor Arbiter above.

Hence, this petition on the following grounds:

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT:

- RESPONDENT VALIDLY CLOSED AND PETITIONERS WERE NOT ILLEGALLY DISMISSED.
- RESPONDENT DID NOT COMMIT UNFAIR LABOR PRACTICE.
- PETITIONERS ARE NOT ENTITLED TO THE RELIEFS PRAYED FOR.

The petition is bereft of merit.

The petitioners maintain that the respondents did not comply with the thirty-day notice requirement prior to the intended date of closure. As argued, the mailing of the notices to close to the petitioners is not what the law contemplates of in requiring that written notice be served on the worker and the DOLE at least one month before the intended date of closure. There should be proof of actual receipt thereof.

The Court disagrees.

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 worker 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 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 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 as one (1) whole year. (emphasis supplied)

The following, therefore, are the requirements for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of or withdrawal from business operations must be bona fide in character; and (c) payment of termination pay equivalent to at least one-half month pay for each year of service, or one month pay, whichever is higher.

The Court finds no grave abuse of discretion on the part of the NLRC in ruling that the respondent complied with the above requirements and by applying by analogy the definition of “service” in Sec. 2, Rule 13 of the Rules of Court to the requirement of service of written notice to the employees affected.

As has been held, “In practice, service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect.[12] However, it is well to note that “What the law requires is a written notice to the employees concerned and that requirement is mandatory.”[13]

Thus, as correctly held by the NLRC in this case:

“x x x when respondents deposited the Notices of Closure on 20 October 2009, the same was deemed filed on the same date with the Regional Office of the DOLE. The Commission does not find any valid reason why the same principle should not apply to complainants since the pertinent portion of Article 283 states, 'x x x 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.' The said provisions do not make any distinction as to the mode of serving the said notice to the DOLE vis-a-vis the affected employees. Thus, the one-month period to serve notice is complied with. Consequently, proper observance of due process is apparent under these circumstances negating complainants' claim for nominal damages.

An examination of the petitioners' Sama-Samang Sinumpaang Salaysay will also reveal that the petitioners never denied having received the said notices sent to them. In fact, the registry return receipts[14] will belie the allegation of non-receipt of the said notices.

Moreover, as correctly argued by the respondents, to allow the petitioners' argument that the 30-day notice should be reckoned from the date of actual receipt of the employee would open doors of opportunity for the employees concerned to do what they can to avoid receipt of the notice.

There is likewise no grave abuse of discretion on the part of the NLRC in ruling that the closure of business of Tateyama is valid.

Respondent Tateyama claims that it had been suffering financial losses. The NLRC, however, upon examination of the records submitted, found that while Tateyama may have experienced some financial decline, the same is far from qualifying as serious financial loss as contemplated by Art. 283 of the Labor Code. As closure need not be premised on serious financial losses, the NLRC upheld the decision of Tateyama to cease operations.

As has been held, “Closure or cessation of operations of establishment or undertaking may or may not be due to serious business losses or financial reverses. However, in both instances, proof must be shown that: (1) it was done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement; and (2) a written notice on the affected employees and the DOLE is served at least one month before the intended date of termination of employment.”[15]

Thus, the Court agrees with the NLRC in holding that the decision to close business is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283. The determination to cease or suspend operations is a prerogative of management that the State usually does not interfere with, as no business can be required to continue operating at a loss simply to maintain the workers in employment. Such an act would be tantamount to a taking of property without due process of law, which the employer has a right to resist.[16] Necessarily by reason of the closure, petitioners were legally dismissed for authorized cause.

Accordingly, the statutory requirement of giving separation pay to the affected employees, the petitioners herein, must likewise be upheld. The award for 13[th] month pay also finds basis in respondent's admission that it will not only pay the petitioners their separation pay but other owing accountability that may exist.[17]

No grave abuse of discretion attended the decision of the NLRC in striking down the charge of unfair labor practice, and allegation that Tateyama and Procycle Industrial Inc. are one and the same and that the creation of the latter was timed due to the Union. To reiterate, Tateyama's decision to close is valid. Procycle's operation was not an incident of Tateyama's closure. The Certificate of Incorporation[18] of Procycle will show that the same was incorporated in 2008, prior to the closure of Tateyama. The allegation that there is substantial ownership of the same individual incorporators in the two corporations in this case is bereft of basis. An examination of the

General Information Sheets[19] of Tateyama and Procycle will show that the two have different incorporators.

As the Supreme Court explained in a case[20]:

“Neither can the veil of corporate fiction between the two companies be pierced by the rest of petitioners’ submissions, namely, the alleged take-over by Miramar of Mar Fishing’s operations and the evident similarity of their businesses. At this point, it bears emphasizing that since piercing the veil of corporate fiction is frowned upon, those who seek to pierce the veil must clearly establish that the separate and distinct personalities of the corporations are set up to justify a wrong, protect a fraud, or perpetrate a deception. This, unfortunately, petitioners have failed to do. In *Indophil Textile Mill Workers Union vs. Calica*, we ruled thus:

In the case at bar, petitioner seeks to pierce the veil of corporate entity of Acrylic, alleging that the creation of the corporation is a devi[c]e to evade the application of the CBA between petitioner Union and private respondent company. While we do not discount the possibility of the similarities of the businesses of private respondent and Acrylic, neither are we inclined to apply the doctrine invoked by petitioner in granting the relief sought. The fact that the businesses of private respondent and Acrylic are related, that some of the employees of the private respondent are the same persons manning and providing for auxiliary services to the units of Acrylic, and that the physical plants, offices and facilities are situated in the same compound, it is our considered opinion that these facts are not sufficient to justify the piercing of the corporate veil of Acrylic.”
(citation omitted)

As a rule, the original and exclusive jurisdiction to review a decision or resolution of respondent NLRC in a petition for certiorari under Rule 65 of the Rules of Court does not include a correction of its evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion. Thus, the NLRC’s factual findings, if supported by substantial evidence, are entitled to great respect and even finality, unless petitioner is able to show that it simply and arbitrarily disregarded the evidence before it or had misappreciated the evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[21]

With the factual contentions having been ruled upon by the NLRC, and having been convinced that its findings are not tainted with arbitrariness or grave abuse of discretion in the assailed decision of the NLRC dated 11 February 2011, the Court, thus, finds no basis to grant the petition.

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] Rollo, pp. 326-336

[2] Rollo, pp. 280-304

[3] Rollo, pp. 357-358

[4] Dropped as Petitioner per Minute Resolution dated December 21, 2011, Rollo, p. 366

[5] Rollo, pp. 55-60

[6] Rollo, pp. 205-220

[7] Rollo, pp. 221-222

[8] Rollo, p. 223

- [9] Rollo, pp. 224-230
- [10] Rollo, pp. 231-242
- [11] NLRC CASE Nos. RAB-IV-01586-09-C & RAB-IV-12-01669-09-C
- [12] Soriano vs. Soriano, G.R. No. 130348, September 3, 2007
- [13] Sebuguero vs. NLRC, G.R. No.115394, September 27, 1995
- [14] Rollo, pp. 243-250
- [15] Manila Polo Club Employees' Union vs. Manila Polo Club, G.R. No. 172846, July 24, 2013
- [16] San Pedro Hospital of Digos, Inc. vs. Secretary of Labor, G.R. No. 104624, October 11, 1996, citing Carmelcraft Corporation vs. NLRC, G.R. No. 90634-35, June 6, 1990
- [17] Position Paper, par. 40, Rollo, p. 199
- [18] Rollo, p. 279
- [19] Rollo, pp. 167 & 173
- [20] Ramirez, et al. vs. Mar Fishing Co., Inc., G.R. No. 168208, June 13, 2012
- [21] Castillo vs. NLRC, G. R. No. 104319, June 17, 1999

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