

COCA COLA FREE WORKERS UNION-FEDERATION OF FREE WORKERS, PETITIONER, VS. COCA COLA BOTTLERS PHILS., INC., AND OFFICE OF THE PANEL OF VOLUNTARY ARBITRATORS, RESPONDENTS.

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SANTOS, J.:^[1]

Before this Court is a Petition for Review^[2] under Rule 43 of the Rules of Court assailing the Resolution^[3] dated May 30, 2012 rendered by the Office of the Panel of Voluntary Arbitrators (Panel), National Conciliation and Mediation Board, Department of Labor and Employment, Region X, Cagayan de Oro City, in VA Case No. AC-761-RB10-05-07-12-2011. The dispositive portion of the assailed Resolution reads:

WHEREFORE, premises considered, we hold to find the closure of the Coca-Cola Bottlers Philippines, Inc.'s Cagayan de Oro Plant valid and thus, making valid the termination of employment of the production employees of the Cagayan de Oro Plant, members of petitioner Union, who must therefore be entitled to separation pay equivalent to one month per year of service or based on CBA and/or company standard whichever is higher.

The evidence submitted to the records show that almost all of the terminated workers have signed individual Deed of Receipts, Release, Waiver and Quitclaims (Annexes "1" to "55", Resp, Manifestation, supra) evidencing their receipts of separation pay in the amount the lowest of which is 175% per year of service, which is more than substantial compliance of the amount of separation granted by law and satisfying the requirement of payment of separation pay in authorized causes of closure of operation under Article 283 of the Labor Code. However, respondent CCBPI is ordered to pay separation pay to the remaining dismissed workers who were not paid their separation pay per its computation.

Consequently, the closure being valid, the claims of illegal dismissal and union busting are likewise dismissed for lack of merit.

SO ORDERED.^[4]

The Antecedents

Petitioner is a registered labor union and is the collective bargaining agent in the production department of respondent Coca Cola Bottlers Phils., Inc. (CCBPI), Cagayan de Oro City. It collectively represents its members whose employment was terminated by respondent.

Respondent CCBPI is a corporation engaged primarily in the manufacture of non-alcoholic beverages.

The undisputed facts are as follows:

On June 5, 2010, respondent, as a result of a technical study conducted sometime in 2010 on the propriety of maintaining its Cagayan de Oro (CDO) Plant and that due primarily to the operational difficulties it has been facing for almost sixty (60) years of its operation, commenced the construction of Line 1 of its Misamis Oriental Plant (MO Plant) located in Villanueva, Misamis Oriental. These operational difficulties according to the

respondent, as disclosed in Annex “1”[5] of its Position Paper,[6] are the following, to wit:

- The CDO Plant has already been running for almost sixty (60) years and has, thus, become fully depreciated. As such, it has already lost its production efficiency and efficacy to meet the growing sales demand of the market it serves.
- The intrusion of floodwater into the CDO Plant has also become a common occurrence. In fact, for the last three (3) years, the Plant was submerged in floodwater in no less than six (6) instances, all of which resulted in prolonged production stoppages and massive damage to equipment, raw materials and other personal property situated therein. Worse, the frequent flooding contaminated one (1) of the deep wells maintained by the CDO Plant, which was subsequently abandoned for having been rendered unserviceable. As a consequence thereof, the CDO Plant was constrained to secure water supply from external sources at higher costs. xxx
- The CDO Plant’s limited land area likewise made it impossible for the Company to introduce extensive physical development therein. It has also caused countless vehicular traffic incidents within the premises.
- Similarly, considering that the CDO Plant is located at the heart of the city’s congested business district, the distribution cycle of products has been considerably and consistently delayed due to the heavy traffic within the vicinity.
- Salt water intrusion and inadequate water and power supply have also been identified as contributing factors to the inefficient and higher cost of operation of the CDO Plant.[7]

On May 7, 2011, Line 1 of the MO Plant became commercially operational. On July 2, 2011, respondent commenced the construction of Line 2 of the MO Plant. Similar to Line 1, Line 2 also consisted of a fully automated manufacturing facility thereby requiring minimum human intervention. Respondent thereafter closed its production department in the CDO Plant.

Incidentally, the closure of the CDO Plant was immediately preceded by the expiration of the Collective Bargaining Agreement (CBA) between petitioner Union and the respondent. Petitioner negotiated for the renewal of the expired CBA as well as the retention of employment and automatic transfer of its members who were employees of the respondent from the CDO Plant to the MO Plant. Respondent insisted, however, that there was closure of the CDO Plant and that the services of the affected employees were validly terminated.

After a series of negotiation, the parties failed to reach an agreement. Thus, on October 6, 2011, petitioner sent a letter to respondent declaring a deadlock in the CBA negotiations and manifesting its intent to submit the same to the NCMB for mediation. The parties, on November 10, 2011, sent a letter[8] to the NLRC submitting the issue for arbitration. The NLRC denied the request for arbitration in a letter[9] dated November 23, 2011 holding that the issue involved is proper for conciliation and mediation before the NCMB. Thus, on December 16, 2011, the parties executed a Submission Agreement[10] submitting the issues for voluntary arbitration before the NCMB.

Meanwhile, on March 1, 2012, respondent sent individual Notices[11] to all affected employees of their impending termination starting March 31, 2012. On even date, respondent also sent a Notice of Termination Due to Closure of Manufacturing Plant[12] and Establishment Employment Report[13] to the DOLE.

On March 31, 2012, the terminated employees were given by respondent separation packages consisting of (a) 175% separation pay per year of service (below 15 years) or 200% separation pay per year of service (15 years and above), as the case may be; (b) commutation of earned and unused Sick/Vacation Leave; and (c) proportionate 13th month pay. The employees received under protest the separation packages as evidenced by individual Deeds of Receipt, Release, Waiver, and Quitclaims.[14]

After due proceedings, the Panel issued the assailed Resolution declaring the closure of respondent’s CDO Plant

a valid exercise of management prerogative and dismissed the petitioners' claim of illegal dismissal and union-busting for lack of merit. Thus, this instant petition for review.

Assignment of Errors

Petitioner, in its Petition for Review,[15] ascribes the following errors committed by the Panel of Voluntary Arbitrators, to wit:

- [WHETHER OR NOT] THE PANEL OF VOLUNTARY ARBITRATORS COMMITTED GROSS MISAPPRECIATION AND ERRONEOUS CONCLUSION OF FACTS;
- [WHETHER OR NOT] THE PANEL OF VOLUNTARY ARBITRATORS COMMITTED MISAPPLICATION OF LAW AND JURISPRUDENCE.[16]

This Court's Ruling

The appeal is bereft of merit.

In a nutshell, the issues can be summarized as follows: (a) whether respondent's act amounts to a mere transfer of business operation or closure of business authorized under Article 283 of the Labor Code; and (b) whether respondent is guilty of illegal dismissal and union-busting.

Preliminarily, respondent raises issues on technicality in its Comment which this Court will first address. Respondent alleges that the petition suffered from several fatal defects and must be dismissed outright. First, respondent notes that the petitioner failed to attach in its petition respondent's reply, position paper, etc., knowing the same to be material to respondent's defenses, allegedly violating Section 6, Rule 43 of the Rules of Court. Second, respondent argues that the verification and certification of non-forum shopping of the petition is defective as the Union President who signed the verification and the certification lacks authority to sign the same. Third, respondent argues that petitioner failed to exhaust administrative remedies in filing the instant petition for review without first filing a motion for reconsideration before the NCMB which issued the assailed resolution.

We disagree with the contentions of the respondent.

Rule 43, Section 6 of the Rules of Court provides:

The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied)

In *Diaz, et.al., v. Mesias, Jr.*, [17] it was held that summary dismissal is unwarranted even if the pleadings and other supporting documents were not attached to the petition as required by Section 6, Rule 43 of the Rules of Court because the entire records of the case will eventually be elevated to this Court, pursuant to Section 11, Rule 43 of the Rules. The Supreme Court emphasized:

A careful perusal of the records of the case shows that the petitioners substantially complied with the procedural requirements of Rule 43, Section 6 of the Rules of Court. Attached to the Petition for Review as annexes are legible certified true copies of the decision of the DARAB, the Resolution of the Motion for Reconsideration by the DARAB, and the decision of the Provincial Adjudicator. The attachment of the final

decisions of these quasi-judicial agencies are sufficient in order for the Court of Appeals to give due course to the petition, instead of dismissing the same on the ground of petitioners failure to attach copies of the pleadings and other supporting documents. Nevertheless, even if the pleadings and other supporting documents were not attached to the petition, the dismissal was unwarranted because the entire records of the case will eventually be elevated to the appellate court, pursuant to Rule 43, Section 11 of the Rules of Court.

Cases should be determined on the merits after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections. Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided. In fact, Rule 1, Section 6 of the Rules of Court states that the Rules shall be liberally construed in order to promote their objective of ensuring the just, speedy and inexpensive disposition of every action and proceeding. (Citations omitted; emphasis supplied)

Anent the authority of the Union President to sign on behalf of petitioner Union, the Verification and Certification of Non-Forum Shopping¹⁸ attached to the petition reads in part:

I, Paquito Abellanos, Filipino, of legal age and resident of Opol, Misamis Oriental, after duly sworn pursuant to law, hereby states, that:

1. I am the President of Coca Cola Free Workers Union- Federation of Free Workers (CCFWU-FFW), the Petitioner in the above-entitled case, and is authorized to represent and sign for and on behalf of the Union by virtue of authorization in the form of Resolution of Union Officers and Board Members;

xxx

A reading of the Resolution^[19] dated June 26, 2012 attached to the petition issued by petitioner Union authorizing the Union President to represent the Union in this case disclosed in part:

Whereas, every now and then, there are papers need to be prepared and executed by the Union through its Officers in connection with the pending Arbitration Case;

xxx

Whereas, it would be wise and appropriate that either of the President of the Union, Paquito D. Abellanos, Jr., Yves S. Salvan or Herbert H. Alamban to represent the Union in the case;

Wherefore, resolved, as it is hereby resolved:

That either Paquito D. Abellanos, Yves S. Salvan or Hobert H. Alamba are hereby authorized to represent the union in the Arbitration Case to do the following:

1. Sign and execute any paper/s and/or pleadings necessary in the case;
2. Enter into stipulation of facts, compromises and abatement of the case;
3. To represent the Union in appealed cases, sign and execute any pleadings necessary in the elevation of the case in appellate courts or tribunals; xxx (Emphasis supplied)

This Court holds that the above quoted Resolution shows that the Union President was properly clothed with authority to represent petitioner Union and to sign or execute on its behalf the verification and certification against non-forum shopping. Such authority can be properly gleaned from the above quoted Resolution of petitioner Union attached to the petition.

Respondent's argument that petitioner failed to exhaust administrative remedies in filing the instant petition as it

did not first file a motion for reconsideration before the NCMB which issued the assailed resolution is misleading. Rule VII, Sections 6 and 7, of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings provide:

Section 6. Finality of Decision. — The decision of the voluntary arbitrator shall be final and executory after ten (10) calendar days from receipt of the copy of the decision by the parties.

Section 7. Motions for Reconsideration. — The decision of the voluntary arbitrator is not subject of a motion for reconsideration.

Technicalities aside, this Court shall now rule on the merits of the case.

Petitioner, in its Petition for Review,[20] asserts that the established facts surrounding the case indubitably show that respondent never ceased or closed its business operation for what really transpired under the circumstances was a mere transfer of its production operation facility from its CDO Plant to its MO Plant. Petitioner insists that the Panel misapplied Article 283 of the Labor Code as transfer of business operation is not one of those contemplated therein. According to petitioner, said provision refers only to closure or cessation of operation or undertaking which is not the case in the case at bar.

This Court is not convinced.

At the onset, it must be noted that petitioner did not deny, and even admitted, the validity of the economic reasons and the existing operational difficulties faced by the respondent that led to the closure of its CDO Plant. In fact, in its Memorandum,[21] petitioner stated:

1.) At the outset, Petitioner never questioned nor contest the reasons advanced by respondent in physically closing the Production Plant in Cagayan de Oro City. Petitioner recognized such management prerogative. The reasons among others in closing the plant are the problems of inefficiency and inadequacy;

As there is no issue regarding the validity of the economic causes and operational difficulties that impelled the closure or “transfer” of respondent’s operations in CDO Plant, the next question relevant in the resolution of the case is whether respondent’s physical closure of the production department of the CDO Plant in favor of the MO Plant constitutes closure or cessation of business operations which is an authorized cause for termination of employment under Article 283 of the Labor Code; or a mere transfer of business operation, as petitioner insists, which does not authorize respondent to terminate the services of petitioner’s members.

In its Petition,[22] petitioner alleges that the following facts indubitably show that there was a mere transfer, not closure, by the respondent of the production department of the CDO Plant to the MO Plant; that such transfer is not among those authorized causes for termination of employment contemplated under Article 283 of the Labor Code:

- The CDO Plant products provided the Northwestern Mindanao demand and the distribution centers of the area for a very long time of its business existence;
- Production operation in CDO Plant was doing business, in the same way as other integral and parallel operations of which in the same Plant Site are those of other Departments, such as Site HR Department, Finance Department, Supply Chain Department, Key Accounts Department and Sales Operation Department;
- Respondent did not physically close down the CDO Plant in order to cease or stop business in the said area, as the other Departments continued their business operation in CDO;
- In fact, employment of employees in other mentioned Departments were not terminated by reason of physical closure of CDO Plant;

- The Villanueva Plant is the business establishment of respondent and was not constructed in addition to the CDO Plant but was intended to replace the CDO Plant operations for reasons advanced by respondent;
- The Villanueva Plant is also where the other Departments based their operations and was created for the purpose of assuming the business operations in CDO Plant after the latter's physical closure;
- The Villanueva Plant when fully operational in its two (2) production lines, terminated the services of employees and physically closed the CDO Plant;
- The Villanueva Plant basically provided the same demands in the same area of northwestern Mindanao and the latter's distribution centers as the CDO Plant capacity provided;
- The Villanueva Plant is just more or less seventeen (17) kilometers from the closed CDO Plant, more or less fifteen (15) minutes of public transport travel and easily accessible for the employees terminated;
- Employees terminated expressed to respondent at the earliest opportunity and before the production operation in Villanueva Plant their willingness and desire to continue their services and demanded for appropriate training for the purpose.[23]

This Court disagrees with the contentions of the petitioner.

Closure or cessation of business has been defined as the "complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer." [24]

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 operations 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 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 closure or cessation of operations of the 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)

In *Industrial Timber Corporation v. Ababon*, [25] the Supreme Court held:

A reading of the foregoing law shows that a partial or total closure or cessation of operations of establishment or undertaking may either be due to serious business losses or financial reverses or otherwise. Under the first kind, the employer must sufficiently and convincingly prove its allegation of substantial losses, while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was bona fide in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service. (Emphasis supplied)

That it was only the production department that was closed down while the other departments in the CDO Plant continued to operate, and that employees in the other mentioned Departments were not similarly terminated are of no moment. It was held that closure or cessation as contemplated under Article 283 of the Labor Code includes the decision to close the entire establishment or to close or abolish a department or section thereof for economic

reasons, such as to minimize expenses and reduce capitalization.[26] This is one prerogative of management that the Court avoids meddling with except when there is bad faith on the part of the management.

That the MO Plant was constructed not in addition to the CDO Plant but was intended to replace and assume the business operations of the CDO Plant for reasons advanced by respondent is also beside the point. This Court agrees with the respondent in its contention that it is neither practical nor feasible to keep and maintain the CDO Plant while the MO Plant, with its state-of-the-art equipment and technologically-advanced machineries, has the capacity to more than provide for the consumers being supplied by the CDO Plant and can more than meet the demands of the CDO Plant's original distribution area in Northwestern Mindanao.

That the MO Plant is just more or less seventeen (17) kilometers away from the CDO Plant is of no moment either. After all, it was established that the location of the MO Plant proved to be more feasible, practical, and desirable for respondent's business as it was undoubtedly established that the area where the CDO Plant was located consisting of a mere 2.3 hectares is flood-prone and congested, the very reason it constructed the MO Plant in Villanueva, Misamis Oriental, consisting of 11 hectares of land.

This Court agrees with the Panel in finding no parallelism between the two (2) plants. It was established that the CDO Plant had limited production capacity, experienced frequent line stoppage due to recurring flood, had inadequate electrical and water supply, experienced saltwater intrusion and vehicular traffic delays in its distribution as it was located in a congested area. On the other hand, the MO Plant has high production rate, adequate water supply and electricity, is equipped with state-of-the-art technology, has improved delivery capabilities and is strategically located.[27] The Panel is correct in ruling that the above circumstances, taken together, indubitably show that there was a closure or cessation, not a mere transfer, of the CDO Plant's operations implemented by the respondent in good faith and because of legitimate business concerns.

Lastly, that the petitioner expressed its willingness and desire to continue its services in the MO Plant and demanded for appropriate training for the purpose does not automatically hold the respondent liable to rehire petitioner. Basic is the rule that the authority to hire and fire lies solely in the discretion of management. For as long as there is no showing of bad faith, such management prerogative cannot be validly questioned. In fact, the Supreme Court in the *Ababon*[28] case further held:

Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment. (Emphasis supplied)

Nonetheless, evident in the records is the fact that the MO Plant became operational even before the CDO Plant closed down, effectively refuting petitioner's claim that the operation of the CDO Plant was merely transferred to the MO Plant. This Court finds meritorious respondent's argument that because of the state-of-the-art equipment and technologically-advanced machineries employed in the MO Plant, thereby giving it the capacity to more than meet the demands of the CDO Plant's original distribution area in Northwestern Mindanao, there is no longer a reason to keep and maintain the CDO Plant at a loss.

Thus, having ruled that what transpired in the instant case is a bona fide closure or cessation of business operations under the second kind, which is an authorized cause for termination of employment under Article 283 of the Labor Code, it follows that the termination of employment of the affected employees is valid provided the termination was effected in accordance with the procedural requirement laid down in Article 283 of the Labor Code.

Under Article 283 of the Labor Code, three requirements are necessary for a valid termination of employment due

to the 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 business must be bona fide in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.[29]

Here, it was undisputed that individual Notices[30] were sent to all affected employees on March 1, 2012, or one (1) month before the impending date of termination on March 31, 2012. On even date, Notice of Termination Due to Closure of Manufacturing Plant[31] and an Establishment Employment Report[32] were also sent the Department of Labor and Employment (DOLE). There is no question then that the respondent had complied with the procedural requirements of Article 283 of the Labor Code.

While this Court agrees with petitioner's contention that the Panel erred in ruling that the receipt under protest of the separation benefits by the terminated workers from respondent is an indication of their acceptance of the termination, still the transaction must be recognized as being a valid and binding undertaking absent any showing that they executed the quitclaim and waiver under force or duress. Besides, it was also established that affected members of petitioner were paid separation packages way more than what they are entitled to under the law. They were also given the option to apply for vacancies in the MO Plant, which option was exercised by some of the affected employees. As held by the Panel, these undisputed circumstances effectively negate petitioner's allegation of bad faith and ill-motive on the part of the respondent in its closure of the CDO Plant.

In fine, this Court rules that the Panel did not err in declaring the closure of respondent's CDO Plant as bona fide in character and in dismissing petitioners' claim of illegal dismissal and union-busting for reasons above discussed.

WHEREFORE, the appeal is hereby DISMISSED. The assailed Resolution dated May 30, 2012 rendered by the Office of the Panel of Voluntary Arbitrators, National Conciliation and Mediation Board, Department of Labor and Employment, Region X, Cagayan de Oro City, in VA Case No. AC-761-RB10-05-07-12-2011 is hereby AFFIRMED in toto.

SO ORDERED.

Lloren, J.,Ch., and Contreras, JJ., concur.

[1] The case was unloaded to the undersigned ponente pursuant to Office Order No. 03-14-SMBP dated April 1, 2014 as part of his initial caseload.

[2] Rollo, pp. 9-41.

[3] Rollo, pp. 42-59.

[4] Rollo, p. 58.

[5] Affidavit of Salvador Burgos - Group Operations Manager for Mindanao Region, CCBPI, Rollo, pp. 338-340.

[6] Annex "1" of Respondent's Comment, Rollo, pp. 296-331.

[7] Rollo, pp. 338-339.

[8] Annex "12" of Annex "1" of Respondent's Comment, Rollo, pp. 371-372.

[9] Annex "13" of Annex "1" of Respondent's Comment, Rollo, p. 373.

- [10] Annex “2” of Respondent’s Comment, Rollo, p. 375.
- [11] Annexes “2” – “2-BBB” of Annex “3” of Respondent’s Comment, Rollo, pp. 409- 463.
- [12] Annex “1” of Annex “3” of Respondent’s Comment, Rollo, p. 402.
- [13] Id., p. 403.
- [14] Annexes “1” to “55” of Annex “4” of Respondent’s Comment, Rollo, pp. 479-589.
- [15] Rollo, pp. 9- 41.
- [16] Rollo, p. 24.
- [17] G.R. No. 156345, March 4, 2004.
- [18] Rollo, p. 41.
- [19] Rollo, pp. 60-61.
- [20] Rollo, pp. 9-41.
- [21] Rollo, p. 595.
- [22] Rollo, pp. 9-41.
- [23] Petition for Review, Rollo, pp. 24-26.
- [24] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super*, G.R. No. 166760, August 22, 2008.
- [25] G.R. No. 164518, January 25, 2006.
- [26] *Manila Polo Club Employees' Union (MPCEU) FUR-TUCP v. Manila Polo Club, Inc.*, G.R. No. 172846, July 24, 2013.
- [27] Rollo, pp. 52.
- [28] *Supra*, Note 13.
- [29] *Supra*, Note 14.
- [30] Annexes “2” – “2-BBB” of Annex “3” of Respondent’s Comment, Rollo, pp. 409- 463.
- [31] Annex “1” of Annex “3” of Respondent’s Comment, Rollo, p. 402.
- [32] Id., p. 403.

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