

**BUSINESSDAY INFORMATION SYSTEMS AND SERVICES, INC., AND
RAUL LOCSIN, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSION, NEMESIO MOYA, ALFREDO AMANTE, EDWIN
BERSAMINA, SAMUEL ...**

G.R. No. 103575. April 05, 1993

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

In this petition for Certiorari, the Businessday Information Systems and Services Inc. (or BSSI for brevity) and its president/manager, Raul Locsin, seek to annul and set aside the decision dated February 13, 1991 of the National Labor Relations Commission (NLRC) which affirmed the Labor Arbiter's finding that they (petitioners) are liable to pay the private respondents separation pay differentials and mid-year bonus.

BSSI was engaged in the manufacture and sale of computer forms. Due to financial reverses, its creditors, the Development Bank of the Philippines (DBP) and the Asset Privatization Trust (APT), took possession of its assets, including a manufacturing plant in Marilao, Bulacan.

As a retrenchment measure, some plant employees, including the private respondents, were laid off on May 16, 1988, after prior notice, and were paid separation pay equivalent to one-half (1/2) month pay for every year of service. Upon receipt of their separation pay, the private respondents signed individual releases and quitclaims in favor of BSSI.

BSSI retained some employees in an attempt to rehabilitate its business as a trading company.

However, barely two and a half months later, these remaining employees were likewise discharged because the company decided to cease business operations altogether. Unlike the private respondents, that batch of employees received separation pay equivalent to a full month's salary for every year of service plus mid-year bonus.

Protesting against the discrimination in the payment of their separation benefits, the twenty-seven (27) private respondents filed three (3) separate complaints against the BSSI and Raul Locsin. These cases were later consolidated.

At the conciliation proceedings before Labor Arbiter Manuel P. Asuncion, petitioners denied that there was unlawful discrimination in the payment of separation benefits to the employees. They argued that the first batch of employees was paid "retrenchment" benefits mandated by law, while the remaining employees were granted higher "separation" benefits because their termination was on account of the closure of the business.

Based on the pleadings of the parties, Labor Arbiter Asuncion rendered a decision on April 25, 1989 in favor of the complainants, now private respondents, the dispositive portion of which reads:

"WHEREFORE, the respondents are hereby ordered to pay the complainants their separation pay differentials and mid-year bonus for the year 1988." (p. 38, Rollo).

Upon appeal by the company to the NLRC, the Second Division on February 13, 1991, affirmed the decision of the Labor Arbiter.

Petitioners' motion for reconsideration of the resolution having been denied, they have taken the present recourse.

In case of retrenchment of a company to prevent losses and closure of business operation, the law 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 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 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 one (1) whole year." (Labor Code; emphasis supplied.)

Undoubtedly, petitioners' right to terminate employees on account of retrenchment to prevent losses or closure of business operations, is recognized by law, but it may not pay separation benefits unequally for such discrimination breeds resentment and ill-will among those who have been treated less generously than others.

The following observations of the Commission are relevant:

"The respondents cited financial business difficulties to justify their termination of the complainants' employment on 16 May 1988. They were given one-half (1/2) month of their salary for every year of service. Due to continuing losses, which is a sign that business, after the termination did not improve, they closed operations on 31 July 1989, where they dismissed the second batch of employees who were given one (1) month pay for every year they served. The third batch of employees were terminated on 28 February 1989, who were likewise given one (1) month pay for every year of service. The business climate obtaining on 16 May 1988 when the complainants were terminated did not at all defer (sic) improvement-wise, with that of 31 July 1988 nor to 28 February 1989. The interval between the dates of termination was so closed to each other, so that, no improvement in business maybe likely expected. In fact, the respondents suffered continuous losses, hence, there is no difference in the circumstances of the business to distinguish.

"Granting that the 16 May 1988 termination was a retrenchment scheme, and the 31 July 1988 and the 28 February 1989 were due to closure, the law requires the granting of the same amount of separation benefits to the affected employees in any of the cases. The respondent argued that the giving of more separation benefit to the second and third batches of employees separated was their expression of gratitude and benevolence to the remaining employees who have tried to save and make the company viable in the remaining days of operations. This justification is not plausible. There are workers in the first batch who have rendered more years of service and could even be said to be more efficient than those separated subsequently, yet, they did not receive the same recognition. Understandably, their being retained longer in their job and be not included in the batch that was first terminated, was a concession enough and may already be considered as favor granted by the respondents to the prejudice of the complainants. As it happened, there are workers in the first batch who have rendered more years in service but received lesser separation pay, because of that arrangement made by the respondents in paying their termination benefits. x x x" (pp. 36-37, Rollo)

Clearly, there was impermissible discrimination against the private respondents in the payment of their separation benefits. The law requires an employer to extend equal treatment to its employees. It may not, in the guise of exercising management prerogatives, grant greater benefits to some and less to others. Management prerogatives are not absolute prerogatives but are subject to legal limits, collective bargaining agreements, or general principles of fair play and justice (*UST vs. NLRC*, 190 SCRA 758). Article 283 of the Labor Code, as amended, protects workers whose employment is terminated because of closure of the establishment or reduction of personnel (*Abella vs. NLRC*, 152 SCRA 141, 145).

With regard to the private respondents' claim for the mid-year bonus, it is settled doctrine that the grant of a bonus is a prerogative, not an obligation, of the employer (*Traders Royal Bank vs. NLRC*, 189 SCRA 274). The matter of giving a bonus over and above the worker's lawful salaries and allowances is entirely dependent on the financial capability of the employer to give it. The fact that the company's business was no longer profitable (it was in fact moribund) plus the fact that the private respondents did not work up to the middle of the year (they were discharge in May 1988) were valid reasons for not granting them a mid-year bonus. Requiring the company to pay a mid-year bonus to them also would in effect penalize the company for its generosity to those workers who remained with the company "till the end" of its days. (*Traders Royal Bank vs. NLRC*, supra.) The award must therefore be deleted.

There is merit in the contention of petitioner Raul Locsin that the complaint against him should be dismissed. A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. There is no evidence in this case that Locsin acted in bad faith or with malice in carrying out the retrenchment and eventual closure of the company (*Garcia. vs. NLRC*, 153 SCRA 640), hence, he may not be held personally and solidarily liable with the company for the satisfaction of the judgment in favor of the retrenched employees.

WHEREFORE, the resolution of the NLRC ordering the petitioner company to pay separation pay differentials to the private respondents is **AFFIRMED**. However, the award of mid-year bonus to them is hereby deleted and set aside. Petitioner Raul Locsin is absolved from any personal liability to the respondent employees. No costs.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quason, JJ., concur.

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