

NASIPIT LUMBER COMPANY AND PHILIPPINE WALLBOARD CORPORATION, PETITIONERS, VS. NATIONAL ORGANIZATION OF WORKINGMEN (NOWM) AND ITS 30 MEMBERS, NAMELY: JUANITO LUNETA, MAXIMO SUSE,...

G.R. No. 146225. November 25, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 50579 affirming, with modification, the Decision[2] of the National Labor Relations Commission (NLRC), in NLRC Case No. M-003556-97 and the resolution[3] of the appellate court denying the petitioners' motion for reconsideration thereof for lack of merit.

The Antecedents

Petitioner Nasipit Lumber Company (Nasipit) and its affiliate, petitioner Philippine Wallboard Corporation (Wallboard), employed, among others, thirty (30) individual workers at the Nasipit Processing Plant. These workers were members of the respondent, the National Organization of Workingmen (NOWM), which belonged to the Western Agusan Workers Union (WAWU-ALU-TUCP) which, in turn, was the certified bargaining unit in the said plant.

Nasipit applied with the National Wage and Productivity Commission (NWPC) for exemption from compliance with Wage Order Nos. RT-01 and RT-01-A. The NWPC rendered judgment on March 8, 1993 denying the application. The corporation challenged the said decision in this Court, and the case was docketed as G.R. No. 113097.

On January 29, 1996, the officers of respondent NOWM, WAWU-ALU-TUCP, representatives of the Department of Labor and Employment (DOLE) and the National Conciliation Mediation Board (NCMB) met and discussed the complaint. The NOWM demanded for the balance of the health bonus of its members for the year 1994, 13[th] month-pay, and the remaining backlog payables amounting to P1,800,000.00. Although no agreement was arrived at by the conferees, the petitioners granted financial assistance to their rank-and-file employees, security guards and company staff on February 9, 1996.

On February 18, 1996, the General Membership of WAWU-ALU-TUCP, approved and issued Resolution No. 02-96 in which it was stated that except for the rank-and-file workers assigned to the St. Christopher Hospital, the thirty (30) members of respondent NOWM would not report for work effective February 19, 1996. The pertinent portion of the resolution reads:

RESOLVED AS THE GENERAL MEMBERSHIP DO HEREBY RESOLVED that if the Company still fails to pay its long accrued workers' benefits and salaries per CBA and Labor Code particularly the balance of Health Bonus for 1994, the balance of 13[th] Month Pay for 1995 and the remaining backlog payrolls

amounting to P1.8 M which were officially proposed and/or demanded by the union officers of WAWU and TULWU together with ALU representatives in the conference held on January 29, 1996 at Embassy Hotel, Butuan City on or before February 19, 1996, no more rank-and-file workers of the Company will report to work except the rank-and-file workers assigned at St. Christopher Hospital.[4]

The petitioners were informed of the said resolution in a Letter[5] dated February 19, 1996.

Meanwhile, the Office of the, DOLE, Regional Office No. 13 conducted an inspection of the offices of petitioner Nasipit and found that the corporation committed the following violations of labor standard law, to wit:

- a)
underpayment of 13[th] month pay from December for (sic) 1995;
- b)
non-payment of vacation leave 1995;
- c)
non-payment of holiday 1995;
- d)
non-payment of overtime pay;
- e)
non-payment of benefits under CBA;
- f)
unpaid wages from December 16-31, 1994 and January-December 1995.[6]

It appears that a Consolidated Statement of Income and Expenses was filed with the Bureau of Internal Revenue (BIR) on April 15, 1996 showing that petitioner Nasipit had a net loss of P13,489,031.00 in its operations for the year 1994, while its affiliate, petitioner Wallboard had a net loss of P8,754,366.00. It also appears that a Consolidated Statement of Income and Expenses was filed with the BIR on April 15, 1996 showing that for the year ending 1994, Wallboard incurred a net loss of P970,470.00 and for the year ending 1995, it incurred a net loss of P11,236,503.00.

In an Order dated September 4, 1996, the Regional Director directed petitioner Nasipit to pay to its employees P7,629,490.00 as unpaid wages. Petitioner Nasipit filed a motion for reconsideration which was denied. It appealed the Order to the DOLE, which was docketed as ROXIII-CI-002.

On October 24, 1997, the Secretary of Labor and Employment issued an Order[7] directing the Regional Director to elevate the entire records of the case to the DOLE, Caraga Regional Office, for appropriate proceedings and computation of the total sum rightly due to the workers.

In the meantime, respondents NOWM and its thirty (30) members filed a complaint on November 18, 1996 against the petitioners for illegal cessation of business operations, non-payment of separation pay, underpayment of salary and salary arrears for one (1) year before the Sub-Regional Arbitration Branch of the NLRC. The respondents claimed that the petitioners terminated their employment on the allegation that the latter's operations were suspended effective January 1996. According to the respondents, they should be reinstated to their former positions, conformably to Article 286 of the Labor Code of the Philippines.

Instead of filing their Answer and Position Paper, the petitioners filed a motion to dismiss the complaint on the following grounds:

- THE ISSUE OF ILLEGAL CESSATION OF OPERATIONS AND SEPARATION PAY IS THE SUBJECT OF ON-GOING NEGOTIATIONS BETWEEN NALCO & AFFILIATES MANAGEMENT AND WAWU-ALU-TUCP (LOCAL 381-NMR) WHICH IS THE RECOGNIZED COLLECTIVE BARGAINING AGENT OF ALL COVERED WORKERS/EMPLOYEES WITHIN THE NASIPIT PLANT BARGAINING UNIT.
- THE ISSUE OF NON-PAYMENT OF SALARY DIFFERENTIALS (P13.00 WAGE INCREASE) IS LIKEWISE BARRED BY A PRIOR PENDING ACTION BETWEEN THE SAME PARTIES FOR THE SAME CAUSE OR ISSUES BEFORE THE HONORABLE SUPREME COURT DOCKETED AS G.R. No. 113097 (Nasipit Lumber Co., Inc., et al., Petitioners, vs. National Wages and Productivity Commission [NWPC], et al.).
- THE ISSUE OF SALARY ARREARAGES IS ALSO BARRED BY A PRIOR ACTION BETWEEN THE SAME PARTIES FOR THE SAME CAUSE NOW PENDING BEFORE THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) DOCKETED AS ROXIII-LESD-0963-CI-001 (In the matter of Complaint Inspection of Nasipit Lumber Co., Inc.).
- COMPLAINANT NATIONAL ORGANIZATION OF WORKINGMEN (NOWM) HAS NO LEGAL PERSONALITY OR CAUSE OF ACTION AGAINST RESPONDENTS NALCO, ET AL., CONSIDERING THAT NALCO & AFFILIATES IS AN ORGANIZED ESTABLISHMENT WITH AN EXISTING CBA . WITH WAWU-ALU.[8]

On July 7, 1997, the labor arbiter dismissed the complaint for lack of merit on his finding that the petitioners had to suspend their operations because of the respondent employees' refusal to report for work:

As borne out by the records, respondents did not cause or initiate the cessation or suspension of respondent NALCO's operations. As aptly pointed out by respondents, NALCO desired to operate, but it cannot do so because on 18 February 1997 (sic), on account of a labor dispute, the general membership of WAWU-ALU-TUCP, the recognized CBA representative, approved Resolution No. 02-96 declaring that effective 19 February 1996, "No more rank-and-file workers of the company will report to work x x x."

The cessation/suspension of NALCO's operations was not management initiated. The deliberate refusal of the workers to work was stage-managed by the union hence Art. 286 of the Labor Code would surely not apply and the complainants are not entitled to separation pay because there was no constructive dismissal. ... In other words, complainants should have filed a case for non-payment of salaries or wages against the herein respondents if this was the case, rather than resort to a concerted action resulting in the stoppage of work/suspension of operations, as in the instant case and later on claim that they were constructively dismissed. They should not blame respondents for the consequential effects of their own acts.[9]

The respondents appealed the decision to the NLRC, which rendered a Decision on March 31, 1998 setting aside the decision of the labor arbiter and awarding separation pay to the thirty members of the respondent union.[10] The NLRC ruled that, contrary to the findings of the labor arbiter, the respondents were dismissed because of their failure to report for work after the petitioners refused to accede to their just demands for monetary benefits. The NLRC also found that the respondents had every reason not to report for work:

Complainant union points out, however, that Resolution No. 02-96 was a mere offshoot of the respondents' refusal to pay the complainant's salaries which at the time the Resolution was passed amounted to about P1.8 Million Pesos. This case originally included as one of the causes of action, the non-payment of salaries to members of the complaining union over a period of one (1) year. This was the principal gripe which brought about the approval of Resolution No. 02-96. Incidentally, this claim was dropped by complainants in this case

because it was [the] subject of another case pending before the Department of Labor and Employment under ROXIII-LS-ED-0963-CI-001.

Now, if the workers had not been paid their salaries for one (1) year, they have a justifiable reason not to continue working and opt to be paid their respective separation pay. An engine cannot run without gas, so to say. Similarly, the workers cannot be forced to work on an empty stomach.

If the Labor Arbiter below only tried to look behind the reason why the union and its members passed Resolution No. 02-96, he could have viewed the case in its proper perspective and ruled differently.[11]

The petitioners moved for the reconsideration of the decision, but the NLRC denied the same, holding that the separation pay was awarded as a matter of course to the respondents, being the relief necessarily consequential to its finding that the petitioners' cessation of operations was not due to any fault on the part of the respondents. The NLRC emphasized that the award was entirely different in nature from the labor standards case docketed as ROXIII-LS-ED-0963-CI-001, where the issue involved was non-payment of salaries.[12]

On August 26, 1998, the petitioners filed a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction with the CA, assailing the decision and resolutions of the NLRC on the following grounds: (a) the NLRC acted without or in excess of jurisdiction in ordering the petitioners to pay the 30 individual respondents separation pay, notwithstanding the position taken by WAWU-ALU-TUCP in its Resolution No. 02-96 not to report for work starting February 19, 1996 unless its members were paid their wages and benefits; and (b) assuming, arguendo, that the 30 individual respondents were entitled to separation pay, the NLRC acted without or in excess of jurisdiction in ordering the payment of separation pay equivalent to one (1) month salary for every year of service.[13]

On August 16, 2000, the CA affirmed the decision of the NLRC, with the modification that the respondents' separation pay was made equivalent to one-half (1/2)-month pay for every year of service, without prejudice to the outcome of G.R. No. 113097 entitled "Nasipit Lumber Co., Inc. et. al. vs. National Wages and Productivity Commission (NWPC), et. al." [14] The CA explained as follows:

We are not convinced. It must be borne in mind that the services of the private respondents were terminated in January 1996, a month before the other rank-and-file employees did not report to work. It seems to us that the petitioners made use of this event in order to avoid the fulfillment of their obligation to the private respondents. Moreover, the petitioners' insistence that the cessation of the operation was due to the union holds no water. As correctly observed by the union, such is a mere offshoot of the petitioners' refusal to make good their obligation to the workers concerned.

Furthermore, it is worth noting that after the petitioners' declaration of the temporary suspension of the operations, they gave financial assistance on February 9, 1996 in the following amounts: P300.00 for rank-and-file workers, P400.00 for the security guards, P500.00 for middle managerial employees and P750.00 for the company staff. Such unequal financial assistance added fuel to the already growing ire of the union due to the failure of the petitioners to give what was due them.[15]

The CA cited the rulings of this Court in *Industrial Timber Corporation v. NLRC*, [16] and *Sebuguero v. NLRC* [17] to support their contentions.

The petitioners filed a motion for reconsideration on September 14, 2000, which was denied by the CA per its Resolution dated November 28, 2000.

Hence, the present petition for review.

The petitioners fault the CA for its decision against them, alleging that-

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE INDIVIDUAL RESPONDENTS ARE ENTITLED TO SEPARATION PAY UNDER ARTICLE 283 OF THE LABOR CODE AND THE CASES OF INDUSTRIAL [TIMBER] CORPORATION VS. NLRC, 273 SCRA 200 AND SEBUGUERO V. NLRC, 248 SCRA 532.[18]

The petitioners aver that they did not terminate the employment of the individual respondents, and that they merely suspended their operations. According to the petitioners, such suspension of operations was based on their Comparative Statement of Income and Expenses for the year endings 1994 and 1995, which showed that they incurred net losses, and that such suspension of operations was sanctioned by Article 286 of the Labor Code.[19] Thus:

It is a fact that in January 1996, petitioners temporarily suspended their operations due to serious business reverses, which business reverses were never questioned by petitioners. In fact, the petitioners' Comparative Statement of Income and Expenses For the Years Ended December 31, 1995 and 1994, hereto attached as Annex "G" (for Nasipit Lumber Company) and ANNEX "H" (for Philippine Wallboard Corporation), show that both petitioners suffered a NET LOSS in 1995 of:

Nasipit Lumber Company - P13,540,816.00

Philippine Wallboard Corporation - P1 1,742,013.00[20]

Further, the petitioners maintain that their operations did not cease because of the fact that the rank-and-file workers did not report for work; rather it arose from serious business reverses. Likewise, their payments of financial assistance to the employees had no bearing in the present case.[21]

In addition, the petitioners assert that the rulings of this Court in *Industrial Timber Corporation v. NLRC*[22] and *Sebuguero v. NLRC*[23] have no application because the former does not involve the closure of operations; while the latter case, if upheld, would in effect place premium on the individual respondents' refusal to report to work.[24] The petitioners insist that contrary to the ruling of the Court in the *Sebuguero* case, when the temporary suspension of operations of a company exceeds six (6) months, its employees are entitled to separation pay, thus:

While it may be true that even after six (6) months from January 1996, the individual respondents were without work, it was of their own doing and not that of petitioners. If the individual respondents themselves chose to no longer work pursuant to Resolution No. 02-96, how can their not reporting for work for a period exceeding six (6) months give rise to their being paid separation pay? By awarding them separation pay, the Honorable Court of Appeals placed a premium on the individual respondents' refusal to report for work.

With the foregoing, the petitioners conclude that there is then absolutely no basis in applying the provisions of Article 283 of the Labor Code to justify the payment of separation pay to the individual respondents.[25]

In their comment on the petition, the respondents aver that the petitioners failed to adduce convincing evidence to justify the suspension of their operations. In fact, the respondents assert, the petitioners even gave financial assistance to the rank-and-file employees, security guards, middle managerial employees and the company staff.

The issues raised by the parties in this case are both factual and legal, to wit: (a) whether the petitioners suspended their operations on account of considerable losses incurred in the years 1994 and 1995; (b) whether the respondents were illegally dismissed by the petitioners; (c) whether the respondents are entitled to separation pay; and (d) if in the affirmative, the amount of entitlement of each individual respondent by way of separation pay and other monetary benefits.

Although only legal issues may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court, the Court is not precluded from delving into and resolving issues of facts, particularly if the findings of the

labor arbiter are inconsistent with those of the NLRC and the CA; if the findings of the NLRC and the appellate court are contrary to the evidence and the record; and in order to give substantial justice to the parties. Indeed, Section 6, Rule 45 of the 1997 Rules of Civil Procedure provides:

SEC. 6. Review discretionary. - A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:

(a)

When the court a quo has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or

(b)

When the court a quo has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

On the first issue, the petitioners aver that they suspended their operations in January 1996 due to serious business reverses as evidenced by their Statements of Income and Expenses for the years 1994 and 1995. For their part, the respondents aver that the petitioners failed to prove convincingly the factual basis for the suspension of their operations. On the other hand, the labor arbiter ruled that the petitioners' suspension of their operations in February 1996 was not management initiated, but was triggered by the refusal of the respondents to report for work due to the petitioners' failure to give them their wages and other monetary benefits. However, the findings of the labor arbiter were rejected by the NLRC and the CA. The CA ruled on the matter as follows:

We are not convinced. It must be borne in mind that the services of the private respondents were terminated in January 1996, a month before the other rank-and-file employees did not report to work. It seems to us that the petitioners made use of this event in order to avoid the fulfillment of their obligation to the private respondents. Moreover, the petitioners' insistence that the cessation of the operation was due to the union holds no water. As correctly observed by the union, such is a mere offshoot of the petitioners' refusal to make good their obligation to the workers concerned.

Furthermore, it is worth noting that after the petitioners' declaration of the temporary suspension of the operations, they gave financial assistance on February 9, 1996 in the following amounts: P300.00 for rank-and-file workers, P400.00 for the security guards, P500.00 for middle managerial employees and P750.00 for the company staff. Such unequal financial assistance added fuel to the already growing ire of the union due to the failure of the petitioners to give what was due them.[26]

We find that, based on the records, the petitioners merely downscaled their operations in 1995, and did not suspend the same because of economic difficulties. The respondents continued to work at the Nasipit Processing Plant although each of them received a monthly pay of only P600.00. The petitioners dismissed the respondents when the latter refused to report for work. We agree with the NLRC and the CA that the petitioners' claim of suspending operations in 1994 and 1995 was merely an afterthought to justify their dismissal of the respondents. It must be stressed that the petitioners obstinately refused to heed and agree to the respondents' just demands to pay their monetary benefits and backlog wages amounting to P1,800,000.00, which ultimately led to the latter's dismissal from employment.

We agree with the contention of the petitioners that under Article 286 of the Labor Code, an employer may bona fide suspend the operation of its business for a period of not exceeding six (6) months. In such a case, there is no termination of the employment of the employees, but only a temporary displacement. When the suspension of the

business operations exceeds six (6) months, then the employment of the employees would be deemed terminated. On the other hand, if the operation of the business is resumed within six (6) months from the bona fide suspension thereof, it shall be the duty of the employer to reinstate his employees to their former positions without loss of seniority rights, if the latter would indicate their desire to resume work within one (1) month from such resumption of operations, conformably to Article 286 of the Labor Code which reads:

Art. 286. When employment not deemed terminated - The bona fide suspension of the operations of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military service or civic duty shall not terminate employment.

In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

Closure or suspension of operations for economic reasons is, therefore, recognized as a valid exercise of management prerogative. The determination to cease or suspend operations is a prerogative of management, which the State does not usually interfere with as no business or undertaking is required to continue operating at a loss simply because it has to maintain its workers in employment. Such an act would be tantamount to a taking of property without due process of law.[27]

However, the burden of proving, with sufficient and convincing evidence, that such closure or suspension is bona fide falls upon the employer.[28] As we ruled in *Somerville Stainless Steel Corporation v. NLRC*:[29]

Considering the severe consequences occasioned by retrenchment on the livelihood of the employee(s) to be dismissed, and the avowed policy of the State - under Sec. 3, Art. XIII of the Constitution, and Art. 3 of the Labor Code - to afford full protection to labor and to assure the employee's right to enjoy security of tenure, the Court reiterates that "not every loss incurred or expected to be incurred by a company will justify retrenchment. The losses must be substantial and the retrenchment must be reasonably necessary to avert such losses. Settled is the rule that the employer bears the burden of proving this allegation of the existence or imminence of substantial losses, which by its nature is an affirmative defense. It is the duty of the employer to prove with clear and satisfactory evidence that legitimate business reasons exist to justify retrenchment. Failure to do so "inevitably results in a finding that the dismissal is unjustified." And the determination of whether an employer has sufficiently and successfully discharged this burden of proof "is essentially a question of fact for the Labor Arbiter and the NLRC to determine."

Otherwise, such ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures to ease out employees.[30]

In the present case, the petitioners failed to prove with convincing evidence a bona fide suspension of their operations in 1994, 1995 and even in January 1996 due to acute economic losses in their operations.

First. The only evidence adduced by the petitioners that they sustained huge losses in their operations for 1994 and 1995 were the xerox copies of unsigned and unverified Comparative Statements of Income and Expenses for the Years Ended December 31, 1994 and 1995 filed with the BIR only on April 15, 1996. The petitioners failed to submit any other documents to support the said Comparative Statements. Thus, such statements are barren of probative weight.

Second. Despite their alleged huge losses in 1994 and 1995, the petitioners continued employing the respondents, although each of them received a monthly salary of only P600.00.

Third. The petitioners' claim that they were ready to resume operations in January 1996 were it not for the respondent union's issuance of Resolution No. 02-96 belies their contention that they sustained huge losses in

their operations in 1994 and 1995. There is no evidence on record that the petitioners ever gave notice to their employees of the suspension of their operations, and, thereafter, that they were ready to resume such operation in January 1996.

Fourth. The CA declared that the petitioners even gave the following benefits to their employees on February 9, 1996; financial assistance of P300.00 for the rank-and-file employees; P400.00 for the security guards; P500.00 for middle managerial employees; and P750.00 for the company staff. The petitioners admitted these findings of the appellate court.

We note that the award of separation pay by the CA to the respondents was without prejudice to the ruling of this Court in *Nasipit Lumber Company, et al. v. National Wages and Productivity Commission, et al.*[31] However, this Court, as early as April 27, 1998, had already promulgated its decision dismissing the petition in the said case.[32] The decision of the CA has to be modified.

IN LIGHT OF THE FOREGOING, the petition is DENIED for lack of merit. The decision of the Court of Appeals is AFFIRMED with MODIFICATION. The petitioners are DIRECTED to pay, jointly and severally, each of the individual private respondents separation pay equivalent to one-half (1/2) month pay for every year of service. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Eloy R. Bello, Jr. (retired) and Elvi John S. Asuncion, concurring.

[2] RAB-10-11-00322-96 for "illegal cessation of business operations, non-payment of separation pay, underpayment of salary, salary differentials, salary arrears."

[3] Rollo, p. 23.

[4] CA Rollo, p. 26.

[5] Id. at 25.

[6] Id. at 34.

[7] Id. at 36.

[8] Id. at 29.

[9] Rollo, pp. 30-31.

[10] CA Rollo, Annex "F."

[11] Id. at 34-35.

[12] Rollo, p. 36.

[13] CA Rollo, p. 9

[14] Rollo, p. 22.

[15] Id. at 20.

[16] 243 SCRA 200 (1995).

[17] 248 SCRA 532 (1995).

[18] *Id.* at 6.

[19] *Rollo*, p. 9

[20] *Id.* at 7.

[21] *Id.*

[22] *Supra.*

[23] *Supra.*

[24] *Id.* at 10.

[25] *Id.*

[26] *Rollo*, p. 20.

[27] *Industrial Timber Corporation v. NLRC (5th Division)*, 273 SCRA 200 (1997).

[28] *Ibid.*

[29] 287 SCRA 420 (1998).

[30] *J.A. T. General Services, et al. v. NLRC*, G.R. No. 148340, January 26, 2004.

[31] 289 SCRA 667 (1998).

[32] *Ibid.*

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