

**CAPITOL MEDICAL CENTER, INC. AND DR. THELMA
NAVARETTE-CLEMENTE, PETITIONERS, VS. DR. CESAR E. MERIS,
RESPONDENT.**

G.R. NO. 155098. September 16, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Subject of the present appeal is the Court of Appeals Decision[1] dated February 15, 2002 reversing the NLRC Resolution[2] dated January 19, 1999 and Labor Arbiter Decision[3] dated April 28, 1998 which both held that the closure of the Industrial Service Unit of the

Capitol Medical Center, Inc., resulting to the termination of the services of herein respondent Dr. Cesar Meris as Chief thereof, was valid.

On January 16, 1974, petitioner Capitol Medical Center, Inc. (Capitol) hired Dr. Cesar Meris (Dr. Meris),[4] one of its stockholders,[5] as in charge of its Industrial Service Unit (ISU) at a monthly salary of P10,270.00.

Until the closure of the ISU on April 30, 1992,[6] Dr. Meris performed dual functions of providing medical services to Capitol's more than 500 employees and health workers as well as to employees and workers of companies having retainer contracts with it.[7]

On March 31, 1992, Dr. Meris received from Capitol's president and chairman of the board, Dr. Thelma Navarette-Clemente (Dr. Clemente), a notice advising him of the management's decision to close or abolish the ISU and the consequent termination of his services as Chief thereof, effective April 30, 1992.[8] The notice reads as follows:

March 31, 1992

Dr. Cesar E. Meris Chief,
Industrial Service Unit
Capitol Medical Center

Dear Dr. Meris:

Greetings!

Please be formally advised that the hospital management has decided to abolish CMC's Industrial Service Unit as of April 30, 1992 in view of the almost extinct demand for direct medical services by the private and semi-government corporations in providing health care for their employees. Such a decision was arrived at, after considering the existing trend of industrial companies allocating their health care requirements to Health Maintenance Organizations (HMOs) or thru a tripartite arrangement with medical insurance carriers and designated hospitals.

As a consequence thereof, all positions in the unit will be decommissioned at the same time industrial services

[are] deactivated. In that event, you shall be entitled to return to your private practice as a consultant staff of the institution and will become eligible to receive your retirement benefits as a former hospital employee. Miss Jane Telan on the other hand will be transferred back to Nursing Service for reassignment at the CSR.

We wish to thank you for your long and faithful service to the institution and hope that our partnership in health care delivery to our people will continue throughout the future. Best regards.

Very truly yours,

(SGD.) DR. THELMA NAVARETTE-CLEMENTE[9] (Emphasis and underscoring supplied)

Dr. Meris, doubting the reason behind the management's decision to close the ISU and believing that the ISU was not in fact abolished as it continued to operate and offer services to the client companies with Dr. Clemente as its head and the notice of closure was a mere ploy for his ouster in view of his refusal to retire despite Dr. Clemente's previous prodding for him to do so,[10] sought his reinstatement but it was unheeded.

Dr. Meris thus filed on September 7, 1992 a complaint against Capitol and Dr. Clemente for illegal dismissal and reinstatement with claims for backwages, moral and exemplary damages, plus attorney's fees.[11]

Finding for Capitol and Dr. Clemente, the Labor Arbiter held that the abolition of the ISU was a valid and lawful exercise of management prerogatives and there was convincing evidence to show that ISU was being operated at a loss.[12] The decretal text of the decision reads:

WHEREFORE, judgment is hereby rendered dismissing the complaint. Respondents are however ordered to pay complainant all sums due him under the hospital retirement plan.

SO ORDERED.[13] (Emphasis supplied)

On appeal by Dr. Meris, the National Labor Relations Commission (NLRC) modified the Labor Arbiter's decision. It held that in the exercise of Capitol's management prerogatives, it had the right to close the ISU even if it was not suffering business losses in light of Article 283 of the Labor Code and jurisprudence.[14]

And the NLRC set aside the Labor Arbiter's directive for the payment of retirement benefits to Dr. Meris because he did not retire. Instead, it ordered the payment of separation pay as provided under Article 283 as he was discharged due to closure of ISU, to be charged against the retirement fund.[15]

Undaunted, Dr. Meris elevated the case to the Court of Appeals via petition for review[16] which, in the interest of substantial justice, was treated as one for certiorari.[17]

Discrediting Capitol's assertion that the ISU was operating at a loss as the evidence showed a continuous trend of increase in its revenue for three years immediately preceding Dr. Meris's dismissal on April 30, 1992,[18] and finding that the ISU's "Analysis of Income and Expenses" which was prepared long after Dr. Meris's dismissal, hence, not yet available, on or before April 1992, was tainted with irregular entries, the appellate court held that Capitol's evidence failed to meet the standard of a sufficient and adequate proof of loss necessary to justify the abolition of the ISU.[19]

The appellate court went on to hold that the ISU was not in fact abolished, its operation and management having merely changed hands from Dr. Meris to Dr. Clemente; and that there was a procedural lapse in terminating the services of Dr. Meris, no written notice to the Department of Labor and Employment (DOLE) of the ISU abolition having been made, thereby violating the requirement embodied in Article 283.[20]

The appellate court, concluding that Capitol failed to strictly comply with both procedural and substantive due process, a condition sine qua non for the validity of a case of termination,[21] held that Dr. Meris was illegally

dismissed. It accordingly reversed the NLRC Resolution and disposed as follows:

IN VIEW OF ALL THE FOREGOING, the assailed resolutions of the NLRC are hereby set aside, and another one entered –

1 – declaring illegal the dismissal of petitioner as Chief of the Industrial Service Unit of respondent Medical Center;

2 – ordering respondents to pay petitioner a) backwages from the date of his separation in April 1992 until this decision has attained finality;

b) separation pay in lieu of reinstatement computed at the rate of one (1) month salary for every year of service with a fraction of at least six (6) months being considered as one year;

c) other benefits due him or their money equivalent;

d) moral damages in the sum of P50,000.00;

e) exemplary damages in the sum of P50,000.00; and

f) attorney's fees of 10% of the total monetary award payable to petitioner.

SO ORDERED.[22]

Hence, the present petition for review assigning to the appellate court the following errors:

I

. . . IN OVERTURNING THE FACTUAL FINDINGS AND CONCLUSIONS OF BOTH THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE LABOR ARBITER.

II

. . . IN HOLDING, CONTRARY TO THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION, THAT THE INDUSTRIAL UNIT (ISU) WAS NOT INCURRING LOSSES AND THAT IT WAS NOT IN FACT ABOLISHED.

III

. . . IN NOT UPHOLDING PETITIONERS' MANAGEMENT PREROGATIVE TO ABOLISH THE INDUSTRIAL SERVICE UNIT (ISU).

IV

. . . IN REQUIRING PETITIONERS TO PAY RESPONDENT BACKWAGES AS WELL AS DAMAGES AND ATTORNEY'S FEES.[23]

Capitol questions the appellate court's deciding of the petition of Dr. Meris on the merits, instead of merely determining whether the administrative bodies acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

The province of a special civil action for certiorari under Rule 65, no doubt the appropriate mode of review by the Court of Appeals of the NLRC decision,[24] is limited only to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[25] In light of the merits of Dr. Meris' claim, however, the relaxation by the appellate court of procedural technicality to give way to a substantive determination of a case, as this Court has held in several cases,[26] to subserve the interest of justice, is in order.

Capitol argues that the factual findings of the NLRC, particularly when they coincide with those of the Labor Arbiter, as in the present case, should be accorded respect, even finality.[27]

For factual findings of the NLRC which affirm those of the Labor Arbiter to be accorded respect, if not finality, however, the same must be sufficiently supported by evidence on record.[28] Where there is a showing that such findings are devoid of support, or that the judgment is based on a misapprehension of facts,[29] the lower tribunals' factual findings will not be upheld.

As will be reflected in the following discussions, this Court finds that the Labor Arbiter and the NLRC overlooked some material facts decisive of the instant controversy.

Capitol further argues that the appellate court's conclusion that the ISU was not incurring losses is arbitrary as it was based solely on the supposed increase in revenues of the unit from 1989-1991, without taking into account the "Analysis of Income and Expenses" of ISU from July 1, 1990 to July 1, 1991 which shows that the unit operated at a loss;[30] and that the demand for the services of ISU became almost extinct in view of the affiliation of industrial establishments with HMOs such as Fortunecare, Maxicare, Health Maintenance, Inc. and Philamcare and of tripartite arrangements with medical insurance carriers and designated hospitals,[31] and the trend resulted in losses in the operation of the ISU.

Besides, Capitol stresses, the health care needs of the hospital employees had been taken over by other units without added expense to it;[32] the appellate court's decision is at best an undue interference with, and curtailment of, the exercise by an employer of its management prerogatives;[33] at the time of the closure of the ISU, Dr. Meris was already eligible for retirement under the Capitol's retirement plan; and the appellate court adverted to the alleged lack of notice to the DOLE regarding Dr. Meris's dismissal but the latter never raised such issue in his appeal to the NLRC or even in his petition for review before the Court of Appeals, hence, the latter did not have authority to pass on the matter.[34]

Work is a necessity that has economic significance deserving legal protection. The social justice and protection to labor provisions in the Constitution dictate so.

Employers are also accorded rights and privileges to assure their self-determination and independence and reasonable return of capital. This mass of privileges comprises the so-called management prerogatives. Although they may be broad and unlimited in scope, the State has the right to determine whether an employer's privilege is exercised in a manner that complies with the legal requirements and does not offend the protected rights of labor. One of the rights accorded an employer is the right to close an establishment or undertaking.

The right to close the operation of an establishment or undertaking is explicitly recognized under the Labor Code as one of the authorized causes in terminating employment of workers, the only limitation being that the closure must not be for the purpose of circumventing the provisions on termination of employment embodied in the Labor Code.

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 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 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. (Emphasis and underscoring supplied)

The phrase "closures or cessation of operations of establishment or undertaking" includes a partial or total closure or cessation.[35]

x x x Ordinarily, the closing of a warehouse facility and the termination of the services of employees there assigned is a matter that is left to the determination of the employer in the good faith exercise of its management prerogatives. The applicable law in such a case is Article 283 of the Labor Code which permits 'closure or cessation of operation of an establishment or undertaking not due to serious business losses or financial reverses,' which, in our reading includes both the complete cessation of operations and the cessation of only part of a company's business. (Emphasis supplied)

And the phrase "closures or cessation x x x not due to serious business losses or financial reverses" recognizes the right of the employer to close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses, as long as he pays his employees their termination pay in the amount corresponding to their length of service.[36]

It would indeed be stretching the intent and spirit of the law if a court were to unjustly interfere in management's prerogative to close or cease its business operations just because said business operation or undertaking is not suffering from any loss.[37] As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement, such exercise will be upheld.[38]

Clearly then, the right to close an establishment or undertaking may be justified on grounds other than business losses but it cannot be an unbridled prerogative to suit the whims of the employer.

The ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be bona fide in character.[39] And the burden of proving such falls upon the employer.[40]

In the case at bar, Capitol failed to sufficiently prove its good faith in closing the ISU.

From the letter of Dr. Clemente to Dr. Meris, it is gathered that the abolition of the ISU was due to the "almost extinct demand for direct medical service by the private and semi-government corporations in providing health care for their employees;" and that such extinct demand was brought about by "the existing trend of industrial companies allocating their health care requirements to Health Maintenance Organizations (HMOs) or thru a tripartite arrangement with medical insurance carriers and designated hospitals."

The records of the case, however, fail to impress that there was indeed extinct demand for the medical services rendered by the ISU. The ISU's Annual Report for the fiscal years 1986 to 1991, submitted by Dr. Meris to Dr. Clemente, and uncontroverted by Capitol, shows the following:

Fiscal Year

No. of Industrial Patients

No of

Companies

No. of Capitol Employees

1986-1987

466 11

1445

1987-1988

580 17

1707

1988-1989

676 14

1888

1989-1990

571 16

2731

1990-1991

759 18

2320[41]

If there was extinct demand for the ISU medical services as what Capitol and Dr. Clemente purport to convey, why the number of client companies of the ISU increased from 11 to 18 from 1986 to 1991, as well as the number of patients from both industrial corporations and Capitol employees, they did not explain.

The "Analysis of Income and Expenses" adduced by Capitol showing that the ISU incurred losses from July 1990 to February 1992, to wit:

July 1, 1990 to

June 30, 1991 July 1, 1991 to

February 29, 1992

INCOME P16, 772.00 P35, 236.00

TOTAL EXPENSES P225, 583.70 P169,244.34

NET LOSS P(208,811.70) P(134,008.34),[42]

was prepared by its internal auditor Vicenta Fernandez,[43] a relative of Dr. Clemente, and not by an independent external auditor, hence, not beyond doubt. It is the financial statements audited by independent external auditors which constitute the normal method of proof of the profit and loss performance of a company.[44]

At all events, the claimed losses are contradicted by the accounting records of Capitol itself which show that ISU had increasing revenue from 1989 to 1991.

Year

In-Patient

Out-Patient

Total Income

1989

P230,316.38

P 79,477.50

P309,793.88

1990

P278,438.10

P124,256.65

P402,694.75

1991

P305,126.35

P152,920.15

P458,046.50[45]

The foregoing disquisition notwithstanding, as reflected above, the existence of business losses is not required to justify the closure or cessation of establishment or undertaking as a ground to terminate employment of employees. Even if the ISU were not incurring losses, its abolition or closure could be justified on other grounds like that proffered by Capitol – extinct demand. Capitol failed, however, to present sufficient and convincing evidence to support such claim of extinct demand. In fact, the employees of Capitol submitted a petition[46] dated April 21, 1992 addressed to Dr. Clemente opposing the abolition of the ISU.

The closure of ISU then surfaces to be contrary to the provisions of the Labor Code on termination of employment.

The termination of the services of Dr. Meris not having been premised on a just or authorized cause, he is entitled to either reinstatement or separation pay if reinstatement is no longer viable, and to backwages.

Reinstatement, however, is not feasible in case of a strained employer-employee relationship or when the work or position formerly held by the dismissed employee no longer exists, as in the instant case.[47] Dr. Meris is thus entitled to payment of separation pay at the rate of one (1) month salary for every year of his employment, with a fraction of at least six (6) months being considered as one(1) year,[48] and full backwages from the time of his dismissal from April 30, 1992 until the expiration of his term as Chief of ISU or his mandatory retirement, whichever comes first.

The award by the appellate court of moral damages,[49] however, cannot be sustained, solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and

proven to warrant the grant of moral damages under the Civil Code, such as that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and of course, that social humiliation, wounded feelings, grave anxiety, etc., resulted therefrom.[50] Such circumstances, however, do not obtain in the instant case. More specifically on bad faith, lack of it is mirrored in Dr. Clemente's offer to Dr. Meris to be a consultant of Capitol, despite the abolition of the ISU.

There being no moral damages, the award of exemplary damages does not lie.[51]

The award for attorney's fees, however, remains.[52]

WHEREFORE, the decision of the Court of Appeals dated February 15, 2002 is hereby AFFIRMED with MODIFICATION. As modified, judgment is hereby rendered ordering Capitol Medical Center, Inc. to pay Dr. Cesar Meris separation pay at the rate of One (1) Month salary for every year of his employment, with a fraction of at least Six (6) Months being considered as One (1) Year, full backwages from the time of his dismissal from April 30, 1992 until the expiration of his term as Chief of the ISU or his mandatory retirement, whichever comes first; other benefits due him or their money equivalent; and attorney's fees.

Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 25-32.

[2] Id. at 52-65.

[3] Id. at 70-74.

[4] Dr. Meris is a doctor of medicine and a trained specialist who earned his doctoral degree at the University of the Philippines, Manila. He also undertook post-graduate studies in the United States. Upon completion of his studies abroad, he underwent surgical residency for two (2) years from 1970 to 1972 at petitioner hospital. Thereafter, he engaged in private medical practice for one (1) year.

[5] Rollo. at 26.

[6] Ibid.

[7] Id. at 37.

[8] Id. at 26.

[9] Records at 16.

[10] Rollo at 27.

[11] Records at 2.

[12] Rollo at 72.

[13] Id. at 74.

[14] Id. at 60-61.

[15] Id. at 63-64. See also Rollo at 80.

[16] Id. at 35.

[17] Id. at 28.

[18] Id. at 29.

[19] Id. at 30.

[20] Ibid.

[21] Id. at 31.

[22] Id. at 31-32.

[23] Id. at 15-19.

[24] *St. Martin Funeral Home v. NLRC*, 295 SCRA 494, 507-508 (1998).

[25] *Land Bank of the Philippines v. Court of Appeals*, 409 SCRA 455, 482 (2003).

[26] Vide: *EMCO Plywood Corporation v. Abelgas*, 427 SCRA 496, 515-516 (2004); See also *El Toro Security Agency, Inc. v. NLRC*, 256 SCRA 363, 366-367 (1996); *Mejares v. Reyes*, 254 SCRA 425, 431 (1996); *Solicitor General v. Metropolitan Manila Authority*, 204 SCRA 837, 842 (1991); *Patricio v. Leviste*, 172 SCRA 774, 779-780 (1989).

[27] Rollo at 15.

[28] Vide: *NYK International Knitwear Corporation Philippines v. NLRC*, 397 SCRA 607, 615-616 (2003); *Philippine Airlines v. Pascua*, 409 SCRA 195, 204 (2003).

[29] *EMCO Plywood Corporation v. Abelgas*, *supra*.

[30] Rollo at 16-17.

[31] Such as *Fortunecare*, *Maxicare*, *Health Maintenance, Inc.* and *Philamcare*.

[32] Rollo at 17.

[33] Id. at 18.

[34] Id. at 19.

[35] *Philippine Tobacco Flue-Curing and Redrying Corporation v. National Labor Relations Commission*, 300 SCRA 37, 55 (1998) citing *Coca-Cola Bottlers (Phils.), Inc. v. NLRC*, 194 SCRA 592, 599 (1991).

[36] *Catatista v. National Labor Relations Commission*, 247 SCRA 46, 54 (1995). See also *Industrial Timber Corporation v. National Labor Relations Commission*, 273 SCRA 200, 210 (1997); *J.A.T. General Services v. National Labor Relations Commission*, 421 SCRA 78, 88 (2004).

[37] *Industrial Timber Corporation v. National Labor Relations Commission*, *supra*.

[38] *J.A.T. General Services v. National Labor Relations Commission* *supra* at 89.

[39] Vide: *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*, 414 SCRA 411, 416 (2003); *Catatista v. NLRC*, *supra* at 56; *Industrial Timber Corporation v. NLRC* (5th Division), *supra* at 210.

[40] J.A.T. General Services v. National Labor Relations Commission, supra at 87; Industrial Timber Corporation v. NLRC (5[th] Division), supra at 210.

[41] Records at 20. See also at 34-48.

[42] Id. at 92; Exhibit 3-A.

The records, however, reveal that the foregoing income, as undisputed by Capitol, came exclusively from consultation fees. Dr. Meris asserts that the ISU provided free consultation and treatment to employees and workers of Capitol while industrial patients were charged very low to attract more industrial companies, thus the low income. The stated income is not inclusive of patient's availment of medical facilities of the hospital as referred by Dr. Meris.

[43] Rollo at 43.

[44] Dela Salle University v. Dela Salle University Employees Association, 330 SCRA 363, 383 (2000) citing Saballa v. NLRC, 260 SCRA 697, 709 (1996); Revidad v. NLRC, 245 SCRA 356, 367 (1995).

[45] Records at 80-83. The consolidated income includes those derived from consultation fees and referrals made by Dr. Meris for X-ray examination, laboratory, ultrasound and other facilities available at the hospital. Some patients were referred for hospitalization while others were sent to other medical specialists. See Reply of Respondents at Records 67.

[46] Id. at 577.

[47] Bongar v. NLRC, 294 SCRA 536, 540-541 (1998).

[48] Caliguia v. NLRC, 264 SCRA 110, 124 (1996).

[49] Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[50] Cocoland Development Corporation v. NLRC, 259 SCRA 51, 63 (1996) citing Primero v. Intermediate Appellate Court, 156 SCRA 435, 444 (1987).

[51] There is no sufficient and convincing evidence that Capitol acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner in terminating the employment of Dr. Meris. See Article 2232 of the New Civil Code.

[52] Austria v. NLRC, 310 SCRA 293, 304 (1999).

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