

**ROLANDO ANGELES, PEPITO DE GUZMAN, IMELDA CARRERA,
JIMMY ELIANG, LIBERATO FLORES, LEONILO BACANI, MARISSA
SAN PEDRO AND DELFIN SAN PEDRO, JR., PETITIONERS, VS.
POLYTEX DESIGN, I...**

G.R. No. 157673. October 15, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Petitioners' loss of employment is not disputed. The bone of contention in this case is whether or not such loss was for just cause.

Petitioners were eight of the 92 workers assigned at the Weaving Department or Finishing Department of Polytex Design, Inc. (Polytex). On April 26, 1999, the building where they worked was gutted by fire, leaving nothing but rubble, resulting in cessation of work. After negotiations between the company's union, KAMAPI, and the management, it was agreed that the employees shall be paid for each year of service, the equivalent of 9 days salary for employees with 9 years and below of service; 10 days salary for employees with 10 to 15 years of service; and 13 days salary for employees with more than 15 years of service.

Petitioners did not accept the terms. They were later informed by Polytex, through a letter dated May 21, 1999, that it has decided to close down the establishment due to the extreme damage it suffered from the fire.

Petitioners then filed the illegal dismissal complaint against Polytex and/or Michael Cua and Rudy Gabiola (respondents) with the Labor Arbiter on May 26, 1999. Thereafter, Polytex filed its Termination Report with the Department of Labor and Employment (DOLE) in July 1999.

In a Decision dated May 15, 2000, the Labor Arbiter denied petitioners' complaint for illegal dismissal; however, it ordered Polytex to award separation pay and 13th month pay in favor of petitioners. According to the Labor Arbiter, there was no illegal dismissal since the company's closure was beyond the control of its owners and stockholders, as it was due to a force majeure.

Petitioners appealed to the National Labor Relations Commission (NLRC) which affirmed in toto the Labor Arbiter's Decision and dismissed the appeal, per Resolution rendered on September 29, 2000.

Petitioners brought their case to the Court of Appeals (CA) via certiorari under Rule 65 of the Rules of Court.

At first, the CA overruled the findings of the Labor Arbiter, as affirmed by the NLRC, and ruled that respondents' alleged business losses were not substantiated by competent evidence, and that respondent violated the 30-day notice rule. Thus, in its March 13, 2002 Decision,[1] the CA granted the petition, and modified the NLRC and Labor Arbiter's Decision by ordering Polytex to pay petitioners separation pay equivalent to one month for every year of service, their unpaid salary, and their proportionate 13th month pay, with full backwages from the time they were terminated until finality of the decision.

Upon motion for reconsideration of respondents, the CA partially reconsidered its March 13, 2002 Decision, and rendered its Resolution[2] dated July 12, 2002, whereby it entered a new decision reinstating the Labor Arbiter's Decision in full, to wit:

WHEREFORE, foregoing considered, our decision dated March 13, 2002 is partially reconsidered and a new decision is entered "reinstating the decision in full" of the Labor Arbiter as affirmed by the NLRC which states: "WHEREFORE, in view of the foregoing, the complaint for illegal dismissal and unfair labor practice is hereby DENIED. However, respondents are hereby ordered to pay the eight (8) individual complainants their separation pay or financial assistance as well as their proportionate 13[th] month pay for the year 1999 in the amounts opposite their respective names:

Separation Pay

13[th] Month Pay

1) Rolando Angeles

P12,923.19

P1,959.54

2) Pepito de Guzman

P14,769.36

P1,735.98

3) Imelda Carrera

P25,080.00

P2,057.49

4) Jimmy Eliang

P12,879.09

P1,910.80

5) Liberato Flores

P20,713.00

P2,041.27

6) Leonilo Bacani

P14,913.36

P2,065.89

7) Marissa San Pedro

P22,990.00

P1,982.58

8) Delfin San Pedro, Jr.

P29,260.00

P1,840.94

All other claims are hereby DISMISSED for lack of merit.

SO ORDERED.”

SO ORDERED.[3]

This time, the CA sustained the findings of the Labor Arbiter and the NLRC that petitioners’ dismissal was for cause. It also ruled that there was substantial compliance with the 30-day notice requirement inasmuch as it was done two months from the date of the fire, not to mention that there was already a negotiation between the company’s union, KAMAPI, and management.

Petitioners filed a Motion for Reconsideration but this was denied by the CA in its Resolution[4] dated March 19, 2003.

Hence, herein petition for review on certiorari on the sole ground that:

THE HONORABLE COURT OF APPEALS FAILED TO APPLY EXISTING LAW AND JURISPRUDENCE WHEN IT REVERSED ITS OWN DECISION, THEREBY COMMITTING GRAVE ABUSE OF DISCRETION.[5]

The petition is without merit.

Under Article 283 of the Labor Code, closure or cessation of operation of the establishment is an authorized cause for terminating an employee, viz.:

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 Department of Labor and Employment at least one (1) month before the intended date thereof. x x x 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 to 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.

Petitioners cite *Del Mar Domestic Enterprises v. National Labor Relations Commission*. [6] They argue that respondents failed to present sufficient and convincing evidence showing such business losses which will justify the closure of the business. Petitioners also argue that there was no substantial compliance with the 30-day termination notice rule.

While business reverses or losses are recognized by law as an authorized cause for terminating employment, it is an essential requirement that alleged losses in business operations must be proven convincingly; otherwise, said ground for termination would be susceptible to abuse by scheming employers, who might be merely feigning business losses or reverses in their business ventures in order to ease out employees. [7]

While indeed there is absolutely nothing on record that the fire totally wiped out respondents of their financial ability to continue with the company’s operations; or that the losses they incurred were serious, substantial, and actual as required in *Del Mar*; nonetheless, an employer is not prevented from exercising its prerogative to close shop so long as it is done 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.[8] In *J.A.T. General Services v. National Labor Relations Commission*,[9] the Court stated:

A careful examination of Article 283 of the Labor Code shows that closure or cessation of business operation as a valid and authorized ground of terminating employment is not limited to those resulting from business losses or reverses. Said provision in fact provides for the payment of separation pay to employees terminated because of closure of business not due to losses, thus implying that termination of employees other than closure of business due to losses may be valid.

x x x x

In the present case, while petitioners did not sufficiently establish substantial losses to justify closure of the business, its income statement shows declining sales in 1998, prompting the petitioners to suspend its business operations sometime in March 1998, eventually leading to its permanent closure in December 1998. Apparently, the petitioners saw the declining sales figures and the unsustainable business environment with no hope of recovery during the period of suspension as indicative of bleak business prospects, justifying a permanent closure of operation to save its business from further collapse. On this score, we agree that undue interference with an employer's judgment in the conduct of his business is uncalled for. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what is clearly a management prerogatives. 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.[10]

The rule is that like in any termination case, the employer has the burden of showing that the dismissal was for a just or authorized cause.[11]

While respondents failed to sufficiently establish substantial losses to justify its closure, there is reasonable basis in its claim that the fire that razed the Weaving Department of the company totally rendered it inoperational, and a considerable amount of capital is needed to make it functional once more. It was a business judgment on the part of its owners and stockholders to cease operations, a judgment which the Court has no business interfering with. 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.[12]

There is nothing on record which shows that the closure of the company was made in bad faith. Neither was the closure motivated by any union activity of the employees; rather, it was dictated by necessity. Despite petitioners' allegations, no convincing proof was ever presented to establish their claim that the company's closure was an attempt at union-busting. Allegations are not proof and it behooved upon petitioners to substantiate the same.[13]

Finally, petitioners bewail respondents' failure to furnish the DOLE of the prior termination notice, as required by Article 283 of the Labor Code. On this score, the Labor Arbiter, the NLRC and the CA, unanimously ruled that there was substantial compliance. Records confirm this conclusions. The fire occurred on April 26, 1999. Admittedly, respondents filed an Establishment Termination Report only on July 12, 1999. However, as early as May 6, 1999, negotiations between the company's union, KAMAPI, and respondents were already being made regarding the separation package to be given to the employees. The employees were also informed by respondents that they intended to file a temporary closure with the DOLE. It should be stressed that the purpose of previous notice is to give the employee some time to prepare for the eventual loss of his job, as well as the DOLE the opportunity to ascertain the verity of the alleged authorized cause of termination.[14] The fact that the company's union, KAMAPI, of which petitioners are members, sat down and talked over with the management as regards their separation package, meant that they acknowledged the existence of a valid cause for the company's closure.

All told, there is no cogent reason for the Court to grant the present petition.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

* The Court of Appeals is deleted from the title of the case pursuant to Section 4, Rule 45 of the Rules of Court.

[1] Per Associate Justice Eugenio S. Labitoria (now retired), with Associate Justices Teodoro P. Regino (also retired) and Rebecca De Guia-Salvador, concurring; rollo, pp. 27-33.

[2] Id at 37.

[3] Id. at 40-41.

[4] Id. at 34.

[5] Id. at 17.

[6] 347 Phil. 277 (1997).

[7] J.A.T. General Services v. National Labor Relations Commission, G.R. No. 148340, January 26, 2004, 421 SCRA 78, 87-88.

[8] Id. at 89.

[9] Supra note 7.

[10] Id. at 88-89.

[11] Me-Shurn Corporation v. Me-Shurn Workers Union-SFM, G.R. No. 156292, January 11, 2005, 448 SCRA 41, 50.

[12] Alabang Country Club, Inc. v. National Labor Relations Commission, G.R. No. 157611, August 9, 2005, 466 SCRA 329, 345.

[13] Espina v. Court of Appeals, G.R. No. 164582, March 28, 2007; Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc., G.R. No. 140992, March 25, 2004, 426 SCRA 319, 325.

[14] San Miguel Corporation v. Aballa, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 430.

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