SHIMIZU PHILS. CONTRACTORS, INC., PETITIONER, VS. VIRGILIO P. CALLANTA, RESPONDENT.

G.R. No. 165923. September 29, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

By this Petition for Review on Certiorari,[1] Shimizu Phils. Contractors, Inc. (petitioner) assails the Decision[2] dated June 10, 2004 and Resolution[3] dated October 5, 2004 of the Court of Appeals (CA) in CA-G.R. SP. No. 66888, which reversed the Decision[4] dated December 14, 2000 of the National Labor Relations Commission (NLRC) and ordered petitioner to reinstate Virgilio P. Callanta (respondent) and pay him his backwages for not having been validly dismissed.

Antecedent Facts

Petitioner, a corporation engaged in the construction business, employed respondent on August 23, 1994 as Safety Officer assigned at petitioner's Yutaka-Giken Project and eventually as Project Administrator of petitioner's Structural Steel Division (SSD) in 1995.

In a Memorandum dated June 7, 1997,[5] respondent was informed that his services will be terminated effective July 9, 1997 due to the lack of any vacancy in other projects and the need to re-align the company's personnel requirements brought about by the imperatives of maximum financial commitments.

Respondent then filed an illegal dismissal complaint against petitioner assailing his dismissal as without any valid cause.

Petitioner advanced that respondent's services was terminated in accordance with a valid retrenchment program being implemented by the company since 1996 due to financial crisis that plague the construction industry. To prove its financial deficit, petitioner presented financial statements for the years 1995 to 1997 as well as the Securities and Exchange Commission's approval of petitioner's application for a new paid-in capital amounting to P330,000,000. Petitioner alleged that in order not to jeopardize the completion of its projects, the abolition of several departments and the concomitant termination of some employees were implemented as each project is completed. When respondent's Honda Project was completed, petitioner offered respondent his separation pay which the latter refused to accept and instead filed an illegal dismissal complaint.

Respondent claimed that petitioner failed to comply with the requirements called for by law before implementing a retrenchment program thereby rendering it legally infirmed. First, it did not comply with the provision of the Labor Code mandating the service of notice of retrenchment. He pointed out that the notice sent to him never mentioned retrenchment but only project completion as the cause of termination. Also, the notice sent to the Department of Labor and Employment (DOLE) did not conform to the 30-day prior notice requirement. Second, petitioner failed to use fair and reasonable criteria in determining which employees shall be retrenched or retained. As shown in the termination report[6] submitted to DOLE, he was the only one dismissed out of 333

employees. Worse, junior and inexperienced employees were appointed/assigned in his stead to new projects thus also ignoring seniority in hiring and firing employees.

In reply, petitioner reiterated its progressive implementation of the retrenchment program and finds this as basis why respondent's termination coincided with project completion. Petitioner argued that when it submitted the retrenchment notice/termination report to DOLE, there was already substantial compliance with the requirement. It explained that such termination report reflects only the number of employees retrenched for the particular month of July of 1997 and cannot be deemed as evidence of the total number of employees affected by the retrenchment program. Petitioner also accused respondent of giving false narration of facts about his employment position and further disclosed that respondent has been saddled with complaints subject of administrative investigations for violations of several company rules, i.e., cited for discrepancies in his time sheet,[7] unauthorized use of company vehicle,[8] stealing of company property[9] and abandonment of work,[10] so much so that petitioner's decision to appoint more competent and more senior employees in his stead cannot be questioned.

Ruling of the Labor Arbiter

On April 14, 2000, the Labor Arbiter rendered a Decision[11] holding that respondent was validly retrenched. He found that sufficient evidence was presented to establish company losses; that petitioner offered respondent his separation pay; and that petitioner duly notified DOLE about the retrenchment. The Labor Arbiter further relied on petitioner's factual version relating to respondent's employment background with regard to his position and behavioral conduct.

Pertinent portions of the Labor Arbiter's Decision read:

> In terminating the services of complainant, respondent Shimizu had complied with the requirements of law on retrenchment. It had prepared a check for the amount of P 29,320.30 as payment for his separation pay and other entitlements. However, as afore-stated, complainant refused to receive the amount, for reasons known only to him. Also, respondent company had duly notified the Department of Labor and Employment (DOLE) about the retrenchment of the complainant.
>
> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered dismissing the instant complaint for lack of merit.
>
> SO ORDERED.[12]

Ruling of the National Labor Relations Commission

Upon appeal, the NLRC upheld the ruling that there was valid ground for respondent's termination but modified the Labor Arbiter's Decision by holding that petitioner violated respondent's right to procedural due process. The NLRC found that petitioner failed to comply with the 30-day prior notice to the DOLE and that there is no proof that petitioner used fair and reasonable criteria in the selection of employees to be retrenched. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, in view of the foregoing, the finding of the Labor Arbiter a quo is MODIFIED.
>
> Respondent Shimizu Philippine Contractor, Inc., is ordered to pay complainant-appellant Virgilio P. Callanta his separation pay equivalent to one (1) month pay for every year of service. For want of due notice, respondent is further directed to pay complainant an indemnity equivalent to one (1) month salary.
>
> SO ORDERED.[13]

Both parties sought reconsideration of the NLRC's Decision. Respondent, in his Motion for Reconsideration,[14]

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attributed grave error upon the NLRC in ruling that the absence of fair and reasonable criteria in effecting the retrenchment affected only the requirements of due process, arguing that such failure should have invalidated the entire retrenchment program. Petitioner, for its part, filed a Motion for Partial Reconsideration[15] questioning the amount of separation pay awarded to respondent.

The NLRC, in its Resolution[16] dated June 29, 2001, denied respondent's motion and found merit in petitioner's motion by modifying the amount of separation pay to an amount equivalent to one month or one-half month pay for every year of service, whichever is higher, in consonance with Article 283 of the Labor Code. Thus:

> WHEREFORE, premises considered, the complainant's Motion for Reconsideration is hereby DENIED for lack of merit. The respondent's partial motion for reconsideration is hereby GRANTED. Consequently, our Decision promulgated on December 14, 2000 is hereby MODIFIED in that the separation pay granted to complainant should be one (1) month pay or one-half (1/2) month pay for every year of service, whichever is higher, a fraction of at least six months to be considered one (1) whole year.
>
> Other dispositions in our said Decision stand Affirmed.
>
> SO ORDERED.[17]

Ruling of the Court of Appeals

Undaunted, respondent filed a petition for certiorari with the CA. On June 10, 2004, the CA reversed and set aside the NLRC's ruling. The CA opined that petitioner failed to prove that there were employees other than respondent who were similarly dismissed due to retrenchment and that respondent's alleged replacements held much higher ranks and were more deserving employees. Moreover, there were no proofs to sustain that petitioner used fair and reasonable criteria in determining which employees to retrench. According to the CA, petitioner's failure to produce evidence raises the presumption that such evidence will be adverse to it. Consequently, the CA invalidated the retrenchment, held respondent to have been illegally dismissed, and ordered respondent's reinstatement and payment of backwages.

The dispositive portion of the Decision reads:

> WHEREFORE, the assailed Decision dated December 14, 2000 and the Resolution dated June 29, 2001 both of the National Labor Relations Commission, Third Division in NLRC Case No. CA 024643-00 are REVERSED and SET ASIDE.
>
> Private Respondent Shimizu Philippine Contractors, Inc. is hereby ORDERED to reinstate Petitioner VIRGILIO P. CALLANTA with backwages computed from the date of his dismissal on July 9, 1997 up to the finality of this Decision without loss of seniority rights and benefits appurtenant to his position.
>
> SO ORDERED.[18]

The CA denied petitioner's Motion for Reconsideration[19] and reiterated that petitioner offered no proof of any standard or program intended to implement the retrenchment program.

Issues

Thus, the instant petition raising the following issues:

> A.
>
> WHETHER X X X THE HONORABLE COURT OF APPEALS EXCEEDED ITS JURISDICTION WHEN IT REVERSED THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC BY RE-EVALUATING THE EVIDENCE ON RECORD.

B.

WHETHER X X X THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT PETITIONER FAILED TO OBSERVE FAIR AND REASONABLE STANDARDS OR CRITERIA IN EFFECTING THE DISMISSAL OF [RESPONDENT].[20]

Petitioner contends that the CA's corrective power in petitions for certiorari is confined only to jurisdictional issues and a determination of whether there is grave abuse of discretion amounting to lack or excess of jurisdiction. It does not encompass the reevaluation and reassessment of factual findings and conclusions of the Labor Arbiter which should be accorded great weight and respect when affirmed by the NLRC. According to petitioner, the CA gravely erred in finding that no valid retrenchment exists contrary to the prior findings of the Labor Arbiter and NLRC.

Petitioner also insists that all the requisites for a valid retrenchment have been established by substantial evidence and that it observed fair and reasonable standards in implementing its retrenchment program, to wit: ability to perform work efficiently and seniority. As succinctly found by the Labor Arbiter, respondent is notorious for violating company rules which adversely reflected on his ability to perform work effectively. Petitioner further denies that junior officers/employees were retained and that respondent was singled out for termination.

Our Ruling

We find the petition meritorious.

At the outset, the power of the CA to review a decision of the NLRC "in a petition for certiorari under Rule 65 of the Rules of Court does not normally include an inquiry into the correctness of the NLRC's evaluation of the evidence."[21] However, under certain circumstances, the CA is allowed to review the factual findings or the legal conclusions of the NLRC in order to determine whether these findings are supported by the evidence presented and the conclusions derived therefrom are accurately ascertained.[22] It has been held that "[i]t is within the jurisdiction of the CA x x x to review the findings of the NLRC."[23]

From the foregoing, the CA, in the present case, cannot be faulted in re-evaluating the NLRC's findings as it can undoubtedly affirm, modify or reverse the same if the evidence warrants. Having settled thus, we shall now proceed to review whether the CA correctly appreciated the NLRC's finding and if the CA's resultant decision was in accord with law and evidentiary facts.

There was substantial compliance for a
valid retrenchment; petitioner used fair and
reasonable criteria in effecting retrenchment.

As an authorized cause for separation from service under Article 283 of the Labor Code,[24] retrenchment is a valid exercise of management prerogative subject to the strict requirements set by jurisprudence:

(1)

That the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2)

That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

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(3)

That the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher;

(4)

That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

(5)

That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, x x x efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[25]

In the present case, both the Labor Arbiter and the NLRC found sufficient compliance with these substantive requirements, there being enough evidence to prove that petitioner was sustaining business losses, that separation pay was offered to respondent, and that notices of termination of service were furnished respondent and DOLE. However, the NLRC modified the Decision of the Labor Arbiter by granting respondent indemnity since the notice to DOLE was served short of the 30-day notice requirement and that there is no proof of the use of fair and reasonable criteria in the selection of employees to be retrenched or retained. The CA, then, reversed the Decision of the NLRC by ruling that the absence of fair and reasonable criteria in implementing the retrenchment invalidates altogether the retrenchment.

Petitioner presented proof that it incurred substantial losses as shown by its financial statements and that it substantially complied with the requirements of serving written notices of retrenchment. It was also shown that it offered to pay respondent's separation pay. The CA, however, ruled that petitioner failed to show that it implemented its retrenchment program in a just and proper manner in the absence of reasonable criteria in effecting such.

We disagree. In implementing its retrenchment scheme, petitioner was constrained to streamline its operations and to downsize its complements in a progressive manner in order not to jeopardize the completion of its projects. Thus, several departments like the Civil Works Division, Electro-mechanical Works Division and the Territorial Project Management Offices, among others, were abolished in the early part of 1996 and thereafter the Structural Steel Division, of which respondent was an Administrator. Respondent was among the last batch of employees who were retrenched and by the end of year 1997, all of the employees of the Structural Steel Division were severed from employment.

Respondent, in any of the pleadings filed by him, never refuted the foregoing facts. Respondent's argument that he was singled out for termination as allegedly shown in petitioner's monthly termination report for the month of July 1997 filed with the DOLE does not persuade this Court. Standing alone, this document is not proof of the total number of retrenched employees or that respondent was the only one retrenched. It merely serves as notice to DOLE of the names of employees terminated/ retrenched only for the month of July. In other words, it cannot be deemed as an evidence of the number of employees affected by the retrenchment program. Thus we cannot conclude that no other employees were previously retrenched.

Respondent then claimed that petitioner did not observe seniority in retrenching him. He further alleged that he is more qualified and efficient than those retained by petitioner. Notably, however, the records do not bear any proof that these allegations were substantiated. On the contrary, the Labor Arbiter found respondent's notoriety due to pieces of evidence showing numerous company violations imputed against respondent. This fact of being subject

of several administrative investigations, respondent failed to refute. Moreover, the Labor Arbiter likewise found respondent guilty of several misrepresentations in the pleadings filed before the tribunal with regard to the latter's employment position. By advancing that other employees were less efficient, qualified and senior than him, respondent has the burden of proving these allegations which he failed to discharge.

On the contrary, we find that petitioner implemented its retrenchment program in good faith because it undertook several measures in cutting down its costs, to wit, withdrawing certain privileges of petitioner's executives and expatriates; limiting the grant of additional monetary benefits to managerial employees and cutting down expenses; selling of company vehicles; and infusing fresh capital into the company. Respondent did not attempt to refute that petitioner adopted these measures before implementing its retrenchment program.

In fine, we hold that petitioner was able to prove that it incurred substantial business losses, that it offered to pay respondent his separation pay, that the retrenchment scheme was arrived at in good faith, and lastly, that the criteria or standard used in selecting the employees to be retrenched was work efficiency which passed the test of fairness and reasonableness.

The termination notice sent to DOLE did
not comply with the 30-day notice requirement,
thus, respondent is entitled to indemnity for
violation of due process.

However, although there was authorized cause to dismiss respondent from the service, we find that petitioner did not comply with the 30-day notice requirement. Petitioner maintains that it substantially complied with the requirement of the law in that it, in fact, submitted two notices or reports with the DOLE. However, petitioner admitted that the reports were submitted 21 days, in the case of the first notice, and 16 days, in the case of the second notice, before the intended date of respondent's dismissal.

The purpose of the one month prior notice rule is to give DOLE an opportunity to ascertain the veracity of the cause of termination.[26] Non-compliance with this rule clearly violates the employee's right to statutory due process.

Consequently, we affirm the NLRC's award of indemnity to respondent for want of sufficient due notice. But to be consistent with our ruling in Jaka Food Processing Corporation v. Pacot,[27] the indemnity in the form of nominal damages should be fixed in the amount of P50,000.00.

WHERFORE, the petition is GRANTED. The challenged June 10, 2004 Decision and October 5, 2004 Resolution of the Court of Appeals in CA- G.R. SP. No. 66888 are REVERSED and SET ASIDE. The Decision and Resolution of the National Labor Relations Commission dated December 14, 2000 and June 29, 2001, respectively, upholding the legality of respondent's dismissal and awarding him separation pay equivalent to one (1) month pay or one-half (1/2) month pay for every year of service, whichever is higher, are REINSTATED and AFFIRMED with MODIFICATION that the indemnity to be awarded to respondent is fixed in the amount of P50,000.00 as nominal damages.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur

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[*] Sometimes referred to as Shimizu Philippines Contractors, Inc. or Shimizu Philippine Contractors, Inc. in some parts of the records.

[1] Rollo, pp. 3-28.

[2] Annex "A" of the Petition, id. at 30-37; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Godardo A. Jacinto and Jose L. Sabio, Jr.

[3] Annex "B" of the Petition, id. at 48-49.

[4] Annex "C" of the Petition, id. at 60-75; penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[5] CA rollo, p. 48.

[6] Id. at 69.

[7] See Memorandum dated March 16, 1996, Annexes "12" and "12-A" of petitioner's reply to respondent's position paper before the Labor Arbiter, rollo, pp. 167-169.

[8] See Incident Regulation Violation Report dated April 1, 1997, Annex "13," id. at 170.

[9] See Sworn Statement of Mr. Rolando Villon dated April 7, 1997, Annex "14," id. at 171-172.

[10] See Memorandum dated May 22, 1997, Annex "15," id. at 173.

[11] Annex "D" of the Petition, id. at 50-59; penned by Labor Arbiter Enrico A.C. Portillo.

[12] Id. at 59

[13] Id. at 74.

[14] CA rollo, pp. 30-36.

[15] Id. at 148-150.

[16] Annex "F" of the Petition, rollo, pp. 76-78.

[17] Id. at 77.

[18] Id. at 36

[19] Annex "B" of the Petition, id. at 38-46.

[20] Id. at 140.

[21] AMA Computer College, Inc. v. Garcia, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 269.

[22] Oriental Petroleum and Minerals Corporation v. Fuentes, G.R. No. 151818, October 14, 2005, 473 SCRA 106, 114.

[23] Emcor Incorporated v. Sienes, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 632.

[24] 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 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 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 as one (1) whole year.

[25] Asian Alcohol Corporation v. National Labor Relations Commission, 364 Phil. 912, 926-927 (1999).

[26] Mobilia Products, Inc. v. Demecillo, G.R. No. 170669, February 4, 2009, 578 SCRA 39, 50.

[27] 494 Phil. 114, 122 (2005).

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