

**CELEBES JAPAN FOODS CORPORATION, REPRESENTED BY
KANEMITSU YAMAOKA AND CESAR ROMERO, PETITIONER, VS.
SUSAN YERMO, ORSON MAMALIS, BAI ANNIE ALANO, MICHIE
ALFANTA, GINALYN PANILAGA...**

G.R. No. 175855. October 02, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in this petition for review on certiorari are the Decision[1] dated June 27, 2005 and the Resolution[2] dated September 22, 2006 of the Court of Appeals, Mindanao Station, Cagayan de Oro City, in CA-G.R. SP No. 73093.

Petitioner Celebes Japan Foods Corporation is engaged in the business of buying, processing and exporting of tuna fish, with buying station and plant located at the Davao Fish Port Complex, Daliao, Toril, Davao City. Kanemitsu Yamaoka, Cesar Romero and Kenji Fuji were the Chairman, Office Manager and Plant Supervisor, respectively, of petitioner Celebes. Petitioner contracted with Penta Manpower and Allied Resources to provide manpower services for the former's business, with the latter recruiting people to work for the former, people who included respondents Susan Yermo, Orson Mamalis, Bai Annie Alano, Michie Alfanta, Ginalyn Panilagao, Annalie Ayag, Jocelyn Agton, Jose Jurie Surigao, Gilda Serrano, Joy Remarca, Erick Tac-An, and Jenne Carlos. Respondents performed jobs such as slicer, laboratory crew packers, recorders/encoders, loiners, vinyl bag openers/receivers or storage persons, and who were necessary and desirable to the main business of petitioner.

On November 7, 2000, respondents were refused entrance by the guards manning the gate of the Davao Fish Port Complex, as they were already terminated from work effective November 1, 2000 based on a memorandum[3] dated November 7, 2000 issued by Romero, petitioner's office manager. The memorandum was posted in the guardhouse.

On November 16, 2000, respondents filed with the Labor Arbiter (LA), Davao City, a Complaint for illegal dismissal with money claims for holiday pay, service incentive, leave pay, allowances, unpaid salaries, damages and attorney's fees against petitioner and Penta Manpower, alleging that they were dismissed without just and valid cause and due process. Petitioner was served a summons and a complaint.

On December 11, 2000, a mandatory conference was ordered but the amicable settlement failed. The LA then ordered all the parties to file their respective position papers. Respondents and Penta Manpower filed their position papers, while petitioner did not file any despite receipt of notice.

On July 2, 2001, the LA rendered a decision[4] in favor of respondents, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring the dismissal of complainants as illegal; and

2. Ordering respondents Celebes Japan Foods Corp., Kenji Fuji, Kanemitsu Yamaoka and Cesar B. Romero to pay to complainants the award above set forth in the total amount of P838,642.90 only.

SO ORDERED.[5]

The LA found that there was an employer-employee relationship between respondents and petitioner; that respondents' works were necessary to petitioner's business of processing tuna fish; that as regular employees, respondents were entitled to security of tenure; that Penta Manpower was a labor-only contractor, since it did not have substantial capital or investment in the form of tools, equipment and machineries, which were necessary for the performance of the required services; and that it was petitioner that actually managed, supervised and controlled respondents' employment. The LA found respondents' dismissal to be illegal, i.e., without cause and due process, and proceeded to compute respondents' money claims.

Petitioner filed an appeal with the National Labor Relations Commission (NLRC), Cagayan de Oro City, on the ground that the former was deprived of its right to due process, and that the LA rendered its decision contrary to law and applicable jurisprudence.

On April 16, 2002, the NLRC rendered its Resolution,[6] the dispositive portion of which reads:

WHEREFORE, the judgment appealed from is VACATED and SET ASIDE in favor of REMANDING the entire records to the arbitration branch of origin. The Labor Arbiter below is hereby directed to accord respondent Celebes Japan Foods Corporation and the other respondents their right to due process by allowing them to submit their position paper, copy furnished the complainants and other respondent (PENTA), and after all the parties are heard, for the Labor Arbiter to render its decision accordingly.

SO ORDERED.[7]

Respondents filed their motion for reconsideration, which the NLRC denied in a Resolution[8] dated June 18, 2002.

Aggrieved, respondents filed a petition for certiorari with the CA, alleging that the NLRC gravely abused its discretion in finding that petitioner was denied due process and in remanding the case to the LA for further reception of evidence.

On June 27, 2005, the CA, Mindanao Station, Cagayan de Oro City, issued its assailed Decision, the dispositive portion of which reads:

IN THE LIGHT OF ALL THE FOREGOING, the petition is GRANTED in part. This Court hereby DECLARES the legality of the dismissal but ORDERS Celebes Japan Foods Corporation to PAY each petitioner herein P50,000.00 as NOMINAL DAMAGES for violation of statutory due process. Further, this Court FINDS no cogent reason to remand the case to the Labor Arbiter. [9]

The CA found that petitioner was not denied due process, since the latter was duly informed that it was a party to the illegal dismissal case filed by respondents, as shown by its receipt of the summons, together with the complaint, as well as the LA Orders directing the submission of position papers and informing the parties that the case was considered submitted for decision; that petitioner was given ample opportunities to defend its interest, but it chose not to participate, which constrained the LA to resolve the case based on available evidence; and that it was only after an adverse decision by the LA that petitioner came out and claimed denial of due process. The CA further found that the NLRC erred in remanding the case to the LA for further proceeding, since the NLRC was in a position to resolve the dispute based on the records before it.

The CA then proceeded to decide the case by agreeing with the LA's finding that respondents were petitioner's

employees and not of Penta Manpower, as the latter was merely engaged in labor-only contracting. However, the CA found that respondents' dismissal was for an authorized cause, as petitioner asserted that the absence or termination of their work was caused by a cessation of its operation as a consequence of prolonged lack of adequate supply for high-quality fresh tuna. Although respondents were dismissed for an authorized cause, the CA found that petitioner did not comply with the statutory requirement of due process; thus, it ordered petitioner to pay each of the respondents nominal damages in the amount of P50,000.00.

Petitioner filed a motion for reconsideration, praying for the reduction of the nominal damages awarded from P50,000.00 to P5,000.00 for each respondent, claiming that the financial condition of the employer must be considered in fixing the amount of nominal damages. It then submitted an audited financial statement for the period ending December 31, 2004, comparative financial statements from the years 2000 to 2004, and its annual income tax returns for the same period, which all showed that the company incurred capital deficits.

The CA denied the motion for reconsideration in a Resolution dated September 22, 2006.

Petitioner is before us raising a lone assignment of error, thus:

WHETHER OR NOT THE COURT OF APPEALS GROSSLY ERRED AND/OR GRAVELY ABUSED ITS DISCRETION IN MISAPPLYING THE DOCTRINES IN *AGABON v. NLRC*, *JAKA v. PACOT* AND *VIERNES v. NLRC* BY REFUSING TO MODIFY AND/OR REDUCE THE AWARD OF NOMINAL DAMAGES FROM P50,000.00 TO P5,000.00 PER EMPLOYEE TERMINATED AND IN THE ABSENCE OF ANY SPECIFIC FACTUAL FINDING THAT THIS IS A CASE OF "DISMISS NOW, PAY LATER" TERMINATION.[10]

The petition has no merit.

The CA ruled that respondents, who were petitioner's employees, were terminated from work due to an authorized cause; and this finding was never assailed by them, thus, already attained finality. In fact, respondents in their Comment filed before us, accept such finding by stating that there is no question that they have been severed from their employment due to an authorized cause. The CA also found that procedural due process was not observed in the termination of respondents, since the latter was not served by petitioner the required notice as provided under Article 283 of the Labor Code; i.e., a written notice must be served on the worker and the Department of Labor and Employment at least one month before the intended date of termination. This finding was not disputed at all by petitioner. Thus, it is settled that respondents were terminated due to an authorized cause without petitioner complying with procedural due process.

Where an employee was terminated for cause, but the employer failed to comply with the notice requirement, the employee is entitled to the payment of nominal damages pursuant to our ruling in *Agabon v. National Labor Relations Commission*[11] and *Jaka Food Processing Corporation v. Pacot*. [12]

In *Agabon*, we found the dismissal of the employees therein to be valid and for a just cause, since abandonment was duly established. However, we held the employer liable, because procedural due process was not observed. We ordered the employer to pay, in lieu of backwages, indemnity in the form of nominal damages, and we said:

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. x x x We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.[13]

The Agabon ruling was qualified in Jaka which declared the dismissal of the employees valid as it was due to an authorized cause under Article 283 of the Labor Code, i.e., retrenchment, as it was proven that Jaka was suffering from serious business losses at the time it terminated respondents' employment. However, Jaka failed to comply with the notice requirement under the same rule. We then distinguished the case from Agabon stating:

The difference between Agabon and the instant case is that in the former, the dismissal was based on a just cause under Article 282 of the Labor Code while in the present case, respondents were dismissed due to retrenchment, which is one of the authorized causes under Article 283 of the same Code.

At this point, we note that there are divergent implications of dismissal for just cause under Article 282, on one hand, and a dismissal for authorized cause under Article 283, on the other.

A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty of, some violation against the employer, i.e. the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in Agabon, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, i.e., when the employer opts to install labor-saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.

x x x x

Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.[14]

In Agabon, the nominal damages awarded to the employees for a dismissal based on a just cause without the notice requirement was P30,000.00; while in Jaka, where the dismissal of the employees was based on an authorized cause under Article 283, but without the required notice under the same rule, we fixed the amount at P50,000.00.

Petitioner claims that in the above-mentioned cases, the relevant circumstances surrounding the case, particularly the financial condition of the employer, were taken into consideration in fixing the amount of nominal damages; that the amount of P50,000.00 for nominal damages awarded to the 12 employees in this case is not reasonable, since petitioner has been having a capital deficit of P43,629,974.46 for the last three years, with a stockholders' equity of only P2,750,000.00 or a capital impairment equivalent to more than 15 times its stockholders' equity. This impairment differs from that of Jaka, since the latter has a P200 million equity and only a 47% impairment of capital, with six employees terminated.

Petitioner's argument fails to persuade.

Jaka has presented its audited financial statement to show that it was in such serious financial distress as to justify the retrenchment of the employees concerned. As its retrenchment program was undertaken in 1997, its deficit had ballooned to 123.61% of the stockholders' equity; thus, a capital deficiency or impairment of equity ensued; in 1998, the deficit grew to P355,794,897.00 or 177% of the stockholder's equity. The deficit was shown to prove the ground for the employees' dismissal, but it was not the sole basis of the court in fixing the nominal damages in

the amount of P50,000.00 for each employee for Jaka's failure to comply with the notice requirement. In the same manner, while petitioner in this case incurred a capital impairment which was much higher than its stockholders' equity, the same should not be the only basis for determining the amount of nominal damages that should be awarded. The gravity of the due-process violation should be taken into special consideration;^[15] and, just like in Jaka, the sanction should be stiffer, because the dismissal process was initiated by the employer's exercise of its management prerogative.

Significantly, there was no bona fide attempt on the part of petitioner to comply with the notice requirements under Article 283 of the Labor Code. Records show that on November 7, 2000, respondents were refused entrance by the guards manning the gate of the Davao Fish Port Complex, based on a memorandum of even date issued by Romero, petitioner's Office Manager, stating that respondents had been terminated effective November 1, 2000. Respondents learned of the existence of such memorandum, which was posted only in the guardhouse on the day they were refused entrance to the gate. There was indeed no notice at all to respondents. Notably, there was not even any reason stated in the memorandum why they were being terminated. We cannot overemphasize the importance of the requirement of the notice of termination, for we have ruled in a number of cases that non-compliance therewith is tantamount to deprivation of the employee's right to due process.^[16]

Nominal damages are adjudicated in order that a right of the plaintiff that has been violated or invaded by the defendant may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.^[17] Considering the circumstances in this case, we find no error committed by the CA in fixing the award of nominal damages in the amount of P50,000.00 for each respondent as indemnity for the violation of the latter's statutory rights.

Petitioner's reliance on *Viernes v. National Labor Relations Commission*^[18] to support its claim for the reduction of the award of nominal damages is misplaced. The factual circumstances are different. *Viernes* is an illegal dismissal case, since there was no authorized cause for the dismissal of the employees; and the employer was ordered to pay backwages inclusive of allowances and other benefits, computed from the time the compensation was withheld up to the actual reinstatement. In addition, since the dismissal was done without due process, the nominal damages awarded was only P2,590.00 equivalent to one-month salary of the employee. In this case, the dismissal was valid, as it was due to an authorized cause, but without the observance of procedural due process, and the only award given was nominal damages.

WHEREFORE, the petition is DENIED. The Decision dated June 27, 2005 and the Resolution dated September 22, 2006 of the Court of Appeals, Mindanao Station, Cagayan de Oro City, in CA-G.R. SP No. 73093 are AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr., concurring; rollo, pp. 22-37.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez, concurring; id. at 83-84.

[3] CA rollo, p. 53.

[4] Penned by Labor Arbiter Newton R. Sancho, id. at 60-67.

[5] Id. at 67.

[6] Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioners Oscar Abella and Leon G. Gonzaga, Jr., concurring; CA rollo, pp. 19-26.

[7] CA rollo, pp. 19-26.

[8] Id. at 36-37.

[9] Rollo, p. 36.

[10] Id. at 7-8.

[11] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[12] G.R. No. 151378, March 28, 2005, 454 SCRA 119.

[13] Agabon v. National Labor Relations Commission, supra note 11, at 617.

[14] Jaka Food Processing Corporation v. Pacot, supra note 12, at 124-126.

[15] Agabon v. National Labor Relations Commission, supra note 71, at 616

[16] Bughaw v. Treasure Island Industrial Corporation, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 322, citing Phil. Carpet Employees Association (PHILCEA) v. Sto. Tomas, 483 SCRA 128, 140-141 (2006); Ariola v. Philex Mining Corporation, 466 SCRA 152, 171 (2005).

[17] Civil Code, Art. 2221.

[18] G.R. No. 108405, April 4, 2003, 400 SCRA 557.

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