

GENUINO ICE COMPANY, INC., HECTOR S. GENUINO AND EDGAR A. CARRJAGA, PETITIONERS. VS. ERIC Y. LAVA AND EDDIE BOY SODELA, RESPONDENTS.*G.R. No. 190001. March 23, 2011*

Ponente: BRION, J.

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Before us is the petition for review on certiorari filed by petitioners Genuino Ice Company, Inc. (GICI), Hector S. Genuino and Edgar A. Carriaga (collectively, petitioners) to challenge the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. No. SP 109429. These CA dispositions, in turn, affirmed the decision[3] and resolution[4] of the National Labor Relations Commission (NLRC) in NLRC CA No. 049477-06.

Petitioner GICI hired the respondents Eric Y. Lava and Eddie Boy Sodela (respondents) as ice plant machine operators. Sometime in March 2005,[5] due to the continuous decline of demand for ice products, the company was forced to shut down a part of its plant facilities and operations, and to implement a work rotation or reduction of workdays program affecting its seven (7) workers (including the present respondents).

On September 30, 2005, GICI, through its personal manager, issued a memorandum ordering the deletion of the respondents' names from the work schedule. The memorandum had the effect of banning the respondents from entering the company premises. The respondents reacted to this move by filing a complaint for illegal dismissal with the Labor Arbiter (LA).

The petitioners alleged that the respondents were contractual employees who were under the control of VICAR General Contractor & Management Services (VICAR), and L.C. Moreno General Contractor & Management Services (MORENO). They argue that there is no employer-employee relationship between GICI and the respondents so that the latter have no cause of action against the petitioners. Also, the petitioners reason that due to the partial shut-down of the company, GICI was excused from complying with the 30-day notice or clearance requirement under the law.

The LA rejected the petitioner's argument and declared that the respondents adduced convincing evidence that they were the employees of GICI. The LA went on to say that VICAR was engaged in "management services" and merely supplied or processed workers for GICI, in a manner akin to the services of a labor-only contractor.[6] In this sense, the LA believed that GICI's liability in the illegal dismissal is solidary with that of VICAR and MORENO.

Notwithstanding the observation that an arrangement akin to labor-only contracting existed, the LA ruled that the respondents were validly retrenched. The LA reasoned out that due to the continuous decline in the sales output of the ice plant, the temporary shut down had become permanent and GICI had no alternative but to trim-down its manpower requirements.[7] However, the LA also found that GICI failed to comply with the procedural requirements for a valid retrenchment. Hence, he awarded the respondents their separation pay equivalent to one-half (1/2) month salary for every year of service in accordance with Art. 283 of the Labor Code.

On appeal, the NLRC reversed the LA's decision and found that the respondents were illegally dismissed from service.

The petitioners responded to the NLRC's adverse decision through a petition for certiorari^[8] under Rule 65 before the CA. The CA saw no grave abuse of discretion in the NLRC's decision, observing that the petitioners failed to prove that GICI incurred or was about to incur financial losses leading to the retrenchment it undertook; no documentary evidence was in fact presented to support the retrenchment claim.^[9] The CA also found no malice or bad faith on the part of Hector S. Genuino, president of Genuino Ice Company, Inc., to hold him solidarity liable with the corporation for illegal dismissal.

After the denial of their motion for reconsideration, the petitioners came to this Court through the present petition on the sole issue of whether there had been a valid retrenchment (and hence, a valid termination of the respondents' service).

THE COURT'S RULING

We dismiss the petition for lack of merit.

Under Article 283 of the Labor Code, there are three (3) basic requisites for a valid retrenchment, namely: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher.

We see no reason to reverse the NLRC and CA findings that no documentary evidence exists in the records to substantiate the claimed business losses; in fact, the petitioners also failed to show its financial conditions prior to and at the time GICI enforced its retrenchment program. In the absence of any attendant grave abuse of discretion, these findings are entitled not only to respect but to our final recognition in this appellate review.

The CA was also correct in affirming the NLRC's award of full backwages and separation pay in lieu of reinstatement. In *FF Marine Corporation v. NLRC*,^[10] we ruled that an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and to other established employment privileges, and to his full backwages. In the event, reinstatement is no longer feasible, the employer must pay him his separation pay.

In the present case, the respondents were illegally dismissed as the employer failed to prove that their dismissal was for a duly authorized cause. The CA was thus correct in awarding them full backwages and separation pay in lieu of reinstatement since the positions the respondents formerly held no longer exist.

We must however modify the CA decision to reflect the correct monetary award due to the respondents. The dispositive portion of the CA decision is incomplete as it failed to specify the separation pay to be awarded to the respondents as well as the reckoning point for the computation of the backwages. *FF Marine Corporation*^[11] tells us that the separation pay shall be computed at one (1) month pay (for those with one year or less of service), or one-half (1/2) month pay for every year of service (for those with more than a year of service), whichever is higher, a fraction of at least six (6) months being considered one whole year.^[12] The backwages shall be computed from the date of termination of service (September 30, 2005) until the finality of this Court's decision.

WHEREFORE, we hereby DISMISS the petition for lack of merit. The August 24, 2009 Decision and the October 22, 2009 Resolution of the Court of Appeals in CA-G.R. No. SP 109429 affirming the ruling of the NLRC in NLRC CA No. 049477-06 are hereby AFFIRMED, with MODIFICATION that Eric Lava shall be awarded full backwages from September 30, 2005 until the finality of this Court's Decision. Separation pay in lieu

of reinstatement shall be computed at 1 month pay for every year of service, with years of service reckoned from the respondents' first day of employment up to the finality of this Decision. Costs against the petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), [*]Velasco, Jr., Bersamin, [**]Villarama, Jr., and Sereno, JJ., concur.

* Additional member per Raffle dated March 7, 2011. No Part; Ponente of the assailed CA Decision and Resolution.

[1] Dated August 24, 2009.

[2] Dated October 22, 2009.

[3] Dated August 14, 2008.

[4] Dated April 28, 2009.

[5] Rollo, p. 44.

[6] Id. at 88.

[7] Id. at 89.

[8] Docketed as CA-G.R. SP No. 109429.

[9] Rollo, p. 144.

[10] *FF Marine Corporation v. NLRC*, G.R. No. 152039, April 8, 2005. 455 SCRA 155.

[11] Id.

[12] Article 283, Labor Code.

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