

UNION OF FILIPINO WORKERS (UFW), PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, SIMEX INTERNATIONAL INC., LILIA SANTANDER, GEORGE SANTANDER AND JOSEPH SANTANDER, RESPONDE...

G.R. No. 90519. March 23, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Certiorari seeks to set aside the Decision of public respondent National Labor Relations Commission (NLRC), dated 26 August 1989, which reversed the Decision of the Labor Arbiter, dated 27 June 1988, and sustained the closure of private respondent company. SIMEX International Inc., as valid.

On 4 September 1987, a Petition for Direct Certification among the rank-and-file workers of SIMEX was filed before the Med Arbiter, docketed as Case No. 00-09-634-87 (Petition for Direct Certification), with the hearing thereof set for 18 September 1987. These workers subsequently affiliated with petitioner Union of Filipino Workers (UFW).

On 19 September 1987, thirty-six (36) workers of the "Iumpia" department were not given their usual working materials and equipment for that day and, instead, were asked to clean their respective working areas. Since these workers were employed on a "pakiao" basis, they refused. Nevertheless, they still reported for work on 21 September 1987 but to their surprise, they found out that SIMEX had removed all materials and equipments from their workplaces. The Union claims that its members were, therefore, effectively locked out.

From 1 October 1987 to 7 October 1987, sixteen (16) more workers from the other departments were similarly refused employment. As a consequence, these workers, through UFW, instituted a Complaint for Unfair Labor Practices and violation of labor standard laws against SIMEX and its principal officers and stockholders, namely private respondents Lilia, George and Joseph, all surnamed SANTANDER, docketed as NLRC-NCR-00-09-03329-87 (for Illegal Dismissal/Lockout of 36 "Iumpia" department workers and 16 others, etc.).

On 9 October 1987, however, SIMEX had filed a Notice of "Permanent Shutdown/Total Closure of All Units of Operation in the Establishment" with the Department of Labor and Employment to take effect on 9 November 1987, allegedly due to business reverses brought about by the enormous rejection of their products for export to the United States. This notice of closure rendered the Petition for Direct Certification moot and academic. Notices of Closure were placed in conspicuous places around the company premises.

Meanwhile, in sympathy with their fifty-two (52) co-workers who were allegedly illegally dismissed by SIMEX and in "protest to the continued acts of unfair labor practices committed" by SIMEX, thirty-nine (39) other workers staged a picket outside the company premises from 10 October 1987 to 27 October 1987. By reason thereof, SIMEX's supposed offer of separation pay totaling P280,000.00 was withdrawn. When these workers

lifted their picket on 27 October 1987 and voluntarily reported for work, SIMEX refused to give them their usual work. They were dismissed effective 1 November 1987.

Another Complaint for Unfair Labor Practice was, therefore, filed against the same respondents, this time involving the thirty-nine (39) workers who picketed the company premises in sympathy with their other co-workers, docketed as NLRC-NCR-11-03887-87 (for Unfair Labor Practice, Illegal Dismissal/Lockout of thirty-nine [39] workers). It is this case that is the subject of this Petition for Certiorari.

On 27 June 1988, the Labor Arbiter rendered his verdict declaring that the closure of SIMEX was a mere subterfuge in order to discourage the formation of the union. The respondents, SIMEX and the SANTANDERS, were found guilty of unfair labor practice and were ordered, jointly and solidarily, to reinstate the 39 workers without loss of seniority rights, benefits and privileges, with full backwages from 1 November 1987 until such time that these workers are actually reinstated. They were also ordered to pay ten per cent (10%) of the total awards as attorney's fees.

On appeal, the NLRC, in a Decision, dated 28 August 1989, set aside the Labor Arbiter's Decision when it held that the "determination of the wisdom or expediency to close a department in a corporation, e.g., the 'lumpia' department in this case, due to financial reverses, is the sole prerogative of the corporation." It ruled that since SIMEX had filed a Notice of Closure on 9 October 1987 and had complied with the requirements of the applicable rules and regulations when it posted in their main gate the aforesaid Notice, its failure to accept the workers of UFW did not constitute unfair labor practice considering that SIMEX had already closed the "lumpia" department. Hence, SIMEX was merely ordered to pay the workers affected a separation pay equivalent to one (1) month's salary for every year of service rendered.

Petitioner UFW has thus elevated its cause before us in this Petition for Certiorari, seeking the reversal of the NLRC Decision, for having been rendered with grave abuse of discretion, and the reinstatement instead of the Decision of the Labor Arbiter and its affirmance in toto.

The public and private respondents in this case were required to file their respective Comments. Since the Solicitor General adopted a position contrary to that of the NLRC, the Court required the latter to file its own Comment, which it has done.

After the Comments, Reply, Rejoinders and the parties' respective Memoranda were submitted, private respondents SIMEX and the SANTANDERS filed a Manifestation, dated 10 December 1990 (p. 212, Rollo), signed by Atty. Julio F. Andres, Jr., stating that after they had manifested to the Court on 9 December 1990 that they were adopting their Comment as their Memorandum, they discovered that an "Acknowledgment Receipt and Undertaking," dated 9 June 1989, had already been signed between private respondent George SANTANDER and petitioner's former counsel, Atty. Modesto S. Mendoza, whereby this case as well as two (2) others had already been settled and compromised. Thereby, this controversy has become moot and academic. Said Undertaking reads:

"I, MODESTO S. MENDOZA, x-x-x, have today RECEIVED FROM SIMEX INTERNATIONAL INC., through its Vice-President MR. GEORGE SANTANDER, the following amounts:

P500,000.00 in cash and

P50,000.00 PCIB check No. 496869

dated Sept. 9, 1989

P50,000.00 PCIB check No. 496870

dated Dec. 9, 1989

P50,000.00 PCIB check No. 496871

dated March 9, 1990

P50,000.00 PCIB check No. 496872

dated June 9, 1990

in full and complete settlement of NLRC-NCR-CASE NOS. 00-09-03329-87, 00-11-3887-87 and 00-01-00255-88.

"I undertake to take charge of obtaining the signatures of the proper officers of the union to sign the Motion to Dismiss in order to implement the full and final settlement of said cases between complainant and respondents.

"I further undertake and warrant that with this payment by the respondents, the complainant Union and each of their members, hereby RELEASE AND DISCHARGE the SIMEX INTERNATIONAL INC., each (sic) Officers, agents and representative (sic) from any demands, claims and liabilities from any cause whatsoever, arising out of their employment with the said respondents (sic) corporation."

UFW maintains, however, that the settlement did not materialize because of its objections as shown by the fact that it had not filed a Motion to Dismiss and Quitclaim in this case.

The issues for determination then are: 1) whether or not a compromise had been reached by the parties; and 2) whether or not there was a valid closure of SIMEX that entitled it to terminate the employment of its thirty-nine (39) employees. A plea is also made that the individual private respondents SANTANDERS be dropped from the suit since they only acted within the scope of their authority.

We incline to the view that no valid compromise agreement was arrived at in this case.

The alleged settlement involved three (3) cases, one of which charges alleged violation of labor standards. Compromise agreements involving labor standards cases must be reduced to writing and signed in the presence of the Regional Director or his duly authorized representative (Atilano v. De la Cruz, G.R. No. 82488, 28 February 1990, 182 SCRA 886). Section 8, Rule II of the Rules on the Disposition of Labor Standards Cases in the Regional Offices provides:

"Section 8. Compromise Agreement. - Should the party arrive at an agreement as to the whole or part of the dispute, said agreement shall be reduced [to] writing and signed by the parties in the presence of the regional director or his duly authorized representative."

The questioned "Acknowledgment Receipt and Undertaking" did not comply with this requisite. It was not, therefore, duly executed.

Even assuming arguendo that it was, Atty. Modesto Mendoza, counsel for petitioner UFW, whose services were subsequently terminated, was not duly authorized to enter into a compromise with SIMEX and the SANTANDERS. As aptly pointed out by the Solicitor General, Article 1878 of the Civil Code provides that a Special Power of Attorney is required before an agent can be authorized to enter into a compromise. It reads:

"Art. 1878. Special powers of attorney are necessary in the following cases:

"x-x-x

"(3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired." (Underscoring ours).

No evidence was adduced that would show that the aforementioned counsel for UFW was authorized to enter into a compromise. Correspondingly, he cannot release and discharge SIMEX and the SANTANDERS from their obligation. A perusal of the "Acknowledgment Receipt and Undertaking" reveals that no representative of UFW signed the alleged settlement.

The fact that said counsel undertook to obtain the signatures of the proper officers of UFW shows that his action was still subject to ratification by the union members. This confirmation was never secured as shown by the fact that no motion for the dismissal of the case at bar had been filed by UFW or on its behalf "in order to implement the full and final settlement of said case," unlike in NLRC-NCR Case No. 00-01-00255-88 where such a Motion had been filed. In an Affidavit, dated 6 May 1991 (p. 258, Rollo), Atty. Mendoza also declared that respondent George Santander had stopped the payment of the three (3), postdated checks, which statement has not been refuted by private respondents.

We now shift to the issue bearing on the legality of the closure of SIMEX. Article 283 (then Article 284) of the Labor Code provides:

"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 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 and undertaking not due to serious business losses or financial losses, 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 in text supplied).

Under this provision, the closure of a business establishment is a ground for the termination of the services of any employee unless the closing is for the purpose of circumventing the provisions of law. But, while business reverses can be a just cause for terminating employees, they must be sufficiently proven by the employer (*Indino v. NLRC*, G.R. No. 80352, 29 September 1989, 178 SCRA 168).

In the case at bar, SIMEX alleged that it suffered export rejections amounting to \$78,959.54 for 1985, \$1,654.00 for 1986 and \$28,414.11 for 1987, respectively. It alleged, that these export rejections resulted in huge financial losses to the company (Rollo, p. 96) so much so that remedial measures were instituted as suppliers hesitated to give the company their usual credit terms (*ibid*, p. 97).

The audited financial statement of SIMEX, however, clearly depicted that for 1985 and 1986, the company actually derived retained earnings of P35,593.21 and P73,241.25, respectively. The private respondents never refuted this fact. Instead, they merely insisted that these export rejections resulted in heavy losses for the company. These export rejections may have, indeed, contributed to a reduction of SIMEX's earnings. The company, however, was not suffering from business losses, as claimed, at the time of application for closure.

Indeed, there is no question that an employer may reduce its work force to prevent losses. However, these losses must be serious, actual and real (*Lopez Sugar Corporation v. Federation of Free Workers*, G.R. No. 75000-01, 30 August 1990, 189 SCRA 179). Otherwise, this "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 (*Garcia v. NLRC*, G.R. No. L-67825, 4 September 1987, 153 SCRA 639).

In this regard, then, SIMEX failed to prove its claim. What were submitted as evidence were mere receipts of export rejections, nothing more. SIMEX never adduced evidence that would reflect the extent of losses suffered as a result of the export rejections, which failure is fatal to its cause.

The Notice of Closure filed by SIMEX had indicated that it will have a permanent shutdown and/or total closure of all its units of operation. This was not so. Workers belonging to the Marketing and Export Divisions were never laid off. A SEC Certification, dated 4 February 1988, shows that SIMEX never applied for dissolution. The Labor Arbiter also found as a fact that SIMEX continued to export its products, including "eggroll wrap," long after its target date of closure.

In explaining this discrepancy, SIMEX merely alleged that not all its operations were closed. Even on this score alone, therefore, private respondents' position must be rejected.

These factors strongly give more credence to the Solicitor General and UFW's contention that the alleged closure of business of SIMEX was "but a subterfuge to discourage formation of a union" and that SIMEX was guilty of union busting. To all appearances, the company had filed a Notice of Closure simply to pre-empt the employees from forming a union within the company.

The SANTANDERS' prayer that they be dropped from this case must also be rejected. They should have adopted that recourse during the earlier stages. Moreover, UFW has adequately shown that the individual private respondents were not only officers of the company but its major stockholders as well (See *Carmelcraft Corporation v. NLRC*, G.R. Nos. 90634-35, 6 June 1990, 186 SCRA 393).

Lastly, if SIMEX has not yet recovered the balance of the compromise money given to then counsel for petitioner, its recourse is to file the appropriate civil or criminal case against the latter. After all, in said counsel's Affidavit, he has stated that he is ready to return the balance of what he had received after payment of the amount due in NLRC-NCR Case No. 00-01-00255-88.

WHEREFORE, the Petition for Certiorari is GRANTED. The Decision of respondent NLRC, dated 26 August 1989, is hereby SET ASIDE and the Decision of the Labor Arbiter, dated 27 June 1988, is hereby REINSTATED and AFFIRMED in toto.

Costs against private respondents.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

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