

## **CONSTRUCTION & DEVELOPMENT CORPORATION OF THE PHILIPPINES, PETITIONER, VS. HON. VICENTE LEOGARDO, JR., ACTING FOR AND IN BEHALF OF THE MINISTER OF LABOR AND EMPLOYMENT, AND NATI...**

*G.R. Nos. 64207-08. November 25, 1983*

Ponente: MELENCIO-HERRERA, J.

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### **MELENCIO-HERRERA, J.:**

This case arose from the following antecedents:

In 1971, the Development Bank of the Philippines (DBP, for brevity) foreclosed the plant of Midland Cement Corporation (Midland, for brevity), which was mortgaged to it to secure a loan, for its failure to pay its obligations. In August 1975, petitioner Construction & Development Corporation of the Philippines (CDCP, for brevity), now a government-controlled corporation, leased the facilities of Midland from the DBP, which had then acquired the controlling interest in Midland.

However, due to serious financial reverses, CDCP requested from DBP the termination of the lease contract and the return of the plant facilities to the latter. The plant was closed at the end of business hours on June 30, 1981, but the employees were informed that they would receive full pay until July 31, 1981.

On July 21, 1981, CDCP filed with Regional Office No. IV-A, Ministry of Labor and Employment, a clearance application to terminate the 175 employees of the cement plant effective August 1, 1981, in view of the termination of its lease agreement with DBP and the closure of business operations on account of serious financial reverses (RO4-A-Case No. LRD-CA-7-718 & 719-81). All affected employees were duly advised.

Private respondent National Mines and Allied Workers Union (NMAWU-MIF) opposed the application for clearance alleging that it had a Collective Bargaining Agreement with petitioner; that the action of petitioner was a move to bust the union as termination of the lease contract is not a cause for termination of employment; that DBP should absorb the workers in the same manner that petitioner did when it took over the cement plant; that pursuant to Article 1311 of the Civil Code,<sup>[1]</sup> the CBA is binding not only on CDCP and NMAWU-MIF, but also on their successors-in-interest and/or assigns.

On July 29, 1981, NMAWU-MIF filed a Motion to implead the DBP alleging that since DBP was the actual owner of the cement plant, it was the proper party to safeguard the security of tenure of the 175 employees.

CDCP admitted that it had an existing CBA with NMAWU--MIF, which was effective up to June 30, 1982, but alleged that it had to cease operating the cement plant because of substantial losses in operational and maintenance expenses resulting from frequent shutdowns caused by lack of raw materials, and bunker fuel, the strike declared by NMAWU-MIF on March 4, 1981, which lasted up to June 11, 1981, and other causes beyond its control; that its delinquency in the payment of lease rentals alone amounted to P22,146,649.05; that upon the turn-over of the plant facilities to DBP, its employer-employee relationship with the 175 employees was

extinguished.

In a letter dated August 13, 1981, addressed to the Minister of Labor and Employment, DBP, through its Acting Chairman, expressly committed itself on a best-effort basis, to require the next lessee to absorb the existing personnel of the cement plant under CDCP and to assume any existing employment contract with them.

On August 27, 1981, the Regional Director granted the clearance to terminate the 175 employees. NAMAWU-MIF appealed to the Ministry of Labor and Employment (MOLE) on the ground of grave abuse of discretion in granting the clearance application and in failing to award separation pay to the affected employees. MOLE, on April 27, 1983, modified the Order of the Regional Director of August 27, 1981 and held:

"Since the closure of the cement division of CDCP was due to the termination of the lease contract brought about by serious business reverses and it appearing that CDCP did not totally cease operations the herein 175 oppositors should be entitled to separation pay equivalent to one-half month for every year of service.

"WHEREFORE, the order appealed from is hereby affirmed with modification in that applicant Construction and Development Corporation of the Philippines is hereby ordered to pay the herein 175 affected employees separation pay equivalent (to) one-half month's salary for every year of service.

"SO ORDERED."[2]

We resolved to consider respondents' Comments as their respective Answers and to give due course to the Petition but dispensed with the submission of memoranda, issues having been joined.

The issue for resolution is whether or not, under the environmental circumstances, the 175 employees whose services were terminated by petitioner are entitled to separation pay. Petitioner upholds the negative view on the ground that the facts of the case do not show that there was a retrenchment in operations but a total closure of the operations of the cement plant, for which reason, separation pay is not a requirement. The Solicitor General supports petitioner's position contrary to that of the Minister of Labor.

We sustain the challenged Order of MOLE.

In the case of *Wenceslao vs. Zaragoza, Inc.*[3] applying the Termination Pay Law[4], it was held: "What the law considers as a just cause for terminating an employment without a definite period is the closing or cessation of operation of the establishment or enterprise of the employer and not merely the closing or cessation of operation of any particular division or department of the employer's business." In that case, separation pay was given because there was no closing or cessation of the entire business but only the closing of a particular division of the employer's business.

It is true that in the later case of *Phil. American Embroideries, Inc. vs. Embroidery & Garment Workers Union*[5], it was held that "the closure of its department where the members of respondent union were employed was not an act of discrimination or a means of dismissal but rather the result of continued losses in operations - a ground that is entirely justified by law." We cannot look to that case for the necessary precedent, however, because the controversy therein revolved only around the question of whether or not the employer was guilty of unfair labor practice and did not touch on the question of separation pay, besides the fact that it was decided before the enactment of the present Labor Code which now distinguishes between closure of an establishment and retrenchment.

At bar, what is involved is the closure of a particular division or department under the CDCP umbrella of organizations due to the termination of a lease contract brought about by serious business reverses. This constitutes retrenchment by, and not closure of, the enterprise or the company itself as CDCP has not totally

ceased operations but is still an on-going concern. Section 2, Article XI of the Collective Bargaining Agreement clearly provides that in case of retrenchment initiated by the employer to prevent losses, employees are entitled to termination pay.

"Section 2. Where the termination of employment is due to retrenchment initiated by the employer to prevent losses or other similar causes, or where the employee suffers from a disease and his continued employment is prohibited by law or is prejudicial to his health or to the health of his co-employees, the employee shall be entitled to termination pay equivalent at least to his one month salary, or to one-half month pay for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year."

Article 284 of the Labor Code, as amended by BP Blg. 130, likewise provides for separation pay in cases of retrenchment to prevent losses.

"Art. 284. 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 or 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. xxx x xxx xxx xxx xxx xxx 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 at least one-half (½) 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."

The financial setbacks reportedly suffered by CDCP have to be considered in the light of its agreements and the applicable law and jurisprudence and balanced with the interests of labor that stand to suffer more because of their meager resources and limited wherewithal to cushion themselves against the deleterious effects of unemployment.

ACCORDINGLY, the challenged Order, dated April 27, 1983, of the Ministry of Labor and Employment is hereby upheld.

No costs.

**SO ORDERED.**

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

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[1] "Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contracts are not transmissible by their nature, or by stipulation or by provision of law. x x x x x x

[2] p. 19, Rollo.

**[3] 24 SCRA 554 (1968).**

[4] Republic Act No. 1052, as amended by R.A. 1787.

**[5] 26 SCRA 634 (1969).**

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