108 OG No. 5, 518 (January 30, 2012)

[SP No. 111502, July 20, 2010]

ESTRELLA R. BACLAS. ET AL., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) ET AL., RESPONDENTS.

Court of Appeals

Before this Court is a Petition for Certiorari[1] under Rule 65 of 1997 Revised Rules of Civil Procedure seeking to annul and set aside the decision dated December 24, 2008, as well as the resolution dated August 28, 2009 of the National Labor Relations Commission in NLRC CA No. 048373-06 NLRC NCR CASE No. 00-04-03327-05 & 00-04-03147-05, entitled "Estrella Baclas, et al., Complainant/s, *vs.* Florian Laundry, Inc., et. al., Respondents.", the dispositive portions of which read:

Decision dated December 24, 2008[2]

> 'WHEREFORE, premises considered, respondent's (sic) appeal is hereby GRANTED. Accordingly, the award of separation pay is hereby deleted and the grant of proportionate 13th month pay is hereby limited to year 2005 only.
>
> Furthermore, while respondent (sic) succeeded in proving closure due to serious business losses, he is however liable to pay each complainant the amount of P1,000.00 as penalty for non-compliance with the one-month notice requirement to the DOLE.
>
> SO ORDERED."[3]

Resolution dated August 28, 2009[4]

> "WHEREFORE, the Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED.[5]"

The facts are:

On April 7, 2005, petitioner Estrella Baclas, together with her co-employees at private respondent Florian Laundry, Inc., filed a Complaint for Illegal Dismissal[6], underpayment/non-payment of salaries/ wages, overtime pay, service incentive leave, 13th month pay, damages, etc. against private respondents Florian Laundry, Inc. (Florian for brevity), Leandro Enriquez, Evelyn Talamayan, Carmen Roque, Ian Enriquez, Ma. Ivone Enriquez, Imeterio Medran and Sharon Michael. In their Position Paper[7], petitioners alleged that: they were hired by private respondent Florian which was engaged in steam laundry business on different dates and were posted to different positions; their tour of duty was from Monday to Saturday, with three shifts, to wit: 6:00 A.M. to 3:00 P.M. (1st shift), 6:00 P.M. to 9:00 P.M. 2nd

shift and from 9:00 P.M. to 6:00 A.M. (3rd shift); they were not paid overtime and night differential pay; they had been working for the company for several years but they were not paid service incentive leave pay and 13th month pay; on April 5, 2005, they reported for work, but were surprised when in the afternoon they were informed that they should no longer report for work the following day because allegedly, the company would stop its operation due to serious business losses; despite such information, they reported for work the next day but they were not allowed to do so, although some personnel were allowed to work; private respondent Florian also hired new workers, thus, belying its claim that it was experiencing business losses; they were terminated without just cause and were denied their right to due process; and, they suffered loss of income and were constrained to engaged the services of counsel to file and prosecute their case. They prayed that their termination be declared illegal and that private respondents be required to reinstate the petitioners to their former positions without lost of seniority rights, payment of their backwages, overtime pay, service incentive leave pay and 13th month pay.

In their Position Paper[8], private respondents alleged that: petitioners failed to present evidence to support their claim that they were employees of private respondent Florian; sometime in January 2003, financial woes started to beset private respondent Florian due to the dwindling number of clients and increasing number of competitors; thereafter, private respondent Florian held monthly meetings with all its employees to update them of the financial status of the company and to brainstorm ways to cut costs; private respondent Florian tried to lessen expenses by changing their suppliers to cheaper ones, cut the number of working days of the employees and lessen overtime; when these measures still did not help decrease the overhead expenses of private respondent Florian, nor improve its financial situation, it asked its employees to shorten their working days and terminated the services of casual employees; since nothing did prove effective, the management decided to cease operations due to serious financial reverses; on April 6, 2005, the management met with its employees and tried to explain the financial hardships the company was facing and how the management tried to keep the business alive, but still continued to experience losses; private respondent Flprian sent notices to their employees and to the Department of Labor and Employment informing them of the business closure due to grave financial losses and the separation of the employees effective May 5, 2005; and, a few days after the said meeting with the employees, private respondent Florian received the summons and complaint in this case.

On December 27, 2006, the Labor Arbiter issued a decision[9], the dispositive portion of which reads:

> "WHEREFORE, premises considered, the complaint for illegal termination is dismissed.
>
> However, respondent Leandro Enriquez should pay the complainants their 13th month pays (sic) and separation pays (sic), (see Annex A)
>
> SO ORDERED."[10]

In the computation of the judgment award of the Labor Arbiter, it appeared that private respondents were adjudged to pay a total amount of P3,910,376.40 in favor of the petitioners. Private respondents appealed the said decision to the NLRC and posted a cash bond in the amount of P50,000.00.

On December 24, 2008, the NLRC rendered the assailed decision granting the appeal, deleting the award of separation pay and reducing the proportionate 13th month pay to the year 2005 only. Private respondents were however ordered to pay each petitioner the amount of P1,000.00 as penalty for non-compliance with the one-month notice rule. Hence, this petition based on the following grounds:

I.

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENTS (sic) APPEAL DESPITE THE LATTER POSTED AN APPEAL BOND OF P50,000.00 WHILE THE TOTAL JUDGMENT AWARD OF THE LABOR ARBITER WAS P3,910,376.40;

II.

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN MODIFYING THE DECISION OF LABOR ARBITER GAUDENCIO DEMAISIP, JR., WHO DIRECTED PRIVATE RESPONDENT LEANDRO ENRIQUEZ TO PAY PETITIONERS SEPARATION PAY AND 13TH MONTH PAY.

The petition lacks merit.

Petitioners argue that: public respondent NLRC committed grave abuse of discretion in granting private respondents' appeal despite the fact that the latter posted an appeal bond P50,000.00 while the total judgment award was P3,910,376.40; this has an effect of non-perfection of the appeal; and, the NLRC committed grave abuse of discretion in deleting the award of separation pay and 13th month pay.

On the other hand, private respondents argue that: the NLRC did not commit grave abuse of discretion in taking cognizance of the appeal after they filed a reduced appeal bond; and, they submitted all the requirements in perfecting an appeal including a motion for the reduction of the bond, considering the serious financial reverses it experienced leading to its closure.

This Court finds for the private respondents.

It is settled that when the closure of the business was due to serious financial losses, the payment of separation pay is no longer required for obvious reasons. Thus, in case of Galaxie Steel Workers Union (GSWU-NAFLU-KMU), et al. *vs.* NLRC, et al.[11], it was held that:

Respecting petitioners' claim for separation pay Article 283 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 devises, 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 to a equivalent to at least his one (1) month pay or to 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[12] 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 one (1) whole year.

In North Davao Mining Corporation *v.* National Labor Relations Commission, this Court held that Article 283 governs the grant of separation benefits "in case of closures or cessation of operation" of business establishments "NOT due to serious business losses or financial reverses... "*Where, the closure then is due to serious business losses, the Labor Code does not impose any obligation upon the employer to pay separation benefits.*

Explaining the policy distinction in Article 283 of the Labor Code, this Court, in Cama *v.* Joni's Food Services, Inc., declared:

> The Constitution, while affording full protection to labor, nonetheless, recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." In line with this protection afforded to business by the fundamental law, Article 283 of the Labor Code clearly makes a policy distinction. It is only in instances 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" that employees whose employment has been terminated as a result are entitled to separation pay. *In other words, Article 283 of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to serious losses. To require an employer to be generous when it is no longer in a position to do so, in our view, would be unduly oppressive, unjust, and unfair to the employer.* Ours is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor the self-destruction of the employer.... (Emphasis supplied)

The denial of petitioners' claim for separation pay was thus in order.