

FIRST DIVISION

[G.R. No. 165923, September 29, 2010]

**SHIMIZU PHILS. CONTRACTORS, INC., * PETITIONER, VS.
VIRGILIO P. CALLANTA, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

By this Petition for Review on *Certiorari*,^[1] Shimizu Phils. Contractors, Inc. (petitioner) assails the Decision^[2] dated June 10, 2004 and Resolution^[3] dated October 5, 2004 of the Court of Appeals (CA) in CA-G.R. SP. No. 66888, which reversed the Decision^[4] dated December 14, 2000 of the National Labor Relations Commission (NLRC) and ordered petitioner to reinstate Virgilio P. Callanta (respondent) and pay him his backwages for not having been validly dismissed.

Antecedent Facts

Petitioner, a corporation engaged in the construction business, employed respondent on August 23, 1994 as Safety Officer assigned at petitioner's Yutaka-Giken Project and eventually as Project Administrator of petitioner's Structural Steel Division (SSD) in 1995.

In a Memorandum dated June 7, 1997,^[5] respondent was informed that his services will be terminated effective July 9, 1997 due to the lack of any vacancy in other projects and the need to re-align the company's personnel requirements brought about by the imperatives of maximum financial commitments.

Respondent then filed an illegal dismissal complaint against petitioner assailing his dismissal as without any valid cause.

Petitioner advanced that respondent's services was terminated in accordance with a valid retrenchment program being implemented by the company since 1996 due to financial crisis that plague the construction industry. To prove its financial deficit, petitioner presented financial statements for the years 1995 to 1997 as well as the Securities and Exchange Commission's approval of petitioner's application for a new paid-in capital amounting to P330,000,000. Petitioner alleged that in order not to jeopardize the completion of its projects, the abolition of several departments and the concomitant termination of some employees were implemented as each project is completed. When respondent's Honda Project was completed, petitioner offered respondent his separation pay which the latter refused to accept and instead filed an illegal dismissal complaint.

Respondent claimed that petitioner failed to comply with the requirements called for by law before implementing a retrenchment program thereby rendering it legally

informed. First, it did not comply with the provision of the Labor Code mandating the service of notice of retrenchment. He pointed out that the notice sent to him never mentioned retrenchment but only project completion as the cause of termination. Also, the notice sent to the Department of Labor and Employment (DOLE) did not conform to the 30-day prior notice requirement. Second, petitioner failed to use fair and reasonable criteria in determining which employees shall be retrenched or retained. As shown in the termination report^[6] submitted to DOLE, he was the only one dismissed out of 333 employees. Worse, junior and inexperienced employees were appointed/assigned in his stead to new projects thus also ignoring seniority in hiring and firing employees.

In reply, petitioner reiterated its progressive implementation of the retrenchment program and finds this as basis why respondent's termination coincided with project completion. Petitioner argued that when it submitted the retrenchment notice/termination report to DOLE, there was already substantial compliance with the requirement. It explained that such termination report reflects only the number of employees retrenched for the particular month of July of 1997 and cannot be deemed as evidence of the total number of employees affected by the retrenchment program. Petitioner also accused respondent of giving false narration of facts about his employment position and further disclosed that respondent has been saddled with complaints subject of administrative investigations for violations of several company rules, *i.e.*, cited for discrepancies in his time sheet,^[7] unauthorized use of company vehicle,^[8] stealing of company property^[9] and abandonment of work,^[10] so much so that petitioner's decision to appoint more competent and more senior employees in his stead cannot be questioned.

Ruling of the Labor Arbiter

On April 14, 2000, the Labor Arbiter rendered a Decision^[11] holding that respondent was validly retrenched. He found that sufficient evidence was presented to establish company losses; that petitioner offered respondent his separation pay; and that petitioner duly notified DOLE about the retrenchment. The Labor Arbiter further relied on petitioner's factual version relating to respondent's employment background with regard to his position and behavioral conduct.

Pertinent portions of the Labor Arbiter's Decision read:

In terminating the services of complainant, respondent Shimizu had complied with the requirements of law on retrenchment. It had prepared a check for the amount of P 29,320.30 as payment for his separation pay and other entitlements. However, as afore-stated, complainant refused to receive the amount, for reasons known only to him. Also, respondent company had duly notified the Department of Labor and Employment (DOLE) about the retrenchment of the complainant.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered dismissing the instant complaint for lack of merit.

SO ORDERED.^[12]

Ruling of the National Labor Relations Commission

Upon appeal, the NLRC upheld the ruling that there was valid ground for respondent's termination but modified the Labor Arbiter's Decision by holding that petitioner violated respondent's right to procedural due process. The NLRC found that petitioner failed to comply with the 30-day prior notice to the DOLE and that there is no proof that petitioner used fair and reasonable criteria in the selection of employees to be retrenched. The dispositive portion of the NLRC Decision reads:

WHEREFORE, in view of the foregoing, the finding of the Labor Arbiter a quo is MODIFIED.

Respondent Shimizu Philippine Contractor, Inc., is ordered to pay complainant-appellant Virgilio P. Callanta his separation pay equivalent to one (1) month pay for every year of service. For want of due notice, respondent is further directed to pay complainant an indemnity equivalent to one (1) month salary.

SO ORDERED.^[13]

Both parties sought reconsideration of the NLRC's Decision. Respondent, in his Motion for Reconsideration,^[14] attributed grave error upon the NLRC in ruling that the absence of fair and reasonable criteria in effecting the retrenchment affected only the requirements of due process, arguing that such failure should have invalidated the entire retrenchment program. Petitioner, for its part, filed a Motion for Partial Reconsideration^[15] questioning the amount of separation pay awarded to respondent.

The NLRC, in its Resolution^[16] dated June 29, 2001, denied respondent's motion and found merit in petitioner's motion by modifying the amount of separation pay to an amount equivalent to one month or one-half month pay for every year of service, whichever is higher, in consonance with Article 283 of the Labor Code. Thus:

WHEREFORE, premises considered, the complainant's Motion for Reconsideration is hereby DENIED for lack of merit. The respondent's partial motion for reconsideration is hereby GRANTED. Consequently, our Decision promulgated on December 14, 2000 is hereby MODIFIED in that the separation pay granted to complainant should be one (1) month pay or one-half (1/2) month pay for every year of service, whichever is higher, a fraction of at least six months to be considered one (1) whole year.

Other dispositions in our said Decision stand Affirmed.

SO ORDERED.^[17]

Ruling of the Court of Appeals

Undaunted, respondent filed a petition for *certiorari* with the CA. On June 10, 2004, the CA reversed and set aside the NLRC's ruling. The CA opined that petitioner failed to prove that there were employees other than respondent who were similarly dismissed due to retrenchment and that respondent's alleged replacements held much higher ranks and were more deserving employees. Moreover, there were no proofs to sustain that petitioner used fair and reasonable criteria in determining which employees to retrench. According to the CA, petitioner's failure to produce evidence raises the presumption that such evidence will be adverse to it. Consequently, the CA invalidated the retrenchment, held respondent to have been illegally dismissed, and ordered respondent's reinstatement and payment of backwages.

The dispositive portion of the Decision reads:

WHEREFORE, the assailed Decision dated December 14, 2000 and the Resolution dated June 29, 2001 both of the National Labor Relations Commission, Third Division in NLRC Case No. CA 024643-00 are REVERSED and SET ASIDE.

Private Respondent Shimizu Philippine Contractors, Inc. is hereby ORDERED to reinstate Petitioner VIRGILIO P. CALLANTA with backwages computed from the date of his dismissal on July 9, 1997 up to the finality of this Decision without loss of seniority rights and benefits appurtenant to his position.

SO ORDERED.^[18]

The CA denied petitioner's Motion for Reconsideration^[19] and reiterated that petitioner offered no proof of any standard or program intended to implement the retrenchment program.

Issues

Thus, the instant petition raising the following issues:

A.

WHETHER X X X THE HONORABLE COURT OF APPEALS EXCEEDED ITS JURISDICTION WHEN IT REVERSED THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC BY RE-EVALUATING THE EVIDENCE ON RECORD.

B.

WHETHER X X X THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT PETITIONER FAILED TO OBSERVE FAIR AND REASONABLE STANDARDS OR CRITERIA IN EFFECTING THE DISMISSAL OF [RESPONDENT].^[20]

Petitioner contends that the CA's corrective power in petitions for *certiorari* is confined only to jurisdictional issues and a determination of whether there is grave abuse of discretion amounting to lack or excess of jurisdiction. It does not encompass the reevaluation and reassessment of factual findings and conclusions of the Labor Arbiter which should be accorded great weight and respect when affirmed by the NLRC. According to petitioner, the CA gravely erred in finding that no valid retrenchment exists contrary to the prior findings of the Labor Arbiter and NLRC.

Petitioner also insists that all the requisites for a valid retrenchment have been established by substantial evidence and that it observed fair and reasonable standards in implementing its retrenchment program, to wit: *ability to perform work efficiently* and *seniority*. As succinctly found by the Labor Arbiter, respondent is notorious for violating company rules which adversely reflected on his ability to perform work effectively. Petitioner further denies that junior officers/employees were retained and that respondent was singled out for termination.

Our Ruling

We find the petition meritorious.

At the outset, the power of the CA to review a decision of the NLRC "in a petition for *certiorari* under Rule 65 of the Rules of Court does not normally include an inquiry into the correctness of the NLRC's evaluation of the evidence."^[21] However, under certain circumstances, the CA is allowed to review the factual findings or the legal conclusions of the NLRC in order to determine whether these findings are supported by the evidence presented and the conclusions derived therefrom are accurately ascertained.^[22] It has been held that "[i]t is within the jurisdiction of the CA x x x to review the findings of the NLRC."^[23]

From the foregoing, the CA, in the present case, cannot be faulted in re-evaluating the NLRC's findings as it can undoubtedly affirm, modify or reverse the same if the evidence warrants. Having settled thus, we shall now proceed to review whether the CA correctly appreciated the NLRC's finding and if the CA's resultant decision was in accord with law and evidentiary facts.

There was substantial compliance for a valid retrenchment; petitioner used fair and reasonable criteria in effecting retrenchment.

As an authorized cause for separation from service under Article 283 of the Labor Code,^[24] retrenchment is a valid exercise of management prerogative subject to the strict requirements set by jurisprudence:

- (1) That the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
- (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one