

FIRST DIVISION

[G.R. Nos. 178222-23, September 29, 2010]

MANILA MINING CORP. EMPLOYEES ASSOCIATION-FEDERATION OF FREE WORKERS CHAPTER, SAMUEL G. ZUÑIGA, IN HIS CAPACITY AS PRESIDENT, PETITIONERS, VS. MANILA MINING CORP. AND/OR ARTEMIO F. DISINI, PRESIDENT, RENE F. CHANYUNGCO, (SVP-TREASURER), RODOLFO S. MIRANDA, (VP-CONTROLLER), VIRGILIO MEDINA (VP), ATTY. CRISANTO MARTINEZ (HRD), NIGEL TAMLYN (RESIDENT MANAGER), BRYAN YAP (VP), FELIPE YAP (CHAIRMAN OF THE BOARD), AND THE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), RESPONDENTS.

DECISION

PEREZ, J.:

This petition for review on *certiorari* seeks a reversal of the 30 June 2006 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 86073 and its Resolution^[2] in the same case dated 30 May 2007.

Respondent Manila Mining Corporation (MMC) is a publicly-listed corporation engaged in large-scale mining for gold and copper ore. MMC is required by law to maintain a tailings containment facility to store the waste material generated by its mining operations. Consequently, MMC constructed several tailings dams to treat and store its waste materials. One of these dams was Tailings Pond No. 7 (TP No. 7), which was constructed in 1993 and was operated under a permit issued by the Department of Environment and Natural Resources (DENR), through its Environmental Management Bureau (EMB) in Butuan City, Agusan del Norte.^[3]

On 10 January 2000, eleven (11) rank-and-file employees of MMC, who later became complainants before the labor arbiter, attended the organizational meeting of MMC-Makati Employees Association-Federation of Free Workers Chapter (Union). On 3 March 2000, the Union filed with the Department of Labor and Employment (DOLE) all the requirements for its registration. The Union acquired its legitimate registration status on 30 March 2000. Subsequently, it submitted letters to MMC relating its intention to bargain collectively. On 11 July 2001, the Union submitted its Collective Bargaining Agreement (CBA) proposal to MMC.

Upon expiration of the tailings permit on 25 July 2001, DENR-EMB did not issue a permanent permit due to the inability of MMC to secure an Environmental Compliance Certificate (ECC). An essential component of an ECC is social acceptability or the consent of the residents in the community to allow TP No. 7 to operate, which MMC failed to obtain.^[4] Hence, it was compelled to temporarily shut down its mining operations, resulting in the temporary lay-off of more than 400 employees in the mine site.

On 30 July 2001, MMC called for the suspension of negotiations on the CBA with the Union until resumption of mining operations.^[5]

Among the employees laid-off, complainants Samuel Zuñiga, Myrna Maquio, Doroteo Torre, Arsenio Mark Perez, Edmundo Galvez, Diana Ruth Rellores, Jonathan Araneta, Teresita Lagman, Reynaldo Anzures, Gerardo Opena, and Edwin Tuazon, together with the Union filed a complaint before the labor arbiter^[6] on even date praying for reinstatement, recognition of the Union as the sole and exclusive representative of its rank-and-file employees, and payment of moral and exemplary damages and attorney's fees.^[7]

In their Position Paper,^[8] complainants challenged the validity of their lay-off on the averment that MMC was not suffering from business losses. They alleged that MMC did not want to bargain collectively with the Union, so that instead of submitting their counterproposal to the CBA, MMC decided to terminate all union officers and active members. Petitioners questioned the timing of their lay-off, and alleged that first, there was no showing that cost-cutting measures were taken by MMC; second, no criteria were employed in choosing which employees to lay-off; and third, the individuals laid-off were those who signed the attendance sheet of the union organizational meeting. Petitioners likewise claimed that they were denied due process because they were not given a 30-day notice informing them of the lay-off. Neither was the DOLE informed of this lay-off, as mandated by law.^[9]

Respondents justified the temporary lay-off as *bona fide* in character and a valid management prerogative pending the issuance of the permit to continuously operate TP No. 7.

The labor arbiter ruled in favor of MMC and held that the temporary shutdown of the mining operation, as well as the temporary lay-off of the employees, is valid.^[10]

On appeal, the National Labor Relations Commission (NLRC) modified the judgment of the labor arbiter and ordered the payment of separation pay equivalent to one month pay for every year of service. It ratiocinated that the temporary lay-off, which exceeded more than six (6) months, had the effect of severance of the employer-employee relationship. The dispositive portion of the Decision read:

WHEREFORE, the assailed decision is, as it is hereby, Vacated and Set Aside and a new one entered ordering respondent Manila Mining Corporation to pay the individual complainants their separation pay computed as follows:

1. **Samuel G. [Z]uñiga** From Feb. 1, 1995 to
July 27, 2001 = 7
yrs.
P14,300/mo.
P14,300 x 7 yrs. x ½ P 50,050.00
2. **Myrna Maquio** From March 1992 to
July 27, 2001 = 9

	yrs.	
	P14,000/mo.	
	P14,000 x 9 yrs. x ½	P 63,000.00
3. Doroteo J. Torre	From July 1983 to July 27, 2001 = 18 yrs.	
	P10,000/mo.	
	P10,000 x 18 yrs. x ½	P 90,000.00
4. Arsenio Mark M. Perez	From June 1996 to July 27, 2001 = 5 yrs.	
	P9,500/mo.	
	P9,500 x 5 yrs. x ½	P 23,750.00
5. Edmundo M. Galvez	From June 1997 to July 27, 2001 = 4 yrs.	
	P9,500/mo.	
	P9,500 x 4 yrs. x ½	P 19,000.00
6. Jonathan Araneta	From March 1992 to July 27, 2001 = 9 yrs.	
	P15,500/mo.	
	P15,500 x 9 yrs. x ½	P 69,750.00
7. Teresita D. Lagman	From August 1980 to July 27, 2001 = 20 yrs.	
	P10,900/mo.	
	P10,900 x 20 yrs. x ½	P109,000.00
8. Gerardo Opena	From October 1997 to July 27, 2001 = 4 yrs.	
	P8,250/mo.	
	P8,250 x 4 yrs. x ½	P 16,500.00
9. Edwin Tuazon	From August 1994 to July 27, 2001 = 8 yrs.	
	P7,000/mo.	
	P7,000 x 8 yrs. x ½	<u>P 28,000.00</u>
GRAND TOTAL		P469,050.00

In addition respondent company is hereby ordered to pay attorney's fees to complainants equivalent to 10% of the award. ^[11]

In an Order^[12] dated 31 May 2004, the NLRC affirmed its Resolution.

Dissatisfied, both parties separately filed their petitions for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 86073 and CA G.R. SP No. 86163.

The two petitions were consolidated upon motion by MMC in a Resolution dated 3 February 2005.

In its Decision dated 30 June 2006, the Court of Appeals modified the NLRC ruling, thus:

WHEREFORE, the instant petition is partially GRANTED and the challenged Resolution dated August 29, 2003 of public respondent National Labor Relations Commission in NLRC NCR CA No. 033111-(CA No. 033111-02) is MODIFIED insofar as it holds MMC liable to pay the Union attorney's fees equivalent to 10% of the award, which portion of the questioned decision is now SET ASIDE.

The monetary award of separation pay is maintained, but is MODIFIED from one (1) month pay for every year of service to ONE-HALF (1/2) MONTH PAY for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.^[13]

Both parties filed their respective motions for reconsideration but in a Resolution dated 30 May 2007, the Court of Appeals denied the motions for lack of merit.^[14]

Only the Union elevated the case to this Court *via* the instant petition for review on *certiorari*. The Union attributes bad faith on the part of MMC in implementing the temporary lay-off resulting in the complainants' constructive dismissal. The Union alleges that the failure to obtain a permit to operate TP No. 7 is largely due to failure on the part of MMC to comply with the DENR-EMB's conditions.^[15]

The Union claims that the temporary lay-off was effected without any proper notice to the DOLE as mandated by Article 283 of the Labor Code. It further maintains that MMC did not observe the jurisprudential criteria in the selection of the employees to be laid-off.^[16]

The Union insists that MMC is guilty of unfair labor practice when it unilaterally suspended the negotiation for a CBA. The Union avers that the lay-off and subsequent termination of complainants were due to the formation of the union at MMC.^[17]

MMC defends the temporary lay-off of the employees as valid and done in the exercise of management prerogative. It concedes that upon expiration of the 6-month period, coupled with losses suffered by MMC, the complainants were constructively dismissed. However, MMC takes exception to the application of Article 286 of the Labor Code in that the 6-month period cannot and will not apply to the instant case in order to consider the employees terminated and to support the payment of separation pay. MMC explains that the 6-month period does not refer to a situation where the employer does not have any control over the nature, extent and period of the temporary suspension of operations. MMC adds that the