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[SYLLABUS]

[G.R. No. 112546, March 13, 1996]

NORTH DAVAO MINING CORPORATION AND ASSET PRIVATIZATION TRUST, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ANTONIO M. VILLANUEVA AND WILFREDO GUILLEMA, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

Is a company which is forced by huge business losses to close its business, legally required to pay separation benefits to its employees at the time of its closure in an amount equivalent to the separation pay paid to those who were separated when the company was still a going concern? This is the main question brought before this Court in this petition for certiorari under Rule 65 of the Revised Rules of Court, which seeks to reverse and set aside the Resolutions dated July 29, 1993[1] and September 27, 1993[2] of the National Labor Relations Commision[3] (NLRC) in NLRC-CA No. M-001395-93.

The Resolution dated July 29, 1993 affirmed in tow the decision of the Labor Arbiter in RAB-1 1-08-00672-92 and RAB- 11-08-00713-92 ordering petitioners to pay the complainants therein certain monetary claims.

The Resolution dated September 27, 1993 denied the motion for reconsideration of the said July 29, 1993 Resolution.

The Facts

Petitioner North Davao Mining Corporation (North Davao) was incorporated in 1974 as a 100% privately-owned company. Later, the Philippine National Bank (PNB) became part owner thereof as a result of a conversion into equity of a portion of loans obtained by North Davao from said bank. On June 30, 1986, PNB transferred all its loans to and equity in North Davao in favor of the national government which, by virtue of Proclamation No. 50 dated December 8, 1986, later turned them over to petitioner Asset Privatization Trust (APT). As of December 31, 1990 the national government held 81.8% of the common stock and 100% of the preferred stock of said company.[4]

Respondent Wilfredo Guillema is one among several employees of North Davao who were separated by reason of the company's closure on May 31, 1992, and who were the complainants in the cases before the respondent labor arbiter.

On May 31, 1992, petitioner North Davao completely ceased operations due to serious business reverses. From 1988 until its closure in 1992, North Davao suffered net losses averaging three billion pesos (P3,000,000,000.00) per year, for each of

the five years prior to its closure. All told, as of December 31, 1991, or five months prior to its closure, its total liabilities had exceeded its assets by 20.392 billion pesos, as shown by its financial statements audited by the Commission on Audit. When it ceased operations, its remaining employees were separated and given the equivalent of 12.5 days' pay for every year of service, computed on their basic monthly pay, in addition to the commutation to cash of their unused vacation and sick leaves. However, it appears that, during the life of the petitioner corporation, from the beginning of its operations in 1981 until its closure in 1992, it had been giving separation pay equivalent to thirty (30) days' pay for every year of service. Moreover, inasmuch as the region where North Davao operated was plagued by insurgency and other peace and order problems, the employees had to collect their salaries at a bank in Tagum, Davao del Norte, some 58 kilometers from their workplace and about 2 ½hours' travel time by public transportation; this arrangement lasted from 1981 up to 1990.

Subsequently, a complaint was filed with respondent labor arbiter by respondent Wilfredo Guillema and 271 other seperated employees for: (1) additional separation pay of 17.5 days for every year of service; (2) back wages equivalent to two days a month; (3) transportation allowance; (4) hazard pay; (5) housing allowance; (6) food allowance; (7) post-employment medical clearance; and (8) future medical allowance, all of which amounted to P58,022,878.31 as computed by private respondent.[5]

On May 6, 1993, respondent Labor Arbiter rendered a decision ordering petitioner North Davao to pay the complainants the following:

> "(a) Additional separation pay of 17.5 days for every year of service;
>
> (b) Backwages equivalent to two (2) days a month times the number of years of service but not to exceed three (3) years;
>
> (c) Transportation allowance at P80 a month times the number of years of service but not to exceed three (3) years."

The benefits awarded by respondent Labor Arbiter amounted to P10,240,517.75. Attorney's fees equivalent to ten percent (10%) thereof were also granted.[6]

On appeal, respondent NLRC affirmed the decision in toto. Petitioner North Davao's motion for reconsideration was likewise denied. Hence, this petition.

The Parties' Submissions and the Issues

In affirming the Labor Arbiter's decision, respondent NLRC ruled that "since (North Davao) has been paying its employees separation pay equivalent to thirty (30) days pay for every year of service," knowing fully well that the law provides for a lesser separation pay, then such company policy "has ripened into an obligation," and therefore, depriving now the herein private respondent and others similarly situated of the same benefits would be discriminatory.[7] Quoting from *Businessday Information Systems and Services. Inc. (BISSI) vs. NLRC.*[8] it said that petitioners "may not pay separation benefits unequally for such discrimination breeds resentment and ill-will among those who have been treated less generously than

others." It also cited *Abella vs. NLRC,*[9] as authority for saying that Art. 283 of the Labor Code protects workers in case of the closure of the establishment.

To justify the award of two days a month in backwages and P80 per month of transportation allowance, respondent Commission ruled:

> "As to the appellants' claim that complainants-appeallees' time spent in collecting their wages at Tagum, Davao is not compensable allegedly because it was on official time can not be given credence. No iota of evidence has been presented to back up said contention. The same is true with appellants' assertion that the claim for transportation expenses is without basis since they were incurred by the complainants. Appellants should have submitted the payrolls to prove that complainants-appellees were not the ones who personally collected their wages and/or the bus/jeep trip tickets or vouchers to show that the complainants-appellees were provided with free transportation as claimed."

Petitioner, through the Government Corporate Counsel, raised the following grounds for the allowance of the petition:

> "1. The NLRC acted with grave abuse of discretion in affirming without legal basis the award of additional separation pay to private respondents who were separated due to serious business losses on the part of petitioner.
>
> 2. The NLRC acted with grave abuse of discretion in affirming without sufficient factual basis the award of backwages and transportation expenses to private respondents.
>
> 3. There is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of the law."

and the following issues:

> "1. Whether or not an employer whose business operations ceased due to serious business losses or financial reverses is obliged to pay separation pay to its employees separated by reason of such closure.
>
> 2. Whether or not time spent in collecting wages in a place other than the place of employment is compensable notwithstanding that the same is done during official time.
>
> 3. Whether or not private respondents are entitled to transportation expenses in the absence of evidence that these expenses were incurred."

The First Issue: Separation Pay

To resolve this issue, it is necessary to revisit the provision of law adverted to by the parties in their submissions, namely Art. 283 of the Labor Code, which reads as follows:

> "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 under-taking 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 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 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." (italics supplied)

The underscored portion of Art. 283 governs the grant of seperation benefits "in case of closures or cessation of operation" of business establishments "NOT due to serious business losses or financial reverses x x x". Where, however, the closure was due to business losses - as in the instant case, in which the aggregate losses amounted to over P20 billion - the Labor Code does not impose any obligation upon the employer to pay separation benefits, for obvious reasons. There is no need to belabor this point. Even the public respondents, in their Comment[10] filed by the Solicitor General, impliedly concede this point.

However, respondents tenaciously insist on the award of separation pay, anchoring their claim solely on petitioner North Davao's long-standing policy of giving separation pay benefits equivalent to 30- days' pay, which policy had been in force in the years prior to its closure. Respondents contend that, by denying the same separation benefits to private respondent and the others similarly situated, petitioners discriminated against them. They rely on this Court's ruling in *Businessday Information Systems and Services, Inc. (BISSI) vs. NLRC, (supra).* In said case, petitioner BISSI, after experiencing financial reverses, decided "as a retrenchment measure" to lay-off some employees on May 16, 1988 and gave them separation pay equivalent to one-half (½) month pay for every year of service. BISSI retained some employees in an attempt to rehabilitate its business as a trading company. However, barely two and a half months later, these remaining employees were likewise discharged because the company decided to cease business operations altogether. Unlike the earlier terminated employees, the second batch received separation pay equivalent to a full month's salary for every year of service, plus a mid-year bonus. This Court ruled that "there was impermissible discrimination against the private respondents in the payment of their separation benefits. The law requires an employer to extend equal treatment to its employees. It may not, in the guise of exercising management prerogatives, grant greater benefits to some and less to others. x x x"

In resolving the present case, it bears keeping in mind at the outset that the factual circumstances of BISSI are quite different from the current case. The Court noted that BISSI continued to suffer losses even after the retrenchment of the first batch of employees; clearly, business did not improve despite such drastic measure. That notwithstanding, when BISSI finally shut down, it could well afford to (and actually did) pay off its remaining employees with MORE separation benefits as compared