SUPREME COURT
FIRST DIVISION

BANCO FILIPINO SAVINGS AND MORTGAGE BANK (REPRESENTED BY ITS LIQUIDATOR, MS. CARLOTA P. VALENZUELA),
***Petitioner*,**

-versus-

G.R. No. 82135
August 20, 1990

NATIONAL LABOR RELATIONS COMMISSION, Labor Arbiter EVANGELINE LUBATON and FORTUNATO DIZON, JR.,
***Respondents*.**
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D E C I S I O N

MEDIALDEA, *J.*:

After BANCO FILIPINO SAVINGS AND MORTGAGE BANK was placed under receivership, and later ordered liquidated by the Monetary Board of the Central Bank, FORTUNATO M. DIZON, Jr., who was then holding the position of Executive Vice President and Chief Operating Officer of the bank, received a letter from the Central Bank appointed liquidator, MS. CARLOTA P. VALENZUELA, informing him that all management authority in the bank had been

assumed by the Central Bank appointed liquidators and that his employment is being terminated.

Mr. Dizon filed with the liquidator a request for the payment to him of the cash equivalent of his vacation and sick leave credits and unexpended/unused reimbursable allowance. His claims were not paid by the liquidator upon counsel's advice that Dizon's claim should be treated as a claim of a creditor and should therefore be processed pursuant to the liquidation plan as approved by the Monetary Board. Subsequent demands for payment having been denied, Dizon filed on March 31, 1986 a complaint with the labor arbiter against the bank for recovery of unpaid salary, the cash equivalent of his accumulated vacation and sick leaves, termination pay under Article 283 of the Labor Code and moral damages and attorney's fees.

Representing the bank, the liquidator moved for the dismissal of the complaint refuting the legal and factual bases thereof as well as the jurisdiction of the labor arbiter to entertain Dizon's money claims because such pertains to the Regional Trial Court of Makati, Branch 146, acting as the liquidation court.

On November 14, 1986, the labor arbiter upheld her jurisdiction and promulgated a decision in favor of Dizon but withheld his demand for payment of moral damages and attorney's fees. Both parties appealed to the National Labor Relations Commission which increased the award due Dizon and further ordered payment of actual and moral damages and attorney's fees. The award of moral damages was later deleted in the resolution of February 24, 1988 of the Commission.

In this petition, the liquidator assails the foregoing decisions and resolution and prays that they be declared null and void on the following grounds: Firstly, she maintains that "all disputed claims against banks under liquidation pertain to the exclusive jurisdiction of the liquidation court (pursuant to section 29 of the Central Bank Act) and may not be adjudicated by the Labor Arbiters and the NLRC under Article 217 of the Labor Code," and cites the case of Hernandez vs. Rural Bank of Lucena, Inc., No. L-29791, January 10, 1978, 81 SCRA 75. She argues that "[t]he general provisions of Article 217 conferring upon respondents Labor Arbiter and the NLRC jurisdiction over claims arising from an employment relationship

cannot prevail over the explicit provisions of Section 29 of the Central Bank Act, which is a special law specifically vesting upon the liquidation court jurisdiction over all claims against liquidated banks." Secondly, the liquidator points out that "[t]he assailed decisions directing the payment of the claims outside of the liquidation process amount to an undue preference in favor of a particular creditor." She submits that "the statutory status of employees as preferred creditors with respect to 'wages due them for services rendered during the period prior to the bankruptcy or liquidation' does not in itself entitle them to advance payment outside of the liquidation proceedings and while said proceedings are in progress. The provision [Art. 110, Labor Code] entitles them only to preferential treatment over other creditors in the same liquidation proceedings to the proceeds of the assets of the employer after the distributable assets shall have been determined therein," and cites the case of Republic vs. Peralta, No. 56568, May 20, 1987, 150 SCRA 37. She further argues that an action could not be maintained against an insolvent bank after it had been ordered liquidated citing Central Bank vs. Morfe, No. L-38427, March 12, 1975, 63 SCRA 114 and Central Bank vs. Court of Appeals, No. L-37859, July 26, 1988, 163 SCRA 482.

It is common knowledge that the taking over of the management and assets of Banco Filipino by the Monetary Board of the Central Bank is being contested by some stockholders of the bank who insist that the bank is solvent and in sound financial condition and that its closure was illegal. The controversy has generated quite a number of cases in this Court and in one of them, G.R. No. 70054, entitled "Banco Filipino Savings and Mortgage Bank vs. The Monetary Board, et al.," We adopted a resolution, dated August 29, 1985, enjoining the Monetary Board, its officers, and the Central Bank-appointed receivers "from executing further acts of liquidation of a bank" save "acts such as receiving collectibles and receivables or paying off creditors claims and other transactions pertaining to normal operations of a bank," and later, further ordered that a hearing be conducted by the Regional Trial Court of Makati, Branch 146 to afford the former management/stockholders of the bank an opportunity to prove that the bank's closure was illegal. The temporary restraining order still stands and it appears that a report and recommendation on the hearing has yet to be filed. For the moment, therefore, the bank is

not being liquidated and the possibility lurks that it might not be at all. Respondent Dizon, cognizant of these, argues that it is the labor arbiter and the NLRC which has jurisdiction over his money claims since there is no liquidation court to speak of.

We are of the opinion that it is the NLRC which has jurisdiction over Dizon's money claims. Section 29 of the Central Bank Act (Republic Act No. 265) before its amendment by Executive Order No. 289 (September, 1987) reads, to wit:

> "Sec. 29. Proceedings upon insolvency. — If the Monetary Board shall determine and confirm within the said period that the bank or non-bank financial intermediary performing quasi-banking functions is insolvent or cannot resume business with safety to its depositors, creditors and the general public, it shall, if the public interest requires, order its liquidation, indicate the manner of its liquidation and approve a liquidation plan. The Central Bank shall, by the Solicitor General, file a petition in the Court of First Instance reciting the proceedings which have been taken and praying the assistance of the court in the liquidation of such institution. The court shall have jurisdiction in the same proceedings to adjudicate disputed claims against the bank or non-bank financial intermediary performing quasi-banking functions and enforce individual liabilities of the stockholders and do all that is necessary to preserve the assets of such institution and to implement the liquidation plan approved by the Monetary Board. The liquidator shall with all convenient speed, convert the assets of the banking institution or non-bank financial intermediary performing quasi-banking functions to money or sell, assign or otherwise dispose of the same to creditors and other parties for the purpose of paying the debts of such institution and he may, in the name of the bank or non-bank financial intermediary performing quasi-banking functions, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of such institution. [Emphasis ours]

There is nothing in Section 29 which suggests that the jurisdiction of the liquidation court to adjudicate claims against the insolvent bank is exclusive. On the other hand, Article 217 of the Labor Code

explicitly provides that labor arbiters have original and exclusive jurisdiction over money claims of an employee against his employer, thus:

> "ART. 217. Jurisdiction of the Labor Arbiter and the Commission. (a) The Labor Arbiter shall have the original and exclusive jurisdiction to hear and decide the following cases involving all workers:
>
> "x x x
>
> "3. All money claims of workers, including those based on non-payment or underpayment of wages, overtime compensation, separation pay and other benefits provided by law or appropriate agreement, except claims for employee's compensation, social security, medicare and maternity benefits." [Emphasis ours]

We do not think that this jurisdiction would be lost simply because a former employer had been placed under liquidation. The legislature deemed it wise to confer jurisdiction over labor disputes to a body exclusively of others and We are not prepared to divest such authority from the labor arbiter and the NLRC absent any clear provision of law to that effect.

The liquidator cites the case of Hernandez vs. Rural Bank of Lucena, supra, where this Court, commenting on the original Section 29 as embodied in R.A. No. 265, held that:

> "The fact that the insolvent bank is forbidden to do business, that its assets are turned over to the Superintendent of Banks, as a receiver, for conversion into cash, and that its liquidation is undertaken with judicial intervention means that, as far as lawful and practicable, all claims against the insolvent bank should be filed in the liquidation proceeding.
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> "The judicial liquidation is intended to prevent multiplicity of actions against the insolvent bank. The lawmaking body contemplated that for convenience only one court, if possible, should pass upon the claims against the insolvent bank and that

> the liquidation court should assist the Superintendent of Banks and control his operations.
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> "In the course of the liquidation, contentious cases might arise wherein a full-dress hearing would be required and legal issues would have to be resolved. Hence, it would be necessary in justice to all concerned that a Court of First Instance should assist and supervise the liquidation and should act as umpire and arbitrator in the allowance and disallowance of claims.
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> "The judicial liquidation is a pragmatic arrangement designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness." (Hernandez vs. Rural Bank of Lucena, Inc. supra, pp. 87-88) [Italics ours]

But it will be noted that even in the quoted opinion, consideration was given of the possibility or practicality of certain claims being adjudicated by other tribunals besides the liquidation court. Thus, in the later case of Carandang vs. Court of Appeals, No. L-44932, April 15, 1988, 160 SCRA 266, We upheld the jurisdiction of the then Court of First Instance of Laguna over that of the liquidation court, the Court of First Instance of Manila, considering that the cause of action of therein plaintiff was already fully litigated in the former court and to re-litigate would "mean more inconvenience to the parties, entailing waste of money and precious time." In other words, it is not a legal aberration that certain claims against an insolvent bank be litigated in another court where to do so would be more practical; and more so in this case where it is not legally possible to litigate Dizon's claims other than with the Labor Arbiter and the NLRC because of the express provision of the Labor Code.

Neither do We subscribe to the interpretation given by the bank in the case of Central Bank vs. Morfe, supra, which purportedly prohibits the filing of cases against a bank after it has been declared insolvent. That case simply ruled that judgments from suits filed after a bank has been declared insolvent "cannot be considered preferred and that Article 2244 (14) (b) [of the Civil Code] does not apply to judgments for the payment of the deposits in an insolvent savings bank which were obtained after the declaration of insolvency." Moreover, as in

the other cited case of Central Bank vs. Court of Appeals, supra, the case involves recovery of deposits.

Under normal circumstances the decision of the NLRC is immediately executory (See Article 223, Labor Code). The bank's liquidator, however, resists immediate payment to Dizon of his adjudicated money claims on the ground that it would amount to undue preference of credit. Dizon countered that under Article 110 of the Labor Code unpaid wages of laborers are indeed preferred. Moreover, Dizon reminded, this Court had temporarily enjoined the liquidation of the bank and, therefore, there is no liquidation proceeding where his claims may be paid.

Article 110 of the Labor Code before its amendment by Republic Act No. 6715 (March 2, 1989) reads as follows:

> "ART. 110. Worker Preference in case of Bankruptcy. — In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer."

In Republic vs. Peralta, supra the majority of this Court was of the opinion that the above quoted provision did not upgrade the worker's claim as absolutely preferred credit. There We explained that the provision did not alter Articles 2241 and 2242 of the Civil Code so much so that creditors with liens over a certain property are still given special preference over the proceeds of that property. And it is only after these specially preferred credits are satisfied may the ordinary preferred credits enumerated in Article 2244 of the Civil Code be paid according to their order of priority. The significance of Article 110 in the scheme of concurrence and preference of credit is to raise the worker's money claim into first priority under Article 2244. (See also Development Bank of the Philippines vs. NLRC, G.R. Nos. 82763-64, March 19, 1990).

Not being an absolutely preferred credit, as taxes are under Articles 2241 (1) and 2242 (1), Dizon's claims cannot be paid ahead of other credits and outside of the liquidation proceeding because the "free property" or the property left after the creditors mentioned in Articles 2241 and 2242 are paid has not yet been determined (See Barreto vs. Villanueva, No. L-14938, December 29, 1962, 6 SCRA 928). In the words of Lipana vs. Development Bank of Rizal, No. 73884, September 24, 1987, 154 SCRA 257, 261, "to execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other [depositors and] creditors."

Thus, Dizon's adjudicated claims should be submitted to the liquidators for processing. If, of course, it is later determined that Banco Filipino's liquidation is improper then the NLRC'S decision may be executed under normal procedure. If the contrary is proven, however, and the bank's liquidation should proceed, Dizon's established claims should be treated as an ordinary preferred credit enjoying first preference under Art. 2244 of the Civil Code.

In its petition, the bank did not raise any argument against the merit of Dizon's money claims. Thus, the comments of the public and private respondents thereto were directed on what was so far discussed. It would seem unfair, therefore, that the bank would subsequently assail the merits of the award in its memorandum leaving the respondents off-guard. In any event, We do not find the bank's foray on Dizon's money claims meritorious.

The bank argues that Dizon is not entitled to separation pay citing Article 283 of the Labor Code which reads to wit:

> "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."

It is the bank's interpretation of the law that when an institution is closed due to serious business losses or financial reverses its workers

are not entitled to separation pay. We disagree. We instead quote with approval the opinion of respondent Labor Arbiter, thus:

> "Article 283 (Art. 282) of the Labor Code enumerated the just causes for an employer to terminate an employee. If an employee is dismissed for just cause, he is not entitled to termination pay. However, in Article 284 (Art. 283), in case of closure of establishment, the employee is always given termination pay. The reason for the closure is taken into consideration only to determine whether to give one month or one-half month pay for every year of service. This provision is based on social justice and equity." (p. 41, Rollo)

Such was Our ruling in International Hardware, Inc. vs. NLRC, G.R. No. 80770, August 10, 1989. As regards the commutation to cash of Dizon's accumulated vacation and sick leaves, both the Labor Arbiter and the NLRC found that this was authorized by the Collective Bargaining Agreement then existing before the bank's closure and which CBA the liquidators manifested to honor. This is a factual issue which We are not inclined to disturb. Also, since Dizon was forced to litigate, he is entitled to attorney's fees.

ACCORDINGLY, the Decision under review is **AFFIRMED** save that the money due the private respondent should be presented to the liquidators for processing.

SO ORDERED.

Narvasa, Cruz, Gancayco and Griño-Aquino, *JJ.*, concur.