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SUPREME COURT
SECOND DIVISION

JOSEFINA A. CAMA,[*] **JUVY S. LEQUIN, ALLAN L. BULAN, ELSA D. ALAMILLO, ZALDY C. ARABE, ROSARIO B. PADUA, PRUDENCIO R. BERCES, ASELA MONTEGREJO, NIMFA C. ABUDE and PRIMA P. SANTIANO,**[**]
Petitioners,

-versus-

G.R. No. 153021
March 10, 2004

JONI'S FOOD SERVICES, INC., and/or JOSE ANTONIO FELICIANO,
Respondents.
x---x

D E C I S I O N

QUISUMBING, *J.*:

This is a Petition for Review of the Decision[1] dated January 29, 2002, of the Court of Appeals, in CA-G.R. SP No. 65164. The decision reversed and set aside for having been issued with grave abuse of discretion the decision dated October 30, 2000, of the National Labor Relations Commission (NLRC), First Division, in NLRC NCR CA No.

022247-2000, which had affirmed with modification the decision dated October 25, 1999, of Labor Arbiter Manuel M. Manansala, in NLRC NCR Cases Nos. 00-04-04231-99 and 00-06-06983-99. Earlier, Labor Arbiter Manansala found respondent Joni's Food Services, Inc., not liable for illegal dismissal but directed it to pay the complainants therein separation pay, service incentive leave pay and attorney's fees. Also challenged by herein petitioners is the CA resolution[2] dated April 16, 2002, denying their motion for reconsideration.

The facts of this case, as found by the Labor Arbiter and adopted by both the NLRC and the Court of Appeals, are as follows:

> Respondent Joni's Food Services, Inc., (hereafter JFSI) is a corporation duly organized and operated in accordance with Philippine laws. It is engaged in the coffee shop and restaurant business, with several branches or outlets. Co-respondent Jose Antonio Feliciano is its president and general manager.[3]

Petitioners were employees of JFSI having been hired on various dates during the 1970's to the 1990's.

In the 1990's, JFSI had eight (8) outlets for its coffee shop and restaurant business. In 1997, faced with dropping sales, however, it shut down three of these shops to avert serious business losses. The following year, 1998, saw JFSI operations in the red. The financial records of the company showed that JFSI incurred a total net loss of ₱2,541,537.70 as of December 31, 1998. As a result, JFSI shut down more outlets, leaving it with just three operating outlets at the end of 1998. Bleak business conditions continued to plague the company and by the end of the first quarter of 1999, the remaining branches were also closed. One month before the target closure date of its remaining outlets, JFSI sent notices of closure to the Department of Labor and Employment (DOLE) and to the complainants who were then employed in the remaining branches or outlets.

On April 5, 1999, the petitioners, except Prima P. Santiano, filed a complaint docketed as NLRC-NCR Case No. 00-04-04231-99 for illegal dismissal, separation pay, service incentive leave pay, 13th month pay, attorney's fees, remittance of SSS and Pag-Ibig

contributions, and refund of excess withholding taxes against JFSI.

On June 30, 1999, petitioner Santiano filed her separate complaint charging JFSI with violations similar to those aired by her co-petitioners. Santiano's separate complaint docketed as NLRC-NRC Case No. 00-06-06983-99 was consolidated with NLRC-NCR Case No. 00-04-04231-99. Following failed attempts to reach an amicable settlement between complainants and respondents, formal hearings ensued before the Labor Arbiter.

On October 25, 1999, the Labor Arbiter handed down the following decision in these consolidated cases:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Declaring respondent Joni's Food Services, Inc. (JFSI) not guilty of illegal dismissal as above-discussed. However, as complainants Josefina Cana, Juvy Lequin, Allan Bulan, Elsa Alamillo, Zaldy Arabe, Gregorio Equipaje, Ronnie Dimabayao, Ernesto Mariano, Carlito Dacanay, Maira Solis, Rosario Padua, Prudencio Berces, Federico Estoesta, Asela Montegrejo, Nimfa Abude, and Prima P. Santiano, were considered validly and legally retrenched to prevent losses and/or validly and legally separated due to closure or cessation of operations of the coffee shop business only *(Underscoring in the original)* of respondent JFSI as above-discussed, the latter (JFSI) is hereby directed to pay the former (complainants herein) separation pay at the rate of one-half (1/2) month pay for every year of service, a fraction of six (6) months shall be considered as one (1) whole year. The total amount of separation pay is Five Hundred Thirteen Thousand Six Hundred Eighty Five Pesos and Fifty Centavos (₱513,685.50) as earlier computed and found on pages 6-7 of this Decision.
>
> 2. Directing respondent JFSI to pay the aforenamed complainants the total amount of Twenty Eight

Thousand Seven Hundred Thirty Nine Pesos and Eighty Four Centavos (₱28,739.84) representing the latter's service incentive leave pay and 13th Month Pay for 1999 as earlier computed and found on pages 9-11 of this Decision.

3. Directing the aforenamed respondent JFSI to pay ten (10%) percent attorney's fees based on the total monetary award for having been forced to prosecute and/or litigate the instant consolidated cases by hiring the services of legal counsel.

4. Dismissing the other money claims and/or charges of complainants herein for lack of factual and legal basis.

5. Declaring that SSS contributions, Pag-Ibig contributions and excess withholdings of tax be addressed before the Social Security System, Pag-Ibig Funds, and Bureau of Internal Revenue, respectively.

6. Dismissing the charges against individual respondents Jose Antonio Feliciano, Feliciano Go and Luningning Go for lack of merit.

SO ORDERED.[4]

In holding that the petitioners were entitled to separation pay, the Labor Arbiter opined that petitioners were retrenched as a result of the closure of the respondent's coffee shop operations and/or to prevent losses, and hence, fell squarely within the coverage of Article 283[5] of the Labor Code. While the Labor Arbiter recognized that JFSI did suffer business losses, nonetheless, he did not consider these serious enough so as to warrant denial of the petitioners' separation pay.

Aggrieved, respondents appealed to the NLRC raising the issue of whether the complainants below were entitled to the monetary award decreed by the Labor Arbiter. In their appeal, docketed as NLRC NCR CA No. 022247-2000, the respondents averred that contrary to the finding of the Labor Arbiter that what occurred was a

retrenchment to prevent losses, what actually took place was a complete cessation of operations of JFSI's coffee shop and restaurant business.

On October 30, 2000, the NLRC (First Division) decided the case, docketed as NLRC NCR CA No. 022247-2000, to wit:

> WHEREFORE, the decision appealed from is hereby AFFIRMED, with the modification deleting the award for attorney's fees.
>
> SO ORDERED.[6]

The NLRC struck out the award of attorney's fees on the finding that bad faith did not attend the closure or retrenchment.

Respondent company, JFSI, then moved for reconsideration, but this was denied by the NLRC in its resolution[7] dated February 28, 2001. Hence, it filed a special civil action for certiorari, docketed as CA-G.R. SP No. 65164, with the Court of Appeals, on the ground that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction by incorrectly applying Article 283 of the Labor Code.

On January 29, 2002, the Court of Appeals granted the writ of certiorari prayed for by JFSI, thus:

> WHEREFORE, foregoing premises considered, the Petition having merit in fact and in law, is hereby GIVEN DUE COURSE. Resultantly, the challenged decision of the National Labor Relations Commission, First Division, as well as its order of February 28, 2001 are hereby declared null and void for having been issued with grave abuse of discretion. No costs.
>
> SO ORDERED.[8]

The appellate court ruled that JFSI was forced to close the business because of serious business losses and financial reverses and therefore it was grave abuse of discretion on the part of both the Labor Arbiter and the NLRC to hold that the parties fell under the

ambit of Article 283 requiring payment of separation pay. The Court of Appeals stressed that to do so would only compound the financial misery of JFSI. It pointed out that the constitutional policy of providing full protection to labor is not intended to oppress capital, for capital is also entitled to be protected under a regime of justice and the rule of law.

The petitioners seasonably moved for reconsideration, but the appellate court denied the motion in its resolution[9] dated April 16, 2002.

Hence, the instant case where the petitioners seek that we resolve:

I

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION, WHICH AFFIRMED THE DECISION OF THE LABOR ARBITER.

II

> WHETHER OR NOT HEREIN PETITIONERS ARE ENTITLED TO SEPARATION PAY.[10]

Despite the foregoing formulation of issues by petitioners, only one core issue needs resolution: Did the Court of Appeals err in ruling that the termination of petitioners' employment due to serious business losses suffered by JFSI precluded payment of separation pay?

Petitioners argue that in terminating their employment on the ground of serious financial reverses, JFSI had the burden of proving that these losses were serious, grave, real, and imminent. They contend that a reading of the financial statements submitted by JFSI clearly disclose that the losses suffered by the latter were not due to serious financial losses brought about by deteriorating economic conditions, but due to an unexplained increase in salaries and wages in 1998. It was, therefore, a reversible error for the Court of Appeals to reverse the findings of the Labor Arbiter and the NLRC that while JFSI had

suffered business losses, these were not serious enough as to warrant denial of their separation pay, for the appellate court's ruling went against the evidence on record.

Respondent company counters that an objective analysis of the financial statements it submitted in evidence during the proceedings below would clearly show that the business losses it suffered in 1998 alone constituted an impairment of 855.43%[11] of its paid-up capital. This was enough to seriously hamper its operations. Respondents submit that following prevailing jurisprudence, it is not necessary for a business to totally or permanently close shop due to losses for it to be exempt from paying separation pay to the workers terminated due to financial losses. All that is required is that the losses be serious. Where a company has to shut down its outlets due to its inability to pay its overhead expenses because of a slump in market conditions, according to respondents, then the losses must be deemed serious.

In the instant case, it was duly established that respondent company incurred losses in 1998, which led it to close several outlets, resulting in the lay-off of petitioners. But just how severely did these losses affect JFSI? Both the Labor Arbiter and the NLRC ruled that the losses were not so severe as to prevent the respondent from paying separation pay to the petitioners. The Court of Appeals ruled to the contrary.

To find out whether the appellate court erred or not, a review of the evidence based on financial statements using ratio analyses is called for. This will help us to find out whether the finding is supported by evidence on record. For this purpose, respondents' audited financial statements, namely its balance sheets[12] and income statements[13] for 1997 and 1998, must be scrutinized, by using basic accounting tools.

To test the liquidity of JFSI for the periods under consideration, working capital ratio is used. This ratio, also known as the current ratio, measures the number of times that the current liabilities could be paid with the current assets, thus:

$$\text{Working capital ratio} = \frac{\text{Current assets}}{\text{Current liabilities}}$$

For 1997, the figures for JFSI are: $\frac{₱398,767.40}{₱1,366,133.80}$ or 0.2918 to 1

For 1998, the figures are: $\frac{₱705,219.90}{₱4,057,969.00}$ or 0.1737 to 1.

The current ratios derived clearly show that in 1997, JFSI did not have sufficient current assets to pay its current liabilities. It was even less liquid in 1998, indicating that the firm faced difficulty in paying current obligations as they fell due.

The solvency of JFSI or its ability to pay all its debts, whether such are current or non-current, is shown by the following ratio:

$$\text{Debt-Equity Ratio} = \frac{\text{Total Liabilities}}{\text{Total Stockholders' Equity}}$$

1997 – $\frac{₱1,366,133.80}{₱416,515}$ = 3.27

1998 – $\frac{₱4,067,969.00}{₱2,125,020.70}$ = 1.91

Thus, it can be said that the solvency position of respondent company in 1997 was poor. The greater proportion of assets of the corporation were being provided for by creditors rather than its owners. The situation the following year became worse, with long-term debt accounting largely for its assets, hence there was a reported huge capital deficit.

With respect to its profitability for the years in question, the return on sales or the amount of income provided by the average peso sales of JFSI appears as follows:

$$\text{Gross Profit Ratio} = \frac{\text{Gross Profit}}{\text{Sales}}$$

1997 – $\frac{₱2,810,861.00}{₱5,449,786.00}$ = 51.57%

1998 -	₱2,502,964.95 / ₱5,072,688.45	=	49.34%

Using the gross profit ratio, which indicates the mark-up on the company's products, we find that in 1997, for every peso of sales generated by respondent, gross profit or mark-up amounted to almost 52 centavos, but this went down in 1998 to just a fraction over 49 centavos (less than 50 centavos).

If we were to employ the net profit (loss) ratio, which is widely used as a measure of the overall profitability of business operations, the comparative figures are:

Net Profit (Loss) Ratio = Net Profit (Loss) / Sales

1997 -	₱21,508 / ₱5,449,786.00	=	0.39%
1998 –	(₱2,541,535.70) / ₱5,072,688.45	=	(50.1%)

From the foregoing analyses, it can be seen that for every peso of sales earned by the respondent in 1997, less than half a centavo (0.39%) represented profit. This is an inadequate and unsatisfactory profit ratio. The situation was worse in 1998, since for every peso of sales made by respondent, no profit was made, but instead a loss was incurred. A loss of 50.1% recorded in 1998 appears to us quite serious.

Respondents assert that the company was taking losses of such magnitude which left its survival or future existence in the dark. To stem these serious losses, the company found no recourse but to shut down its outlets. Thus, as found by the Court of Appeals, respondents had no option but to lay off employees and eventually close shop.

The Constitution, while affording full protection to labor, nonetheless, recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth."[14] 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. *(North Davao Mining Corp. vs. NLRC, G.R. No. 112546, 13 March 1996, 254 SCRA 721, 729. See also State Investment House, Inc. vs. CA, G.R. Nos. 89767, 96056 & 96437, 19 February 1992, 206 SCRA 348, 351).*

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. Hence, we find that the Court of Appeals did not err when it decreed that petitioners herein are not entitled to separation pay under Article 283 of the Labor Code.

WHEREFORE, the petition is **DENIED** for lack of merit. The decision of the Court of Appeals, dated January 29, 2002, in CA-G.R. SP No. 65164, as well as its resolution of April 16, 2002, is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Tinga, *JJ.*, concur.
Puno, *J., (Chairman)*, on leave.

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* Also spelled "Cana" in some parts of the records.

** Also spelled "Santiago" in some parts of the records.

[1] Rollo, pp. 131-138. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Oswaldo D. Agcaoili and Sergio L. Pestaño, concurring.

[2] Rollo, p. 146.

[3] Id. at 60.

[4] Id. at 73-75.

[5] 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 undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker 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 to 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 as one (1) whole year.

[6] Rollo, pp. 81-82.

[7] Id. at 91-92.

[8] Id. at 137.

[9] Id. at 146.

[10] Id. at 17.

[11] Id. at 87.

[12] Id. at 103.

[13] Id. at 104.

[14] Const. (1987), Art. XIII, Sec. 3.

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