SUPREME COURT
SECOND DIVISION

CHENIVER DECO PRINT TECHNICS CORPORATION,
Petitioner,

-versus-

G.R. No. 122876
February 17, 2000

NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), CFW-MAGKAKAISANG LAKAS NG MGA MANGGAGAWA SA CHENIVER DECO PRINT TECHNIC CORPORATION, EDGARDO VIGUESILLA,
Respondents.
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D E C I S I O N

QUISUMBING, *J.*:

This Special Civil Action for Certiorari seeks to annul the resolution of public respondent promulgated on May 31, 1995, in NLRC NCR CA 007946-94, and its resolution dated August 14, 1995, which denied petitioner's motion for reconsideration.

Petitioner is a duly organized corporation operating its printing business in Visita St., Barangay Sta. Cruz, Makati. Private respondent

CFW-Nagkakaisang Lakas ng mga Manggagawa sa Cheniver Deco Print Technic Corporation is a registered labor union affiliated with the Confederation of Free Workers (CFW). Private respondent Edgardo Viguesilla and twenty-two (22) others are members of aforesaid union and former employees of petitioner.

The records disclose that on June 5, 1992, petitioner informed its workers about the transfer of the company from its site in Makati to Sto. Tomas, Batangas. Petitioner decided to relocate its business in view of the expiration of the lease contract on the premises it occupied in Makati and the refusal of the lessor to renew the same. Earlier, the local authorities also took action to force out petitioner from Makati because of the alleged hazards petitioner's plant posed to the residents nearby.

In view of the impending transfer, petitioner gave its employees up to the end of June 1992 to inform management of their willingness to go with petitioner, otherwise, it would hire replacements. On June 27, 1992, petitioner reminded its workers of the following schedule to be followed:

June 29, 1992	-	last day of operation in Makati
July 1-31, 1992	-	temporary shutdown to give way to transfer of operation
August 1, 1992	-	start of operation at new site in Sto. Tomas, Batangas.

On August 4, 1992, petitioner wrote its employees to report to the new location within seven days, otherwise, they would be considered to have lost interest in their work and would be replaced. Five days later, the union advised petitioner that its members are not willing to go along with the transfer to the new site. Nonetheless, petitioner gave its workers additional time within which to report to the new work place. Later on, the labor federation informed petitioner that the employees decided to continue working for petitioner. However, not one reported for work at petitioner's new site. It appears that several employees namely, Edgar Paquit, Dexter Mitschek, Nicanor

Quebec, Maricris Polvorosa, Vicente Solis, Eugene De la Cruz, Rodel Gomez, Marylin Macaraig, Diomedis Poblio, Albert Pimentel, Marieta Ramos, Gilbert Saquibal, Marlon Tafalla, Eduardo Jolbitado, Solitario Andres, Maria Cecilia Perez and Wilfredo Flores, decided not to work at the new site but just opted to be paid financial assistance offered by petitioner.

On the other hand, the remaining workers (private respondents herein) filed a complaint against petitioner for unfair labor practice, illegal dismissal, underpayment of wages, non-payment of legal holiday pay, 13th month pay, incentive leave pay and separation pay. On October 27, 1994, the labor arbiter rendered a decision declaring the transfer of petitioner's operation valid and absolving petitioner of the charges of unfair labor practice and illegal dismissal. However, the labor arbiter directed petitioner to pay private respondents their separation pay and other money claims as well as attorney's fees, decreeing as follows:

"WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring respondent company not guilty of unfair labor practice. (ULP);

2. Declaring respondent company not guilty of illegal dismissal and illegal lay-off but directing it to pay the individual complaints their separation pay, to wit:

a) Adeser, Tarcisio	–	P 20,280.00
b) Albino, Silveria	–	36,816.00
c) Arizala, Imelda	–	18,408.00
d) Canares, Danilo	–	36,816.00
e) Carin, Elena	–	12,272.00
f) Cabanatan, Lourdes	–	9,204.00
g) Dizon, Juanito	–	12,272.00
h) Domingo, Salome	–	24,544.00
i) Esguerra, Bonifacio	–	21,476.00
j) Famillaran, Benjamin	–	27,612.00
k) Gabucan, Amelia	–	15,340.00

l) Ibardolaza, Hadjie	–	21,476.00
m)Jores, Nelita	–	18,408.00
n) Largadas, Mario	–	9,204.00
o) Mitschek, Dexter	–	33,748.00
p) Paquit, Edgar	–	15,340.00
q) Panotes, Roel	–	12,272.00
r) Pedrigosa, Lerma	–	18,408.00
s) Pedrigosa, Liza	–	18,408.00
t) Ulzoron, Yolanda	–	9,204.00
u) Viguesilla, Edgardo	–	21,476.00
v) Viray, Ruel	–	9,204.00
		P 422,188.00

3. Directing respondent company to pay complainants the sum of P280,010.00 as to their other money claims aforestated, distributed as follows:

a) Adeser, Tarcisio	–	P 5,330.00
b) Albino, Silveria	–	13,080.00
c) Arizala, Imelda	–	13,080.00
d) Canares, Danilo	–	13,080.00
e) Carin, Elena	–	13,080.00
f) Cabanatan, Lourdes	–	13,080.00
g) Dizon, Juanito	–	13,080.00
h) Domingo, Salome	–	13,080.00
i) Esguerra, Bonifacio	–	13,080.00
j) Famillaran, Benjamin	–	13,080.00
k) Gabucan, Amelia	–	13,080.00
l) Ibardolaza, Hadjie	–	13,080.00
m)Jores, Nelita	–	13,080.00
n) Largadas, Mario	–	13,080.00
o) Mitschek, Dexter	–	13,080.00
p) Paquit, Edgar	–	13,080.00
q) Panotes, Roel	–	13,080.00
r) Pedrigosa, Lerma	–	13,080.00
s) Pedrigosa, Liza	–	13,080.00
t) Ulzoron, Yolanda	–	13,080.00
u) Viguesilla, Edgardo	–	13,080.00

v) Viray, Ruel – 13,080.00

P 280,010.00
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4. Directing respondent company to pay complainants attorney's fees of ten (10%) percent based on the totality of the monetary award.

Other claims are hereby dismissed for lack of factual and legal basis.

SO ORDERED."[1]

On appeal, respondent NLRC affirmed with modification the decision of the labor arbiter by deleting the award of attorney's fees, thus:

"For all of the foregoing the decision appealed from is hereby AFFIRMED with modification that the award of attorney's fees be deleted for lack of legal and factual basis.

SO ORDERED."[2]

Its motion for reconsideration having been denied, petitioner filed the instant petition alleging that public respondent committed grave abuse of discretion in:

"I

AFFIRMING THE LABOR ARBITER'S AWARD OF SEPARATION PAY TO PRIVATE RESPONDENTS;

II

AFFIRMING THE AWARD OF OTHER MONEY CLAIMS TO PRIVATE RESPONDENTS WITHOUT BASIS IN FACT AND [IN] LAW AS SHOWN BY LACK OF COMPUTATION OF THE SAME."[3]

Petitioner contends that the transfer of its business is neither a closure nor retrenchment, hence, separation pay should not be awarded to the private respondents. It also avers that private respondents were not terminated from the service but they resigned from their job because they find the new work site too far from their residences.

The foregoing contention lacks factual and legal basis, hence, bereft of merit.

Broadly speaking, there appears no complete dissolution of petitioner's business undertaking but the relocation of petitioner's plant to Batangas, in our view, amounts to cessation of petitioner's business operations in Makati. It must be stressed that the phrase "closure or cessation of operation of an establishment or undertaking not due to serious business losses or reverses" under Article 283 of the Labor Code includes both the complete cessation of all business operations and the cessation of only part of a company's business.[4] In Philippine Tobacco Flue-Curing & Redrying Corp. vs. NLRC,[5] a company transferred its tobacco processing plant in Balintawak, Quezon City to Candon, Ilocos Sur. The company therein did not actually close its entire business but merely relocated its tobacco processing and redrying operations to another place. Yet, this Court considered the transfer as closure not due to serious business losses for which the workers are entitled to separation pay.

There is no doubt that petitioner has legitimate reason to relocate its plant because of the expiration of the lease contract on the premises it occupied. That is its prerogative. But even though the transfer was due to a reason beyond its control, petitioner has to accord its employees some relief in the form of severance pay. Thus, in E. Razon, Inc. vs. Secretary of Labor and Employment,[6] petitioner therein provides arrastre services in all piers in South Harbor, Manila, under a management contract with the Philippine Ports Authority. Before the expiration of the term of the contract, the PPA cancelled the said contract resulting in the termination of employment of workers engaged by petitioner. Obviously, the cancellation was not sought, much less desired by petitioner. Nevertheless, this Court required petitioner therein to pay its workers separation pay in view of the cessation of its arrastre operations.

Now, let it be noted that the termination of employment by reason of closure or cessation of business is authorized under Article 283 of the Labor Code which provides:

> "ART. 283. Closure of establishment and reduction of personnel. -- The employer may 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 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 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 (1/2) 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."

Consequently, petitioner herein must pay his employees their termination pay in the amount corresponding to their length of service. Since the closure of petitioner's business is not on account of serious business losses, petitioner shall give private respondents separation pay equivalent to at least one (1) month or one-half (1/2) month pay for every year of service, whichever is higher.

In Cheniver Deco Print Technics Corporation vs. NLRC, et al., [G. R. No. 122876, February 17, 2000].

Petitioner's contention that private respondents resigned from their jobs, does not appear convincing. As public respondent observed, the subsequent transfer of petitioner to another place hardly accessible to its workers resulted in the latter's untimely separation from the

service not to their own liking, hence, not construable as resignation.[7] Resignation must be voluntary and made with the intention of relinquishing the office, accompanied with an act of relinquishment.[8] Indeed, it would have been illogical for private respondents herein to resign and then file a complaint for illegal dismissal. Resignation is inconsistent with the filing of the said complaint.[9]

As to petitioner's assertion that private respondents resorted to forum shopping, the same deserves scant consideration. As noted by the Solicitor General, private respondents' claims in this case are based on underpayment of wages, legal holiday pay, service incentive leave pay and 13th month pay. On the other hand, the other cases separately filed in different fora by Danilo Canares, Aurelia Gabucan, Dexter Mitschek and Ruel Viray involved different issues which are distinct and have no bearing on the case at bar.[10] The case pursued by Canares is for diminution of salary on account of his demotion which was decided in his favor with finality by this Court;[11] Gabucan's case involves reinstatement to her job; Mitschek's case pertains to diminution of his salary; and Viray's complaint was dismissed without prejudice for failure to prosecute. Thus, there is no basis for petitioner's forum shopping charge as the instant case and the others do not raise identical causes of action, subject matter and issues.[12]

Lastly, petitioner alleges that claims of other private respondents have already been paid upon the enforcement of the order dated February 26, 1992 in case number NRC-00-9112-CI-001. This is not correct. As correctly pointed out by the Solicitor General, the aforesaid order refers to the enforcement of Wage Order No. NCR-02 mandating P2.00 wage increase.[13] Certainly, the wage differential received by private respondents by virtue of the mandated wage increase is different from the monetary benefits herein being claimed by private respondents. Hence, public respondent cannot be faulted for grave abuse of discretion on this score.

WHEREFORE, the instant petition is **DENIED**, and the assailed **RESOLUTIONS** of public respondent are **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Bellosillo, *J.*, *(Chairman)*, Mendoza, and De Leon, Jr., *JJ.*, concur.
Buena, *J.*, on official leave.

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[1] Rollo, pp. 23-25.
[2] Id. at 29.
[3] Id. at 9.
[4] (Citing Coca-Cola Bottlers [Phils.] Inc. vs. NLRC, 194 SCRA 592, 599 [1991]).
[5] [300 SCRA 37 (1998)].
[6] 222 SCRA 1, 7 (1993).
[7] Rollo, p. 28.
[8] Pascua vs. NLRC, 287 SCRA 554, 567 (1998).
[9] Valdez vs. NLRC, 286 SCRA 87, 94 (1998).
[10] Rollo, p. 141.
[11] Cheniver Deco Print Technics Corp. vs. NLRC, GR-119841, June 5, 1995.
[12] International Container Terminal Services Inc. vs. Court of Appeals, 249 SCRA 389, 394-395 (1995).
[13] Rollo, p. 142.
