

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

BENJAMIN G. INDINO,
Petitioner,

-versus-

**G.R. No. 80352
September 29, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION (SECOND DIVISION),
and DASMARIÑAS INDUSTRIAL &
STEELWORKS CORPORATION and/or
PHILIPPINE NATIONAL
CONSTRUCTION CORPORATION
(PNCC), Formerly CONSTRUCTION
DEVELOPMENT CORPORATION OF
THE PHILIPPINES (CDCP),
*Respondents.***

X-----X

DECISION

SARMIENTO, J.:

The main issue in this Petition for *Certiorari* assailing the two Resolutions dated August 20, 1987^[1] and October 5, 1987^[2] of the respondent National Labor Relations Commission (NLRC) in NLRC Case No. 10-3268-85, is the validity of the petitioner's separation

from the employ of private respondent Dasmariñas Industrial and Steelworks Corporation (DISC).

The petitioner, Benjamin G. Indino, joined the Philippine National Construction Corporation (PNCC) as a project personnel officer on December 12, 1974. On January 6, 1981, he was transferred to private respondent DISC, a sister corporation of PNCC, which assigned him to its Philphos Project in Isabel, Leyte.

On July 27, 1983, while the petitioner was on a paid vacation leave, he received a “letter-memorandum” from Roman B. Lopez, DISC personnel manager, informing him that his services were no longer needed at the Philphos Project in Leyte. The “letter-memorandum” reads:

Date July 27, 1983

The significant business reverses being experienced by the company makes (sic) it imperative to take drastic measures to reduce both its work force and operating costs. We regret to inform you, therefore, that your employment with DISC shall be terminated at the close of business hours on August 27, 1983, or after thirty (30) days from your receipt hereof.

Relatively, you can elect to submit a formal resignation in which case you shall also be entitled to separation pay and other benefits applicable under existing policies. You may also take advantage of your earned leave during the period July 27, 1983 to August 27, 1983.

The Personnel Administration Department (PAD), will be glad to answer your questions pertaining to your formal separation. Please accomplish the necessary clearance on or before July 30, 1983.

SGD. ROMAN B. LOPEZ
Personnel Manager^[3]

Immediately after receipt of the “letter-memorandum,” the petitioner filed with the NLRC a complaint for illegal dismissal against private

On the basis of that agreement, the petitioner was reinstated on October 1, 1983 at respondent DISC's central office, occupying the position of Project Administrative Officer III.^[6] Barely two months after his reinstatement, however, or on December 14, 1983, the petitioner received another "letter-memorandum" from respondent DISC, again terminating his services. The "letter-memorandum" states:

December 14, 1983

As we have completed most of our major projects and about to complete the Philippine Phosphate Fertilizer Project plus the fact that there has been a low project in sales/marketing due to critical economic situation, the company is forced to take drastic measures to reduce both its work force and operating costs. We regret to inform you, therefore, that your employment with DISC shall be terminated at the close of business hours on January 15, 1984, or thirty (30) days from your receipt hereof.

Relatively, you can elect to submit a formal resignation in which case you shall be entitled to separation pay and other benefits applicable under existing policies. You may also take advantage of your earned leaves during the period December 15, 1983 to January 15, 1984.

The Personnel Administration Department (PAD) will be glad to answer your questions pertaining to your formal separation. Please accomplish the necessary clearance on or before January 15, 1984.

(SGD.) ROMAN B. LOPEZ
Personnel Manager^[7]

Accordingly, pursuant to this "formal separation," the petitioner received from DISC the amount of P20,458.62 as separation benefits.^[8]

The petitioner, however, refused to accept his termination; on October 7, 1985, he filed a complaint for illegal dismissal, unpaid wages, moral and exemplary damages, and attorney's fees against

respondent DISC.^[9] Later, he amended his complaint and impleaded the Philippine National Construction Corporation (PNCC) as additional respondent.^[10] On February 10, 1987, Labor Arbiter Ricardo C. Nora, to whom the case was assigned, dismissed the petitioner's complaint for lack of merit.

Dissatisfied with the labor arbiter's decision, the petitioner appealed to the respondent NLRC. The latter, however, finding no error in the appealed judgment, issued a resolution on August 10, 1987 affirming the same and denying the petitioner's appeal. A motion for reconsideration seasonably filed by the petitioner was denied on October 5, 1987. Hence, this petition.

The petitioner insists that his removal was unjustified and illegal and was carried out to circumvent the compromise agreement he had earlier entered into with respondent DISC which provided, among others, his reinstatement in any of the offices or projects of respondent DISC. The aforementioned compromise agreement, he avers, is already the law between them and precludes his separation or dismissal. Moreover, the petitioner points out, the reason for his separation in the "letter-memorandum" of December 14, 1983 is but a rehash of that in the first "letter-memorandum" of July 27, 1983. The petitioner concludes that the later move by DISC at ostensible retrenchment had been made in bad faith and manifested its thinly-veiled desire to dismiss him. The petitioner likewise makes capital of the failure of the respondent DISC to show that it was incurring, or at least about to incur, losses, which would warrant its retrenchment policy. As such, his removal from employment was unjustified and amounted to an illegal dismissal. Finally, the petitioner substantiates the inclusion of the Philippine National Construction Corporation (PNCC) as a party respondent in the case with the fact that PNCC was originally his employer but which later transferred him to respondent DISC, the PNCC sister company. This, according to the petitioner, shows the link between the two respondents and for purposes of this case, deprives them of their separate personality.

We find the petition impressed with merit.

The failure of the respondent DISC to show proof of its actual or imminent losses that would justify drastic cuts in personnel or costs,

is fatal to its cause. Article 283 (then Article 284) of the Labor Code provides that an “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.”^[11] Clearly, under the said provision of law, the right of an employer to terminate the services of any employee is predicated on the existence of any of the following causes: (1) installation of labor-saving devices; (2) redundancy; (3) retrenchment to prevent losses; and (4) the closing or cessation of operation of the establishment or under taking, unless the closing IS for the purpose of circumventing the provisions of law.^[12] Thus, while business reverses can be a just cause for terminating employees,^[13] they must be sufficiently proven by the employer.^[14] This is precisely mandated under par. (b) of Article 277 (formerly 278) of the Labor Code which states, among others, that “(T)he burden of proving that the termination was for a valid or authorized cause shall rest on the employer.”

Admittedly, the assassination of Senator Benigno “Ninoy” Aquino on August 21, 1983 produced extremely adverse political, social, and economic conditions that resulted in widespread business failures. Not all enterprises, however, experienced severe economic setbacks; a number, in fact, flourished during that financially bleak period.

It is almost an inflexible rule that employers who contemplate terminating the services of their workers cannot be so arbitrary and ruthless as to find flimsy excuses for their decisions. This must be so considering that the dismissal of an employee from work involves not only the loss of his position but more important, his means of livelihood.^[15] Applying this caveat to the case at bar, it was therefore incumbent for respondent DISC, before putting into effect any retrenchment process on its work force, to show by convincing evidence that it was being wrecked by serious financial problems. Simply stating its state of insolvency or its impending doom will not be sufficient. To do so would render the security of tenure of workers and employees illusory. In a grander scale, to hold as valid and legal the respondent DISC’s act would be disastrous to labor. Any employer desirous of ridding itself of its employees could then easily do so without need to adduce proof in support of its action. We can not

countenance this. Security of tenure is a right guaranteed to employees and workers by the Constitution and should not be denied on the basis of mere speculation.^[16]

Another point that makes the respondent DISC's cause suspect is that, as correctly pointed out by the petitioner, the reason it gave in its "letter-memorandum" dated December 14, 1983 terminating his services was simply a rehash of its (DISC's) "letter-memorandum" dated July 27, 1983, which ultimately produced the compromise agreement between the parties. It will be noted that on July 27, 1983, the event (Ninoy Aquino's assassination) that led to the near-collapse of the national economy, had not yet taken place. Respondent DISC's use of basically the same reason thus shows its all-too-apparent effort to remove the petitioner from its payroll. Taken in the light of the then just recently concluded compromise agreement between the parties, the act of DISC in subsequently dismissing the petitioner just two months-and-a-half after his reinstatement appears as having been made in bad faith. Surely, if the basis for the second "letter-memorandum" is the same as that of the first, there is no reason why the petitioner could not be retained as in the first instance. The ground of DISC's retrenchment policy being basically no different from the first, it is therefore covered by the compromise agreement reached by the parties earlier.

Finally, considering that the petitioner started his employment originally with the Philippine National Construction Company (PNCC) but was only transferred later to its sister company, the respondent DISC, the inclusion of the former as party respondent in this action is justified and proper. The so-called separate and distinct personality of PNCC could be validly ignored inasmuch as it would unjustly prejudice the petitioner *vis-a-vis* whatever benefits he may receive by reason of his illegal dismissal. This has been demonstrated by the amount of the separation pay given to the petitioner by respondent DISC which appears to correspond only to the period in which the former was in the employ of the latter. The period when the petitioner was still in the employ of PNCC was apparently ignored. This omission should not be allowed inasmuch as there is no showing that PNCC gave the petitioner separation benefits before he was transferred to DISC. It should always be borne in mind that the fiction of law that a corporation, as a juridical entity, has a distinct

and separate personality, was envisaged for convenience and to serve justice; therefore, it should not be used as a subterfuge to commit injustice and circumvent labor laws.^[17]

WHEREFORE, the Petition is granted, the assailed Resolutions of the National Labor Relations Commission dated August 20, 1987 and October 5, 1987 are **ANNULLED** and **SET ASIDE**. The respondent Dasmariñas Industrial & Steelworks Corporation is hereby **ORDERED** to **REINSTATE** the petitioner to his former position without loss of seniority rights and privileges, and to **PAY** the petitioner three (3) years back wages without any qualifications. Costs against the respondent Dasmariñas Industrial & Steelworks Corporation.

SO ORDERED.

Melencio-Herrera, Paras, Padilla and Regalado, JJ., concur.

[1] Commissioner Oscar N. Abella, ponente, Commissioners Daniel M. Lucas, Jr., and Domingo H. Zapanta, concurring; Rollo, 21-29.

[2] Rollo, 30.

[3] Id., 8-9; 50.

[4] Id., 9.

[5] Id.

[6] Id., 74.

[7] Id., 10, 74-75.

[8] Id., 10, 75.

[9] Id., 53.

[10] Id.

[11] See also Cebu Stevedoring Co., Inc. vs. The Honorable Regional Director/Minister of Labor, et al., No. 54285, December 8, 1988.

[12] International Hardware, Inc. vs. National Labor Relations Commission, et al., No. 80770, August 10, 1989.

[13] Columbia Development Corporation vs. Minister of Labor and Employment, No. 57769, December 29, 1986, 146 SCRA 421; Garcia vs. National Labor Relations Commission, No. 67825, September 4, 1987, 153 SCRA 639.

[14] Garcia vs. National Labor Relations Commission, supra; Camara Shoes vs. Kapisanan ng mga Manggagawa sa Camara Shoes, et al., Nos. 63208-09, May 5, 1989.

[15] Remerco Garments Manufacturing vs. Minister of Labor and Employment, Nos. 56176-77, February 28, 1985, 135 SCRA 167.

- [16] Tolentino vs. National Labor Relations Commission, No. 75380, July 31, 1987, 152 SCRA 717.
- [17] La Campana Coffee Factory, Inc. vs. Kaisahan ng mga Manggagawa sa La Campana (KKM), 93 Phil. 160 (1953).

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