**SUPREME COURT**
**SECOND DIVISION**

**J.A.T. GENERAL SERVICES and JESUSA ADLAWAN TOROBU,**
***Petitioners*,**

***-versus-***

**G.R. No. 148340**
**January 26, 2004**

**NATIONAL LABOR RELATIONS COMMISSION and JOSE F. MASCARINAS,**
***Respondents*.**
**x----------x**

# D E C I S I O N

**QUISUMBING, *J.*:**

For review are the Decision[1] dated February 27, 2001 of the Court of Appeals in CA-G.R. SP No. 60337, and its Resolution[2] dated May 28, 2001, denying the motion for reconsideration. The Court of Appeals dismissed the petition for certiorari filed by petitioners and affirmed the Resolution[3] of the National Labor Relations Commission (NLRC), Third Division, which affirmed the Decision[4] of Labor Arbiter Jose G. De Vera in NLRC-NCR Case No. 00-03-02279-98, which found petitioners liable for illegal dismissal and ordered petitioners to pay private respondent Jose Mascarinas separation pay,

backwages, legal holiday pay, service incentive leave pay and 13th month pay in the aggregate sum of P85,871.00.

The facts, as culled from the records, are as follows:

Petitioner Jesusa Adlawan Trading & General Services (JAT) is a single proprietorship engaged in the business of selling second-hand heavy equipment. JAT is owned by its namesake, co-petitioner Jesusa Adlawan Torobu. Sometime in April 1997, JAT hired private respondent Jose F. Mascarinas as helper tasked to coordinate with the cleaning and delivery of the heavy equipment sold to customers. Initially, private respondent was hired as a probationary employee and was paid P165 per day that was increased to P180 in July 1997 and P185 in January 1998.

In October 1997, the sales of heavy equipment declined because of the Asian currency crisis. Consequently, JAT temporarily suspended its operations. It advised its employees, including private respondent, not to report for work starting on the first week of March 1998. JAT indefinitely closed shop effective May 1998.

A few days after, private respondent filed a case for illegal dismissal and underpayment of wages against petitioners before the NLRC.

In his Complaint, private respondent alleged that he started as helper mechanic of JAT on January 6, 1997 with an initial salary rate of P165.00 per day, which was increased to P180.00 per day after six (6) months in employment. He related that he was one of those retrenched from employment by JAT and was allegedly required to sign a piece of paper which he refused, causing his termination from employment.

On December 14, 1998, JAT filed an Establishment Termination Report with the Department of Labor and Employment (DOLE), notifying the latter of its decision to close its business operations due to business losses and financial reverses.

After due proceedings, the Labor Arbiter rendered a decision on March 25, 1999, finding the dismissal of herein private respondent unjustified and ordering JAT to pay private respondent separation

pay and backwages, among others. The decretal portion of the decision reads as follows:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents [herein petitioners] to pay complainant the aggregate sum of P85,871.00.
>
> SO ORDERED.[5]

The Labor Arbiter ruled that (1) private respondent Jose F. Mascarinas' dismissal was unjustified because of petitioners' failure to serve upon the private respondent and the DOLE the required written notice of termination at least one month prior to the effectivity thereof and to submit proof showing that petitioners suffered a business slowdown in operations and sales effective January 1998; (2) private respondent may recover backwages from March 1, 1998 up to March 1, 1999 or P66,924.00[6] and separation pay, in lieu of reinstatement, at the rate of one (1) month pay for every year of service, or P10,296.00;[7] (3) the payrolls submitted by JAT showed that effective May 1, 1997, private respondent's wages did not conform to the prevailing minimum wage, hence, private respondent is entitled to salary differentials from May 1, 1997 to January 6, 1998, in the amount of P1,066.00;[8] (4) that private respondent be awarded legal holiday pay in the amount of P1,850.00,[9] service incentive leave pay in the amount of P925.00[10] and 13th month pay for 1997 in the amount of P4,810.00.[11]

On appeal, the NLRC affirmed the decision of the labor arbiter.[12] The NLRC found that the financial statements submitted on appeal were questionable, unreliable and inconsistent with petitioners' allegations in the pleadings, particularly as to the date of the alleged closure of operation; hence, they cannot be used to support private respondent's dismissal. The NLRC also affirmed the monetary awards because petitioners failed to prove the payment of benefits claimed by private respondent.

Dissatisfied, petitioners filed a Petition for Certiorari under Rule 65 before the Court of Appeals, which the latter dismissed. The decretal portion of the decision reads as follows:

> WHEREFORE, foregoing premises considered, the instant petition, having no merit in fact and in law, is hereby DENIED DUE COURSE, and ordered DISMISSED, and the assailed decision of the National Labor Relations Commission AFFIRMED, with costs to petitioners.
>
> SO ORDERED.[13]

The Court of Appeals affirmed the findings of the NLRC, particularly on the illegal dismissal of the private respondent. The appellate court held that the petitioners failed to prove by clear and convincing evidence their compliance with the requirements for valid retrenchment. It cited the findings of the NLRC on the belated submission of the financial statements during appeal that could not be given sufficient weight, and that the petitioners' late submission of notice of closure is indicative of their bad faith.

Petitioners filed a Motion of Reconsideration, which was denied by the Court of Appeals.

Hence, the present petition alleging that the:

> A. THE LOWER COURT (sic) ERRED IN RULING THAT A NOTICE TO THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) IS NECESSARY IN CASE OF TEMPORARY SUSPENSION OF BUSINESS;
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> B. THE LOWER COURT (sic) ERRED IN RULING THAT PRIVATE RESPONDENT IS ENTITLED TO BACKWAGES DESPITE THE FACT THAT PRIVATE RESPONDENT WAS NOT DISMISSED FROM SERVICE AT THE TIME THE COMPLAINT WAS FILED;
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> C. THE LOWER COURT (sic) ERRED IN RULING THAT THE EMPLOYER HAS THE BURDEN OF PROVING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES;

D. ASSUMING ARGUENDO THAT THE NOTICE TO THE LABOR DEPARTMENT FAILED TO COMPLY WITH THE ONE-MONTH PERIOD, THE LOWER COURT (sic) ERRED IN AWARDING BACKWAGES AND/OR SEPARATION PAY TO PRIVATE RESPONDENT EVEN FOR PERIOD AFTER PETITIONERS FILED A NOTICE OF ACTUAL CLOSURE OF THE COMPANY BEFORE THE LABOR DEPARTMENT.[14]

The relevant issues for our resolution are: (a) whether or not private respondent was illegally dismissed from employment due to closure of petitioners' business, and (b) whether or not private respondent is entitled to separation pay, backwages and other monetary awards.

On the first issue, the petitioners claim that the Court of Appeals erroneously concluded that they are liable for illegal dismissal because of non-compliance of the procedural and substantive requirements of terminating employment due to retrenchment and cessation of business. They argued that there was no closure but only suspension of operation in good faith in March 1998, when private respondent claimed to have been illegally dismissed, due to the decline in sales and heavy losses incurred in its business arising from the 1997 Asian financial crisis. Petitioners assert that under Article 286 of the Labor Code, a bona fide suspension of the operation of a business for a period not exceeding six (6) months shall not terminate employment and no notice to an employee is required. However, petitioners relate that JAT was compelled to permanently close its operation eight (8) months later or on November 1998, when the hope of recovery became nil but only after sending notices to all its workers and DOLE. Thus, petitioners argue that it cannot be held liable for illegal dismissal in March 1998 since there was no termination of employment during suspension of operations and a notice to employee is not required, unlike in the case of permanent closure of business operation.

We need not belabor the issue of notice requirement for a suspension of operation of business under Article 286[15] of the Labor Code. This matter is not pertinent to, much less determinative of, the disposition of this case. Suffice it to state that there is no termination of employment during the period of suspension, thus the procedural requirement for terminating an employee does not come into play yet.

Rather, the issue demanding a sharpened focus here concerns the validity of dismissal resulting from the closure of JAT.

A brief discussion on the difference between retrenchment and closure of business as grounds for terminating an employee is necessary. While the Court of Appeals defined the issue to be the validity of dismissal due to alleged closure of business, it cited jurisprudence relating to retrenchment to support its resolution and conclusion. While the two are often used interchangeably and are interrelated, they are actually two separate and independent authorized causes for termination of employment. Termination of an employment may be predicated on one without need of resorting to the other.

Closure of business, on one hand, is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business as an authorized cause for termination of employment aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. On the other hand, retrenchment is reduction of personnel usually due to poor financial returns so as to cut down on costs of operations in terms of salaries and wages to prevent bankruptcy of the company. It is sometimes also referred to as down-sizing. Retrenchment is an authorized cause for termination of employment which the law accords an employer who is not making good in its operations in order to cut back on expenses for salaries and wages by laying off some employees. The purpose of retrenchment is to save a financially ailing business establishment from eventually collapsing.[16]

In the present case, we find the issues and contentions more centered on closure of business operation rather than retrenchment. Closure or cessation of operation of the establishment is an authorized cause for terminating an employee under Article 283 of the Labor Code, to wit:

> 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 workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. 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 one (1) whole year.

However, the burden of proving that such closure is bona fide falls upon the employer. (Industrial Timber Corporation vs. NLRC, 339 Phil. 395, 405 [1997]).[17] In the present case, JAT justifies its closure of business due to heavy losses caused by declining sales. It belatedly submitted its 1997 Income Statement[18] and Comparative Statement of Income and Capital for 1997 and 1998[19] to the NLRC to prove that JAT suffered losses starting 1997. However, as noted earlier, these were not given much evidentiary weight by the NLRC as well as the Court of Appeals, to wit:

> The financial statements submitted by the respondents on appeal are questionable for the following reasons: (1) the figures in Annexes "D-2" and "E" of the appeal memorandum (which both refer to 1997) do not tally; (2) they (the respondents) allegedly closed on March 1, 1998. Yet, their 1998 financial statement (Annex "E") indicates operations up to and ending December 31, 1998. In view of the foregoing, the above-mentioned financial statements do not justify the complainant's dismissal.[20]

The foregoing findings of the Court of Appeals is conclusive on us. We see no cogent reason to set it aside. While business reverses or losses are recognized by law as an authorized cause for terminating employment, it is an essential requirement that alleged losses in business operations must be proven convincingly. Otherwise, said ground for termination would be susceptible to abuse by scheming

employers, who might be merely feigning business losses or reverses in their business ventures in order to ease out employees.[21] In this case, the financial statements were not only belatedly submitted but were also bereft of necessary details on the extent of the alleged losses incurred, if any. The income statements only indicated a decline in sales in 1998 as compared to 1997. These fell short of the stringent requirement of the law that the employer prove sufficiently and convincingly its allegation of substantial losses. While the comparative income statement shows a net loss of P207,091 in 1998, the income statement of 1997 still shows JAT posting a net income of P19,361. Both statements need interpretation as to their impact on the company's termination of certain personnel as well as business closure.

Having concluded that private respondent was not validly dismissed resulting from closure of business operations due to substantial losses, we now proceed to determine whether or not private respondent was validly dismissed on the ground of closure or cessation of operations for reasons other than substantial business losses.

A careful examination of Article 283 of the Labor Code shows that closure or cessation of business operation as a valid and authorized ground of terminating employment is not limited to those resulting from business losses or reverses. Said provision in fact provides for the payment of separation pay to employees terminated because of closure of business not due to losses, thus implying that termination of employees other than closure of business due to losses may be valid.

Hence, in the case of North Davao Mining Corporation vs. NLRC, [G.R. No. 112546, 13 March 1996, 254 SCRA 721, 727],[22] we emphasized that:

> Art. 283 governs the grant of separation 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 filed by the Solicitor General, impliedly concede this point.

In another case, Industrial Timber Corporation vs. NLRC, [339 Phil. 395, 405 (1997)],[23] we held more emphatically that:

> In any case, Article 283 of the Labor Code is clear that an employer may close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses, as long as he pays his employees their termination pay in the amount corresponding to their length of service. It would, indeed, be stretching the intent and spirit of the law if we were to unjustly interfere in management's prerogative to close or cease its business operations just because said business operation or undertaking is not suffering from any loss.

In the present case, while petitioners did not sufficiently establish substantial losses to justify closure of the business, its income statement shows declining sales in 1998, prompting the petitioners to suspend its business operations sometime in March 1998, eventually leading to its permanent closure in December 1998. Apparently, the petitioners saw the declining sales figures and the unsustainable business environment with no hope of recovery during the period of suspension as indicative of bleak business prospects, justifying a permanent closure of operation to save its business from further collapse. On this score, we agree that undue interference with an employer's judgment in the conduct of his business is uncalled for. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what is clearly a management prerogatives. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement such exercise will be upheld. (Maya Farms Employees Organization vs. NLRC, G.R. No. 106256, 28 December 1994, 239 SCRA 508, 515).[24]

In the event, under Article 283 of the Labor Code, three requirements are necessary for a valid cessation of business operations, namely: (a) service of a written notice to the employees and to the DOLE at least one (1) month before the intended date thereof; (b) the cessation of business must be bona fide in character; and (c) payment to the employees of termination pay amounting to at least one-half (1/2) month pay for every year of service, or one (1) month pay, whichever is higher. (Caffco International Limited vs. Office of the Minister-Ministry of Labor & Employment, G.R. No. 76966, 7 August 1992, 212 SCRA 351, 357).[25]

The closure of business operation by petitioners, in our view, is not tainted with bad faith or other circumstance that arouses undue suspicion of malicious intent. The decision to permanently close business operations was arrived at after a suspension of operation for several months precipitated by a slowdown in sales without any prospects of improving. There were no indications that an impending strike or any labor-related union activities precipitated the sudden closure of business. Further, contrary to the findings of the Labor Arbiter, petitioners had notified private respondent[26] and all other workers through written letters dated November 25, 1998 of its decision to permanently close its business and had submitted a termination report to the DOLE.[27] Generally, review of labor cases elevated to this Court on a petition for review on certiorari is confined merely to questions of law. But in certain cases, we are constrained to analyze or weigh the evidence again if the findings of fact of the labor tribunals and the appellate court are in conflict, or not supported by evidence on record or the judgment is based on a misapprehension of facts.[28]

In this case, we are persuaded that the closure of JAT's business is not unjustified. Further we hold that private respondent was validly terminated, because the closure of business operations is justified.

Nevertheless in this case, we must stress that the closure of business operation is allowed under the Labor Code, provided separation pay be paid to the terminated employee. It is settled that in case of closure or cessation of operation of a business establishment not due to serious business losses or financial reverses, the employees are always given separation benefits. (Complex Electronics Employees

Association vs. NLRC, 369 Phil. 666, 684 [1999]).[29] The amount of separation pay must be computed from the time private respondent commenced employment with petitioners until the time the latter ceased operations. (Industrial Timber Corp.-Stanply Operations vs. NLRC, G.R. No. 112069, February 14, 1996, 253 SCRA 623, 630-631).[30]

Considering that private respondent was not illegally dismissed, however, no backwages need to be awarded. Backwages in general are granted on grounds of equity for earnings which a worker or employee has lost due to illegal dismissal.[31] It is well settled that backwages may be granted only when there is a finding of illegal dismissal.[32]

The other monetary awards to private respondent are undisputed by petitioners and unrefuted by any contrary evidence. These awards, namely legal holiday pay, service incentive leave pay and 13th month pay, should be maintained.

**WHEREFORE**, the petition is given due course. The assailed Resolutions of the Court of Appeals in CA-G.R. SP No. 60337 are **AFFIRMED** with the **MODIFICATION** that the award of P66,924.00 as backwages is deleted. The award of separation pay amounting to P10,296.00 and the other monetary awards, namely salary differentials in the amount of P1,066.00, legal holiday pay in the amount of P1,850.00, service incentive leave pay in the amount of P925.00 and 13th month pay in the amount of P4,910, or a total of P29,047.00 are maintained. No pronouncement as to costs.

**SO ORDERED**.

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

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino, and Mercedes Gozo-Dadole concurring.
[2] Rollo, pp. 32-33.
[3] Id. at 43-47.
[4] Id. at 38-41.

[5] Id. at 41.
[6] P198.00/day x 26 days x 13 mos. = P66,924.00, Rollo, p. 40.
[7] From January 1997 up to March 31, 1999, or two (2) years x P5,148.00 = P10,296.00, ibid.
[8] From May 1, 1997 up to January 6, 1998 at P185.00/day less amount paid at P180.00/day = P5.00 x 26 days x 8.2 mos. = P1,066.00, id. at 41.
[9] P185.00 x 10 legal holidays = P1,850.00, ibid.
[10] P185.00 x 5 days = P925.00, ibid.
[11] P185.00 x 26 days = P4,810.00, ibid.
[12] Rollo, p. 47.
[13] Id. at 30.
[14] Id. at 12-13.
[15] ART. 286. When employment not deemed terminated. – The bona fide suspension of operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment.
[16] See SCRA Annotation, "Reversal of Fortune as Ground for Dismissal" by Rogelio E. Subong, 282 SCRA 617, 621-622.
[17] Industrial Timber Corporation vs. NLRC, 339 Phil. 395, 405 [1997]
[18] Rollo, p. 34.
[19] Id. at 35.
[20] Id. at 46.
[21] Garcia vs. NLRC, No. L-67825, 4 September 1987, 153 SCRA 639, 651.
[22] North Davao Mining Corporation vs. NLRC, [G.R. No. 112546, 13 March 1996, 254 SCRA 721, 727].
[23] Industrial Timber Corporation vs. NLRC, [339 Phil. 395, 405 (1997)]
[24] Maya Farms Employees Organization vs. NLRC, G.R. No. 106256, 28 December 1994, 239 SCRA 508, 515.
[25] Caffco International Limited vs. Office of the Minister-Ministry of Labor & Employment, G.R. No. 76966, 7 August 1992, 212 SCRA 351, 357
[26] Rollo, p. 59.
[27] Id. at 36-37.
[28] Ignacio vs. Coca-Cola Bottlers Phils., Inc., G.R. No. 144400, 19 September 2001, 365 SCRA 418, 423.
[29] Complex Electronics Employees Association vs. NLRC, 369 Phil. 666, 684 [1999]
[30] Industrial Timber Corp.-Stanply Operations vs. NLRC, G.R. No. 112069, February 14, 1996, 253 SCRA 623, 630-631
[31] Belaunzaran vs. NLRC, 333 Phil. 670, 679 (1996).
[32] Supra, note 30 at 629.