

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**JAKA FOOD PROCESSING
CORPORATION,**
Petitioner,

-versus-

**G.R. No. 151378
March 28, 2005**

**DARWIN PACOT, ROBERT
PAROHINOG, DAVID BISNAR,
MARLON DOMINGO, RHOEL
LESCANO and JONATHAN CAGABCAB,**
Respondents.

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DECISION

GARCIA, J.:

Assailed and sought to be set aside in this Appeal by way of a Petition for Review on Certiorari under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals in CA-G.R. SP. No. 59847, to wit:

1. Decision dated 16 November 2001,^[1] reversing and setting aside an earlier decision of the National Labor Relations Commission (NLRC); and

2. Resolution dated 8 January 2002,^[2] denying petitioner's motion for reconsideration.

The material facts may be briefly stated, as follows:

Respondents Darwin Pacot, Robert Parohinog, David Bisnar, Marlon Domingo, Rhoel Lescano and Jonathan Cagabcab were earlier hired by petitioner JAKA Foods Processing Corporation (JAKA, for short) until the latter terminated their employment on August 29, 1997 because the corporation was "in dire financial straits". It is not disputed, however, that the termination was effected without JAKA complying with the requirement under Article 283 of the Labor Code regarding the service of a written notice upon the employees and the Department of Labor and Employment at least one (1) month before the intended date of termination.

In time, respondents separately filed with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) complaints for illegal dismissal, underpayment of wages and nonpayment of service incentive leave and 13th month pay against JAKA and its HRD Manager, Rosana Castelo.

After due proceedings, the Labor Arbiter rendered a decision^[3] declaring the termination illegal and ordering JAKA and its HRD Manager to reinstate respondents with full backwages, and separation pay if reinstatement is not possible. More specifically the decision dispositively reads:

WHEREFORE, judgment is hereby rendered declaring as illegal the termination of complainants and ordering respondents to reinstate them to their positions with full backwages which as of July 30, 1998 have already amounted to P339,768.00. Respondents are also ordered to pay complainants the amount of P2,775.00 representing the unpaid service incentive leave pay of Parohinog, Lescano and Cagabcab and the amount of P19,239.96 as payment for 1997 13th month pay as alluded in the above computation.

If complainants could not be reinstated, respondents are ordered to pay them separation pay equivalent to one month salary for very (sic) year of service.

SO ORDERED.

Therefrom, JAKA went on appeal to the NLRC, which, in a decision dated August 30, 1999,^[4] affirmed in toto that of the Labor Arbiter.

JAKA filed a motion for reconsideration. Acting thereon, the NLRC came out with another decision dated January 28, 2000,^[5] this time modifying its earlier decision, thus:

WHEREFORE, premises considered, the instant motion for reconsideration is hereby GRANTED and the challenged decision of this Commission dated 30 August 1999 and the decision of the Labor Arbiter are hereby modified by reversing and setting aside the awards of backwages, service incentive leave pay. Each of the complainants-appellees shall be entitled to a separation pay equivalent to one month. In addition, respondents-appellants is (sic) ordered to pay each of the complainants-appellees the sum of P2,000.00 as indemnification for its failure to observe due process in effecting the retrenchment.

SO ORDERED.

Their motion for reconsideration having been denied by the NLRC in its resolution of April 28, 2000,^[6] respondents went to the Court of Appeals via a petition for certiorari, thereat docketed as CA-G.R. SP No. 59847.

As stated at the outset hereof, the Court of Appeals, in a decision dated November 16, 2000, applying the doctrine laid down by this Court in *Serrano vs. NLRC*,^[7] reversed and set aside the NLRC's decision of January 28, 2000, thus:

WHEREFORE, the decision dated January 28, 2000 of the National Labor Relations Commission is REVERSED and SET

ASIDE and another one entered ordering respondent JAKA Foods Processing Corporation to pay petitioners separation pay equivalent to one (1) month salary, the proportionate 13th month pay and, in addition, full backwages from the time their employment was terminated on August 29, 1997 up to the time the Decision herein becomes final.

SO ORDERED.

This time, JAKA moved for a reconsideration but its motion was denied by the appellate court in its resolution of January 8, 2002.

Hence, JAKA's present recourse, submitting, for our consideration, the following issues:

“I. WHETHER OR NOT THE COURT OF APPEALS CORRECTLY AWARDED ‘FULL BACKWAGES’ TO RESPONDENTS.

II. WHETHER OR NOT THE ASSAILED DECISION CORRECTLY AWARDED SEPARATION PAY TO RESPONDENTS”.

As we see it, there is only one question that requires resolution, i.e. what are the legal implications of a situation where an employee is dismissed for cause but such dismissal was effected without the employer's compliance with the notice requirement under the Labor Code.

This, certainly, is not a case of first impression. In the very recent case of *Agabon vs. NLRC*,^[8] we had the opportunity to resolve a similar question. Therein, we found that the employees committed a grave offense, i.e., abandonment, which is a form of a neglect of duty which, in turn, is one of the just causes enumerated under Article 282 of the Labor Code. In said case, we upheld the validity of the dismissal despite non-compliance with the notice requirement of the Labor Code. However, we required the employer to pay the dismissed employees the amount of P30,000.00, representing nominal damages for non-compliance with statutory due process, thus:

“Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta vs. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of ‘dismiss now, pay later,’ which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

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The violation of petitioners’ right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules,” *(Emphasis supplied)*.

The difference between *Agabon* and the instant case is that in the former, the dismissal was based on a just cause under Article 282 of the Labor Code while in the present case, respondents were dismissed due to retrenchment, which is one of the authorized causes under Article 283 of the same Code.

At this point, we note that there are divergent implications of a dismissal for just cause under Article 282, on one hand, and a dismissal for authorized cause under Article 283, on the other.

A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty of, some violation against the employer, i.e. the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in Agabon, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, i.e. when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.

The clear-cut distinction between a dismissal for just cause under Article 282 and a dismissal for authorized cause under Article 283 is further reinforced by the fact that in the first, payment of separation pay, as a rule, is not required, while in the second, the law requires payment of separation pay.^[9]

For these reasons, there ought to be a difference in treatment when the ground for dismissal is one of the just causes under Article 282, and when based on one of the authorized causes under Article 283.

Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.

The records before us reveal that, indeed, JAKA was suffering from serious business losses at the time it terminated respondents' employment. As aptly found by the NLRC:

“A careful study of the evidence presented by the respondent-appellant corporation shows that the audited Financial Statement of the corporation for the periods 1996, 1997 and 1998 were submitted by the respondent-appellant corporation. The Statement of Income and Deficit found in the Audited Financial Statement of the respondent-appellant corporation clearly shows the following in 1996, the deficit of the respondent-appellant corporation was P188,218,419.00 or 94.11% of the stockholder’s [sic] equity which amounts to P200,000,000.00. In 1997 when the retrenchment program of respondent-appellant corporation was undertaken, the deficit ballooned to P247,222,569.00 or 123.61% of the stockholders’ equity, thus a capital deficiency or impairment of equity ensued. In 1998, the deficit grew to P355,794,897.00 or 177% of the stockholders’ equity. From 1996 to 1997, the deficit grew by more that (sic) 31% while in 1998 the deficit grew by more than 47%.

The Statement of Income and Deficit of the respondent-appellant corporation to prove its alleged losses was prepared by an independent auditor, SGV & Co. It convincingly showed that the respondent-appellant corporation was in dire financial straits, which the complainants-appellees failed to dispute. The losses incurred by the respondent-appellant corporation are clearly substantial and sufficiently proven with clear and satisfactory evidence. Losses incurred were adequately shown with respondent-appellant’s audited financial statement. Having established the loss incurred by the respondent-appellant corporation, it necessarily (sic) follows that the ground in support of retrenchment existed at the time the complainants-appellees were terminated. We cannot therefore sustain the findings of the Labor Arbiter that the alleged losses of the respondent-appellant was [sic] not well substantiated by substantial proofs. It is therefore logical for the corporation to implement a retrenchment program to prevent further losses.”^[10]

Noteworthy it is, moreover, to state that herein respondents did not assail the foregoing finding of the NLRC which, incidentally, was also affirmed by the Court of Appeals.

It is, therefore, established that there was ground for respondents' dismissal, i.e., retrenchment, which is one of the authorized causes enumerated under Article 283 of the Labor Code. Likewise, it is established that JAKA failed to comply with the notice requirement under the same Article. Considering the factual circumstances in the instant case and the above ratiocination, we, therefore, deem it proper to fix the indemnity at P50,000.00.

We likewise find the Court of Appeals to have been in error when it ordered JAKA to pay respondents separation pay equivalent to one (1) month salary for every year of service. This is because in *Reah's Corporation vs. NLRC*,^[11] we made the following declaration:

“The rule, therefore, is that in all cases of business closure or cessation of operation or undertaking of the employer, the affected employee is entitled to separation pay. This is consistent with the state policy of treating labor as a primary social economic force, affording full protection to its rights as well as its welfare. The exception is when the closure of business or cessation of operations is due to serious business losses or financial reverses; duly proved, in which case, the right of affected employees to separation pay is lost for obvious reasons.” (*Emphasis supplied*).

WHEREFORE, the instant petition is **GRANTED**. Accordingly, the assailed decision and resolution of the Court of Appeals respectively dated November 16, 2001 and January 8, 2002 are hereby **SET ASIDE** and a new one entered upholding the legality of the dismissal but ordering petitioner to pay each of the respondents the amount of P50,000.00, representing nominal damages for non-compliance with statutory due process.

SO ORDERED.

DAVIDE, JR., C.J., PUNO, PANGANIBAN, QUISUMBING, YNARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO MORALES,

**CALLEJO, SR., AZCUNA, TINGA, CHICO-NAZARIO, and
GARCIA, JJ., concur.**

- [1] Annex “C”, Petition; Rollo, pp. 53, et seq.; Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Buenaventura J. Guerrero and Alicia L. Santos of the Third Division.
- [2] Annex “E-1”, Petition; Rollo, pp. 84, et seq.
- [3] Annex “1”, Respondent’s Comment; Rollo, pp. 117, et seq.
- [4] Annex “2”, Respondent’s Comment Rollo, pp. 123, et seq.
- [5] Annex “B”, Petition; Rollo, pp. 39, et seq.
- [6] Annex “E”, Petition; Rollo, pp. 80, et seq.
- [7] 380 Phils. 416 [2000] and Resolution on the Motion for Reconsideration, 387 Phils. 345 [2000].
- [8] G.R. No. 158693, promulgated 17 November 2004.
- [9] “ART. 283. 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 of 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 as one (1) whole year.”
- [10] Rollo, pp. 48-49.
- [11] 271 SCRA 247, 254 [1997].