SUPREME COURT
EN BANC

NORTH DAVAO MINING CORPORATION and ASSET PRIVATIZATION TRUST,
***Petitioners*,**

-versus-

G.R. No. 112546
March 13, 1996

NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ANTONIO M. VILLANUEVA and WILFREDO GUILLEMA,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Is a company which is forced by huge business losses to close its business, legally required to pay separation benefits to its employees

at the time of its closure in an amount equivalent to the separation pay paid to those who were separated when the company was still a going concern? This is the main question brought before this Court in this petition for *certiorari* under Rule 65 of the Revised Rules of Court, which seeks to reverse and set aside the Resolutions dated July 29, 1993[1] and September 27, 1993[2] of the National Labor Relations Commission[3] (NLRC) in NLRC CA No. M-001395-93.

The Resolution dated July 29, 1993 affirmed in toto the Decision of the Labor Arbiter in RAB-11-08-00672-92 and RAB-11-08-00713-92 ordering petitioners to pay the complainants therein certain monetary claims.

The Resolution dated September 27, 1993 denied the motion for reconsideration of the said July 29, 1993 Resolution.

The Facts

Petitioner, North Dabao Mining Corporation (North Davao) was incorporated in 1974 as a 100% privately-owned company. Later, the Philippine National Bank (PNB) became part owner thereof as a result of a conversion into equity of a portion of loans obtained by North Davao from said bank. On June 30, 1986, PNB transferred all its loans to and equity in North Davao in favor of the national government which, by virtue of Proclamation No. 50 dated December 8, 1986, later turned them over to petitioner Asset Privatization Trust (APT). As of December 31, 1990 the national government held 81.8% of the common stock and 100% of the preferred stock of said company.[4]

Respondent Wilfredo Guillema is one among several employees of North Davao who were separated by reason of the company's closure on May 31, 1992, and who were the complainants in the cases before the respondent labor arbiter.

On May 31, 1992, petitioner North Davao completely ceased operation due to serious business reverses. From 1988 until its closure in 1992, North Davao suffered net losses averaging three billion pesos (P 3,000,000,000.00) per year, for each of the five years prior to its closure. All told, as of December 31, 1991, or five months

prior to its closure, its total liabilities had exceeded its assets by 20.392 billion pesos, as shown by its financial statements audited by the Commission on Audit. When it ceased operations, its remaining employees were separated and given the equivalent of 12.5 days' pay for every year of service, computed on their basic monthly pay, in addition to the commutation to cash of their unused vocation and sick leaves. However, it appears that, during the life of the petitioner corporation, from the beginning of its operation in 1981 until its closure in 1992, it have been giving separation pay equivalent to thirty (30) days' pay for every year of service. Moreover, inasmuch as the region where North Davao operated was plagued by insurgency and other peace and order problems, the employees had to collect their salaries at a bank in Tagum, Davao Del Norte, some 58 kilometers from their workplace and about 2 ½ hours travel time by public transportation; this arrangement lasted from 1981 up to 1990.

Subsequently, a complaint was filed with respondent Labor Arbiter by respondent Wilfredo Guillema and 271 other separated employees for: (1) additional separation pay of 17.5 day for every year of service; (2) back wages equivalent to two days a month; (3) transportation allowance; (4) hazard pay; (5) housing allowance; (6) food allowance; (7) post-employment medical clearance; and (8) future medical allowance all of which amounted to P58,022, 878.31 as computed by private respondent.[5]

On May 6, 1993, respondent labor arbiter rendered a decision ordering petitioner North Davao to pay the complainants the following:

> "(a) Additional separation pay of 17.5 days for every year of service;
>
> (b) Backwages equivalent to two (2) days a month times the number of years of service but not to exceed three (3) years;
>
> (c) Transportation allowance at P80 a month times the number of years of service but not to exceed three (3) years."

The benefits awarded by respondent Labor Arbiter amounted to P10,240,517.75. Attorney's fees equivalent to ten percent (10%) thereof were also granted.[6]

On appeal, respondent NLRC affirmed the decision in toto. Petitioner North Davao's motion for reconsideration was likewise denied. Hence, this petition.

The Parties' Submissions and the Issues

In affirming in Labor Arbiter's decision, respondent NLRC ruled that "since (North Davao) has been paying its employees separation pay equivalent to thirty (30) days pay for every year of service," knowing fully well that the law provides for a lesser separation pay, then such company policy "has ripened into an obligation," and therefore, depriving now the herein private respondent and others similarly situated of the same benefits would be discriminatory.[7] Quoting from Businessday Information Systems and Services, Inc. (BISSI) vs. NLRC,[8] it said that petitioners "may not pay separation benefits unequally for such discrimination breeds resentment and ill-will among those who have been treated less generously than others." It also cited Abella vs. NLRC,[9] as authority for saying that Art. 283 of the Labor Code protects workers in case of closure of the establishment.

To justify the award of two days a month in backwages and P80 per month of transportation allowance, respondent Commission ruled:

> "As the appellants' claim that complainants-appellees' time spent in collecting their wages at Tagum, Davao is not compensable allegedly because it was on official time can not be given credence. No iota of evidence has been presented to back up said contention. The same is true with appellants' assertion that the claim for transportation expenses is without basis since they were incurred by the complainants. Appellants should have submitted the payrolls to prove that complainants appellees were not the ones who personally collected their wages and/or the bus/jeep trip tickets or vouchers to show that the complainants-appellees were provided with free transportation as claimed."

Petitioner, through the Government Corporate Counsel, raised the following grounds for the allowance of the petition:

> "1. The NLRC acted with grave abuse of discretion in affirming without legal basis the award of additional separation pay to private respondents who were separated due to serious business losses on the part of the petitioner.
>
> 2. The NLRC acted with grave abuse of discretion in affirming without sufficient factual basis the award of backwages and transportation expenses to private respondents.
>
> 3. There is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of the law".

and the following issues:

> "1 Whether or not an employer whose business operations ceased due to serious business losses or financial reverses is obliged to pay separation pay to its employees separated by reason of such closure.
>
> 2. Whether or not time spent in collecting wages in a place other that the place of employment is compensable notwithstanding that the same is done during official time.
>
> 3. Whether or not private respondents are entitled to transportation expenses in the absence of evidence that these expenses were incurred."

The First Issue: Separation Pay

To resolve this issue, it is necessary to revisit the provision of law adverted to by the parties in their submissions, namely Art. 283 of the Labor Code, which reads as follows:

> "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 under taking 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 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 under taking 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 (½) 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." (Emphasis supplied)

The underscored portion of 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." 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[10] filed by the Solicitor General, impliedly concede this point.

However, respondents tenaciously insist on the award of separation pay, anchoring their claim solely on petitioner North Davao's long-standing policy of giving separation pay benefits equivalent to 30-days pay, which policy had been in force in the year prior to its closure. Respondents contend that, by denying the same separation benefits to private respondents and the others similarly situated, petitioners discriminated against them. They rely on this Court's ruling in Businessday Information Systems and Services, Inc. (BISSI) vs. NLRC, (supra). In said case, petitioner BISSI, after experiencing financial reverses, decided "as a retrenchment measure" to lay-off some employees on May 16, 1988 and give them separation pay

equivalent to one-half (½) month pay for every of service. BISSI retained some employees in an attempt to rehabilitate its business as a traiding company. However, barely two and a half months later, these remaining employees were likewise discharged because the company decided to cease business operations altogether. Unlike the earlier terminated employees, the second batch receive separation pay equivalent to a full month's salary for every year of service, plus a mid-year bonus. This court ruled that "there was impermissible discrimination against the private respondents in the payment of their separation benefits. The law requires an employer to extend equal treatment to its employees. It may not, in the guise of exercising management prerogatives, grant greater benefits to some and less to others."

In resolving the present case, it bears keeping in mind at the outset that the factual circumstances of BISSI are quite different from the current case. The court noted that BISSI continued to suffer losses even after the retrenchment of the first batch of employees; clearly, business did not improve despite such drastic measure. That notwithstanding, when BISSI finally shut down, it could well afford to (and actually did) pay off its remaining employees with MORE separation benefits as compared with those earlier laid off; obviously, then, where was no reason for BISSI to skimp on separation pay for the first batch of discharged employees. That it was able to pay one-month separation benefit for employees at the time of closure of its business meant that it must have been also in a position to pay the same amount to those who were separated prior to closure. That it did not do so was a wrongful exercise of management prerogatives. That is why the court correctly faulted it with "impermissible discrimination." Clearly, it exercised its management prerogatives contrary to "general principles of fair play and justice."

In the instant case however, the company's practice of giving one month's pay for every year of service could no longer be continued precisely because the company could not afford it anymore. It was forced to close down on account of accumulated losses of over P20 billion. This could not be said of BISSI. In the case of North Davao, it gave 30-days' separation pay to its employees when it was still a going concern even if it was already losing heavily. As a going concern, its cash flow could still have sustained the payment of such separation

benefits. But when a business enterprise completely ceases operations, i.e. upon its death as a going business concern, its vital life blood — its cashflow — literally dries up. Therefore, the fact that less separation benefits were granted when the company finally met its business death cannot be characterized as discrimination. Such action was dictated not by a discriminatory management option but by its complete inability to continue its business life due to accumulated losses. Indeed, one cannot squeeze blood out of a dry stone. Nor water out of parched land.

As already stated, Art. 283 of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to losses. In the case before us, the basis for the claim of the additional separation benefit of 17.5 days is alleged discrimination, i.e.. unequal treatment of employees, which is proscribed as an unfair labor practice by Art. 248 (e) of said Code. Under the facts and circumstances of the present case, the grant of a lesser amount of separation pay to private respondent was done, not by reason of discrimination, but rather, out of sheer financial bankruptcy — a fact that is not controlled by management prerogatives. Stated differently, the total cessation of operation due to mind-boggling losses was a supervening fact that prevented the company from continuing to grant the more generous amount of separation pay. The fact that North Davao at the point of its forced closure voluntarily paid any separation benefits at all — although not required by law — and 12.5-days worth at that, should have elicited administration instead of condemnation. But to require it to continue being generous when it is no longer in a position to do so would certainly be unduly oppressive, unfair and most revolting to the conscience. As this court held in Manila Trading & Supply Co. vs. Zulueta,[11] and reiterated in San Miguel Corporation vs. NLRC[12] and later, in Allied Banking Corporation vs. Castro,[13] "(t)he law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer."

At this juncture, we note that the Solicitor General in his Comment challenges the petitioners' assertion that North Davao, having closed down, no longer has the means to pay for the benefits. The Solicitor General stresses that North Davao was among the assets transferred by PNB to the national government, and that by virtue of

Proclamation No. 50 dated December 8, 1986 the APT was constituted trustee of this government asset. He then concludes that "(i)t would, therefore be incongruous to declare that the National Government, which should always be presumed to be solvent, could not pay now private respondents' money claims." Such argumentation is completely misplaced. Even if the national government owned or controlled 81.8% of the common stock and 100% of the preferred stock of North Davao, it remains only a stockholder thereof, and under existing laws and prevailing jurisprudence, a stockholder as a rule is not directly, individually and/or personally liable for the indebtedness of the corporation. The obligation of North Dabao cannot be considered the obligation of the national government, hence, whether the latter be solvent or not is not material to the instant case. The respondents have not shown that this case constitutes one of the instances where the corporate veil may be pierced.[14] From another angle, the national government is not the employer private respondent and his co-complainants, so there is no reason to expect any kind of bailout by the national government under existing law and jurisprudence.

The Second and Third Issues: Back Wages and Transportation Allowance

Anent the award of back wages and transportation allowance, the issues raised in connection therewith are factual, the determination of which is best left to the respondent NLRC. It is well settled that this Court is bound by the findings of fact of the NLRC, so long as said findings are supported by substantial evidence.[15]

As the Solicitor General pointed out in his comment:

> "It is undisputed that because of security reasons, from the time of its operations, petitioner NDMC maintained its policy of paying its workers at a bank in Tagum, Davao del Norte, which usually took the worker about two and a half (2 ½) hours of travel from the place of work and such travel time is not official.
>
> Records also show that on February 12, 1992, when an inspection was conducted by the Department of Labor and Employment at the premises of petitioner NDMC at Amacan,

Maco, Davao del Norte, it was found out that petitioners had violated labor standards law, one of which is the place of payment of wages (p. 109, Vol. 1, Record)."

Section 4, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code provides that:

> Section 4. Place of payment. — (a) As a general rule, the place of payment shall be at or near the place of undertaking. Payment in a place other than the workplace shall be permissible only under the following circumstances:
>
> (1) When payment cannot be effected at or near the place of work by reason of the deterioration of peace and order conditions, or by reason of actual or impending emergencies caused by fire, flood, epidemic or other calamity rendering payment thereat impossible;
>
> (2) When the employer provides free transportation to the employees back and forth; and
>
> (3) Under any analogous circumstances; provided that the time spend by the employees in collecting their wages shall be considered as compensable hours worked.
>
> (b) x x x
> (Emphasis supplied)

Accordingly, in his Order dated April 14, 1992 (p. 109, Vol. 1, Record), the Regional Director, Regional Office No. XI, Department of Labor and Employment, Davao City, ordered petitioner NDMC, among others, as follows:

> 'WHEREFORE, Respondents is further ordered to pay its workers salaries at the plant site at Amacan, New Leyte, Maco, Davao del Norte or whenever not possible, through

> the bank in Tagum, Davao del Norte as already been practiced subject, however to the provisions of Section 4 of Rule VIII, Book III of the rules implementing the Labor Code as amended.'

Thus, public respondent Labor Arbiter Antonio M. Villanueva correctly held that:

> 'From the evidence on record, we find that the hours spend by complainants in collecting salaries at a bank in Tagum, Davao del Norte shall be considered compensable hours worked. Considering further the distance between Amacan, Maco to Tagum which is 2 ½ hours by travel and the risks in commuting all the time in collecting complainants' salaries, would justify the granting of backwages equivalent to two (2) days in a month as prayed for.'
>
> 'Corollary to the above findings, and for equitable reasons, we likewise hold respondents liable for the transportation expenses incurred by complainants at P40.00 round trip fare during pay days.' (p. 10, Decision; p. 207, Vol. 1, Record)

On the contrary, it will be petitioners' burden or duty to present evidence of compliance of the law on labor standards, rather than for private respondents to prove that they were not paid/provided by petitioners of their backwages and transportation expenses."

Other than the bare denials of petitioners, the above findings stands uncontradicted. Indeed we are not at liberty to set aside findings of facts of the NLRC, absent any capriciousness, arbitrariness, or abuse or complete lack of basis. In Maya Farms Employees Organizations vs. NLRC,[16] we held:

> "This court has consistently ruled that findings of fact of administrative agencies and quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but

even finality and are binding upon this Court unless there is a showing of grave abuse of discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record."

WHEREFORE, judgment is hereby rendered **MODIFYING** the assailed Resolution by **SETTING ASIDE** and deleting the award for "additional separation pay of 17.5 days for every year of service", and **AFFIRMING** it in all other aspects. No costs.

SO ORDERED.

Narvasa, *C.J.*, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco and Hermosisima, *JJ.*, concur.

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[1] Rollo, pp. 33-45.
[2] Rollo, pp. 51-52.
[3] Fifth Division, Cagayan de Oro City, composed of comm. Leon G. Gonzaga, Jr.
[4] Rollo, pp. 35, 70 and 100.
[5] Rollo, p. 98.
[6] Rollo, pp. 33-34
[7] Rollo, p. 42.
[8] 221 SCRA 9, 12 (April 5, 1993).
[9] 152 SCRA 141, 145 (July 20, 1987).
[10] Rollo, pp. 96-188.
[11] 69 Phil. 485,486-487 (Jan. 30, 1940).
[12] 115 SCRA 329 (July 20, 1982).
[13] 156 SCRA 789, 800 (December 22, 1987).
[14] This Court has pierced the veil of corporate fiction in numerous cases where it was used, among other, to avoid a judgment credit (Sibegat Timber Corp. vs. Garcia, 216 SCRA 470 [December 11, 1992]; Tan Boon Bee & Co., Inc. vs. Jarencio, 163 SCRA 205 [June 30, 1988]) to avoid inclusion of corporate assets as part of the estate of a decedent (Cease vs. CA, 93 SCRA 483 [October 18, 1979]); to avoid liability arising from debt (Arcilla vs. CA, 2154 SCRA 120 [October 23, 1992]; Philippine Bank of Communication vs. CA, 198 SCRA 567 [March 22, 1991]); or when made use of as a shield to perpetrate fraud and/or confuse legitimate issues (Jacinto vs. Ca, 198 SCRA 211 [June 6, 1991]); or to promote unfair objectives or otherwise to shield them (Villanueva vs. Adre, 172 SCRA 876 [April 27, 1989]).

[15] Wyeth-Suaco Laboratories, Inc. vs. National Labor Relations Commission, 219 SCRA 356 (March 2, 1993).
[16] 239 SCRA 508, 512 (DECEMBER 28, 1994).