Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NAVOTAS SHIPYARD CORPORATION and JESUS VILLAFLOR, Petitioners,	**G.R. No. 190053**
	Present:
-versus-	CARPIO, *J.*, *Chairperson*, BRION, DEL CASTILLO, PEREZ, and REYES,* *JJ.*
INNOCENCIO MONTALLANA, ALFREDO BAUTISTA, TEODORO JUDLOMAN, GUILLERMO BONGAS, ROGELIO BONGAS, DIOSDADO BUSANTE, EMILIANO BADU and ROSENDO SUBING-SUBING, Respondents.	Promulgated: MAR 24 2014

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] that challenges the decision[2] dated July 20, 2009 and the resolution[3] dated October 7, 2009 of the Court of Appeals (*CA*) in CA-G.R. SP No. 96078.

The Antecedents

The case arose when respondents Innocencio Montallana, Alfredo Bautista, Teodoro Judloman, Guillermo Bongas, Rogelio Bongas, Diosdado

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* Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1650 dated March 13, 2014.

1 *Rollo*, pp. 11-21; filed pursuant to Rule 45 of the Rules of Court.

2 Id. at 97-113; penned by Associate Justice Antonio L. Villamor, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Celia C. Librea-Leagogo.

3 Id. at 122-123.

Busante, Emiliano Badu and Rosendo Subing-Subing filed a complaint for illegal (constructive) dismissal, with money claims, against the petitioners, Navotas Shipyard Corporation (*company*) and its President/General Manager, Jesus Villaflor.

The respondents alleged that on October 20, 2003, the company's employees (about 100) were called to a meeting where Villaflor told them: *"Magsasara na ako ng negosyo, babayaran ko na lang kayo ng separation pay dahil wala na akong pangsweldo sa inyo. Marami akong mga utang sa krudo, yelo, at iba pa.*"[4] Since then, they were not allowed to report for work but Villaflor's promise to give them separation pay never materialized despite their persistent demands and follow-ups.

The petitioners, on the other hand, claimed that due to the "seasonal lack of fish caught and uncollected receivables[,]"[5] the company suffered financial reverses. It was thus constrained to temporarily cease operations. They projected that the company could resume operations before the end of six months or on April 22, 2004. It reported the temporary shutdown to the Department of Labor and Employment, National Capital Region (*DOLE-NCR*) and filed an Establishment Termination Report.

The Compulsory Arbitration Rulings

In a decision[6] dated September 13, 2004, Labor Arbiter (*LA*) Geobel A. Bartolabac dismissed the complaint for lack of merit, but awarded the respondents 13th month pay and service incentive leave pay for the year 2003 in the aggregate amount of ₱62,534.00. LA Bartolabac ruled that the respondents could not have been illegally dismissed. He declared that the "Notice of Temporary Closure filed before the DOLE belies complainants' unsubstantiated allegation that they were informed in a meeting on 20 October 2003 x x x that [their] services were terminated."[7] He considered the temporary shutdown as a suspension of the employment relationship between the parties.

The respondents appealed the LA's ruling. They argued before the National Labor Relations Commission (*NLRC*) that since they were not given work assignments for more than six months, they should have been considered constructively dismissed and granted backwages as well as separation pay. The NLRC dismissed the appeal for lack of merit and affirmed LA Bartolabac's decision *in toto*.[8] It also denied the respondents'

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4 Id. at 29.
5 Id. at 33.
6 Id. at 125-131.
7 Id. at 129.
8 Id. at 132-138.

subsequent motion for reconsideration.[9] The respondents sought relief from the CA by way of a petition for *certiorari*, charging the NLRC with grave abuse of discretion in upholding the dismissal of their complaint.

The CA Proceedings

Before the CA, the respondents maintained that the company's closure was intended to be permanent, as evidenced by Villaflor's statement during the meeting on October 20, 2003 that he was closing the company and that they would be given separation pay. In such a case, they argued that they should have been given individual notices thirty days before the intended closure; in the absence of this notice, they should be considered illegally dismissed.

The CA found merit in the respondents' submission that the company's shutdown was not temporary, but permanent. While it acknowledged that initially, the shutdown was only temporary, it "has ripened into a closure or cessation of operations"[10] after it exceeded the six months allowable period under Article 286 of the Labor Code in the manner this Court declared in *Mayon Hotel & Restaurant v. Adana.*[11] It thus became a dismissal, it pointed out that, by operation of law, when the petitioners failed to reinstate the respondents after the lapse of six months. It noted that "during the proceedings [before] the LA covering a period in excess of six months, there is no showing on record that notices to return to work were given to the petitioners or that operations have resumed."[12]

The CA declared that the NLRC committed grave abuse of discretion in upholding LA Bartolabac's ruling that no illegal dismissal took place as the LA disregarded the obtaining facts and the applicable provisions of law. It set aside the challenged NLRC decision and granted the respondents' claims for service incentive leave pay, 13th month pay, separation pay and backwages.

The Petition

The petitioners seek relief from this Court through the present Rule 45 appeal on the ground that the CA committed a reversible error of law **when it awarded separation pay and backwages notwithstanding the closure of the company's business operations.** They argue that under the circumstances, the respondents are not entitled to backwages, pursuant to Article 283 of the Labor Code. They maintain that although they "suffered

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9 Id. at 94-95.
10 *Supra* note 2, at 110.
11 497 Phil. 892, 916 (2005).
12 *Supra* note 2, at 110.

business losses that led to the disposition of their fishing vessels in order to pay their debts, diesel, salaries and others, they gave the separation pays of their employees."[13]

The Respondents' Position

In their Comment filed on March 4, 2010,[14] the respondents ask the Court to dismiss the petition considering that the issues raised by the petitioners had been squarely ruled upon by the CA. They stress that the CA committed no error in its appreciation of the established facts, as well as the application of the pertinent law and jurisprudence in the case.

The Court's Ruling

We find the petition partially meritorious.

It appears from the records that the company was compelled to shut down its operations due to serious business reverses during the period material to the case. It also appears that the petitioners initially intended the shutdown to be temporary as it expected to resume operations before the expiration of six months or on April 22, 2004, as the CA noted.[15] The company reported the shutdown to the DOLE-NCR and filed an Establishment Termination Report which contained the names of the employees to be affected.[16]

Before the lapse of the six-month period, the respondents filed a constructive dismissal case, rationalizing that they had to do so because the shutdown was merely a company ploy to remove them from the service. They were allegedly not notified to report back for work before the expiration of the six-month period; neither was there any notice of resumption of operations during the pendency of the case before the LA. The challenged CA rulings supported the respondents' position.

The applicable law

To place the case in perspective, we first examine the applicable law in view of the disagreement between the petitioners and the respondents in that respect. According to the CA, the "[p]etitioners anchor their arguments mainly on Article 283 of the Labor Code, stating that private respondents resorted to retrenchment and permanent closure of business, while private

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13 *Supra* note 1, at 16-17.
14 *Rollo*, pp. 145-149.
15 *Supra* note 2, at 99.
16 *Rollo*, pp. 59-60.

respondents maintain that what is applicable is Article 286 x x x as the closure of business was merely temporary."[17] Articles 283 and 286 of the Labor Code provide:

> 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 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 and 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.
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> ART. 286. When employment not deemed terminated. — The *bona-fide* suspension of the 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. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.[18]

As we earlier stated, the petitioners undertook a temporary shutdown. In fact, the company notified the DOLE of the shutdown and filed an Establishment Termination Report containing the names of the affected employees.[19] The petitioners expected the company to recover before the end of the six-month shutdown period, but unfortunately, no recovery took place. Thus, the shutdown became permanent. According to the petitioners, they gave the company's employees their separation pay.

We disagree with the company's position that it resorted to a retrenchment under Article 283 of the Labor Code; it was a temporary shutdown under Article 286 where the employees are considered on floating status or whose employment is temporarily suspended. Citing *Sebuguero v. National Labor Relations Commission,*[20] the CA was correct when it said

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17 *Supra* note 2, at 106-107.
18 Italics supplied.
19 *Supra* note 16.
20 G.R. No. 115394, September 27, 1995, 248 SCRA 532.

that "[t]here is no specific provision of law which treats of a temporary retrenchment or lay-off."[21]

Were the respondents illegally dismissed and entitled to the CA award?

1. ***The illegal dismissal ruling***

Under the circumstances, we cannot say that the company's employees were illegally dismissed; rather, they lost their employment because the company ceased operations after failing to recover from their financial reverses. The CA itself recognized what happened to the company when it observed: "The temporary shutdown has ripened into a closure or cessation of operations. In this situation[,] private respondents are definitely entitled to the corresponding benefits of separation."[22] Even the respondents had an inkling of the company's fate when they claimed before the LA that on October 20, 2003, they were called, together with all the other employees of the company, by Villaflor; the latter allegedly told them that he would be closing the company, but would give them their separation pay. He also disclosed to them the reason – he could no longer pay their salaries due to the company's unsettled financial obligations on fuel and ice and other indebtedness.[23]

The respondents' verbal account of what happened during the meeting, particularly the company's imminent closure, to our mind, confirmed the company's dire situation. The temporary shutdown, it appears, was a last ditch effort on the part of Villaflor to make the company's operations viable but, as it turned out, the effort proved futile. The shutdown became permanent as the CA itself acknowledged. The CA misappreciated the facts when it opined that the respondents were illegally dismissed because they were not reinstated by the petitioners after the lapse of the company's temporary shutdown. It lost sight of the fact that the company did not resume operations anymore, a situation the CA itself recognized. The respondents, therefore, had no more jobs to go back to; hence, their non-reinstatement.

In these lights, the CA was not only incorrect from the point of law; it likewise disregarded, or at the very least, grossly misappreciated the evidence on record – that the petitioner was in distress and **had temporarily suspended its operations**, and duly reflected these circumstances to the DOLE. From this perspective, there was no grave abuse of discretion to justify the CA's reversal of the NLRC's findings and conclusions.

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21 *Supra* note 2, at 109.
22 Id. at 110.
23 Id. at 98.

2. *The award of backwages/nominal damages*

Since there was no illegal dismissal, the respondents are not entitled to backwages. The term "backwages" presupposes illegal termination of employment. It is restitution of earnings unduly withheld from the employee because of illegal termination. Hence, where there is no illegal termination, there is no basis for claim or award of backwages.[24]

The lack of basis for backwages notwithstanding, we note that the respondents claimed that they were not given individual written notices of the company's temporary shutdown or of its closure. The records support the respondents' position. Other than the Establishment Termination Report[25] submitted by the company to the DOLE-NCR when it temporarily shut down its operations and which included the respondents' names, there is no evidence (other than the petitioner's informal talk with its employees, which did not strictly comply with the legal requirement) that they were served individual written notices at least thirty (30) days before the effectivity of the termination, as required under Section 1(iii), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code.[26] **Pursuant to existing jurisprudence, if the dismissal is by virtue of a just or authorized cause, but without due process, the dismissed workers are entitled to an indemnity in the form of nominal damages.**

In the present case, the evidence on hand substantially shows that the company closed down due to serious business reverses, an authorized cause for termination of employment. The failure to notify the respondents in writing of the closure of the company will not invalidate the termination of their employment, but the company has to pay them nominal damages for the violation of their right to procedural due process. This amount is addressed to the sound discretion of the court, taking into account the relevant circumstances, as the Court explained in *Agabon v. NLRC.*[27] In *Agabon,* the dismissed employees abandoned their jobs, a just cause for termination of employment. They were dismissed without notice and hearing. The Court awarded them ₱30,000.00 in nominal damages.

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[24] C.A, Azucena, Jr., The LABOR CODE With Comments and Cases, Volume II, Sixth Edition, 2007, p. 827, citing *Industrial Timber Corporation-Stanply Operations v. NLRC,* 323 Phil. 754, 759 (1996).

[25] *Supra* note 16.

[26] ***For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before the effectivity of the termination, specifying the ground or grounds for the termination.***

[27] 485 Phil. 248, 288 (2004).

[28] 494 Phil. 114, 121 (2005).

In *Jaka Food Processing Corp. v. Pacot*,[28] the Court made a distinction between "just" and "authorized" cause in relation to the award of nominal damages. Thus, the Court said: "*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 Court awarded ₱50,000.00 nominal damages in *Jaka*.

Further, in *Industrial Timber Corp. v. Ababon*,[29] the Court emphasized that in the determination of the amount of nominal damages, "several factors are taken into account: (1) the authorized cause invoked – whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to satisfy the awards, taking into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all." In this cited case, the Court, in considering the circumstances obtaining in the case, deemed it wise and just to reduce the amount of nominal damages to be awarded to each employee, to ₱10,000.00 instead of ₱50,000.00 each.[30] Thus, the Court said:

> In the case at bar, there was valid authorized cause considering the closure or cessation of ITC's business which was done in good faith and due to circumstances beyond ITC's control. Moreover, ITC had ceased to generate any income since its closure on August 17, 1990. Several months prior to the closure, ITC experienced diminished income due to high production costs, erratic supply of raw materials, depressed prices, and poor market conditions for its wood products. It appears that ITC had given its employees all benefits in accord with the CBA upon their termination.[31]

In the present case, there is no question that the company failed to resume operations anymore as it had been saddled with serious financial obligations due to unpaid debts for diesel fuel and ice and other indebtedness, and because of this it had to dispose of its fishing vessels. The respondents themselves were aware of the company's heavy financial burden since Villaflor told them about it at the meeting on October 20, 2003. Then there was Villaflor's undertaking to give them separation pay of which

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29 520 Phil. 522, 527-528 (2006); italics supplied.

30 Id. at 528.

31 Ibid.

he also told them. Although the respondents were not individually served written notice of the termination of their employment, the company, nonetheless, filed an Establishment Termination Report which included the names of the respondents. The filing of the report indicates that the company made the *bona fide* effort to comply with the notice requirement under the law and the rules. **Given the circumstances surrounding the company's closure and guided by the ruling in *Industrial Timber*, we find it reasonable to award the respondents ₱10,000.00 in nominal damages.**

3. ***The award of separation pay, service incentive leave pay and 13th month pay***

Under Article 283 of the Labor Code quoted earlier, the employer may terminate the employment of any employee due to, among other causes, the closure or cessation of operations of the establishment or undertaking. In such an eventuality, the employee may or may not be entitled to separation pay. On this point, Article 283 provides: ***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 least six months shall be considered one (1) whole year.***

Considering that the company's closure was due to serious financial reverses, it is not legally bound to give the separated employees separation pay. In *Reahs Corporation v. NLRC*,[32] the Court explained that "[t]he grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee, **except** only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition."[33]

We note, however, that in his meeting with the employees, including the respondents, on October 20, 2003, Villaflor told them that he would be giving them separation pay as a consequence of the company's closure. He should now honor his undertaking to the respondents and grant them separation pay. Except for the petitioners' claim that "they gave the separation pays of their employees,"[34] they failed to present proof of actual payment. In this light, Villaflor's grant of separation pay to the respondents has still to be fulfilled.

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32 337 Phil. 698, 705 (1997).
33 Emphasis ours.
34 *Supra* note 1, at 17.

Finally, the petitioners did not appeal the LA's award of service incentive leave pay and 13th month pay for the year 2003 to the respondents. Accordingly, the award stands.

WHEREFORE, premises considered, the petition is **GRANTED IN PART.** Petitioners Navotas Shipyard Corporation and Jesus Villaflor are **ORDERED** to pay, jointly and severally, respondents Innocencio Montallana, Alfredo Bautista, Teodoro Judloman, Guillermo Bongas, Rogelio Bongas, Diosdado Busante, Emiliano Badu and Rosendo Subing-Subing **nominal damages** of ₱10,000.00 each, **service incentive leave pay, 13th month pay** for the year 2003, based on the labor arbiter's computation, and **separation pay** equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher, with a fraction of at least six (6) months considered as one (1) whole year. The award of **backwages** is **SET ASIDE.** Let the records of the case be **REMANDED** to the labor arbiter for enforcement of this **DECISION.**

Except as above modified, the assailed decision and resolution of the Court of Appeals are **AFFIRMED.** No costs.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice