SPECIAL SECOND DIVISION

[CA-G.R. SP. NO. 133207, March 13, 2015]

CRISPULO BORINAGA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION FOURTH DIVISION, FLORO ENTERPRISES, INC. / MR. GREGORY FLORO, RESPONDENTS.

D E C I S I O N

CRUZ, R.A., J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision dated August 27, 2013[1] of the National Labor Relations Commission ("NLRC") Fourth Division in NLRC LAC No. 05-001673-13 affirming the decision of the labor arbiter dismissing the complaint for monetary claims filed by the petitioner and the Resolution dated October 21, 2013[2] denying reconsideration thereof.

THE ANTECEDENTS

Petitioner Crispulo Borinaga was hired by Private Respondent Floro Enterprises, Inc. ("FEI") on July 1987. On November 30, 2010, private respondent declared a temporary closure of its business operations effective January 3, 2011[3]. Petitioner claims that private respondent continued operating under a new company called "DVC" which eventually declared cessation of business operations effective July 27, 2011. In an electronic mail dated June 23, 2011, Private Respondent Gregory Floro instructed the manager, Jackie Blanclaver, to read his letter to the employees of FEI which states:

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> "To arrange for adequate financing for the company, I have arranged my assets to be sold. Negotiations are still pending. Upon payment, I am arranging payments as follows:
>
> All SSS, Pag-ibig and medicare liabilities for FEI [acronym for Floro Enterprises, Inc.] employees up to December 30, 2010. FEI was closed down temporarily on this date.
>
> All FEI payroll liabilities up to December 30, 2010 for those employees cleared by administrative personel of their own liabilities.
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> -xxx-
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> For all admin workers, please prepare liability sheet summaries and employee clearance forms.

Please have all concerned employees sign this memo after reading."

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Petitioner alleges that the FEI employees were ordered to stop working on June 27, 2011. He claims that he has not been receiving the correct amount of salary and 13th month pay since 2009. He also avers that FEI also failed to remit his Social Security System ("SSS") and PAG-IBIG contributions. He asseverates that he has not received any separation pay from private respondent as a result of the cessation of its business operations.

This prompted petitioner and 26 other employees of FEI to file a complaint[4] for monetary claims consisting of unpaid wages, 13th month pay, separation pay, moral and exemplary damages, attorney's fees, illegal deductions and failure to remit SSS and PAG-IBIG contributions before the NLRC.

On January 16, 2013 and after due proceedings, the labor arbiter issued a decision dismissing the complaint of the petitioner and his co-workers and ruling that private respondent complied with the notice requirements for cessation of business operations due to serious business losses under Article 283 of the Labor Code of the Philippines.

Petitioner filed a Memorandum of Appeal on May 23, 2013[5] before the NLRC. In a Decision dated August 27, 2013, the NLRC dismissed the appeal for lack of merit and affirmed the decision of the labor arbiter. The NLRC ruled that the records indubitably showed that for the years 2006, 2007 and 2008, private respondent suffered serious business losses amounting to P9,699,495.00, P19,303,478.00 and P13,182,263.00 respectively. The five-hectare land where the FEI factory is located was also foreclosed by the Veteran's Bank. When its business did not improve, it ceased its operations by furnishing the Department of Labor and Employment ("DOLE") with Establishment Termination Report on December 6, 2010. Since the closure was due to serious business losses and the action to close shop was neither motivated by bad faith nor is it a scheme designed to evade its obligations to its employees, private respondent is not liable for separation pay. The NLRC ruled that private respondent complied with the requirements of notice to the DOLE and to the workers. With respect to unpaid wages and 13th month pay, the NLRC ruled that petitioner cannot compel private respondent to pay the same because such are components of the separation pay. Assuming without admitting, that the claims for unpaid wages and 13th month pay accrued before its closure in 2010, NLRC notes that the petitioner failed to provide details and particulars with respect to his entitlement thereto. The NLRC stated that the promise of Gregory Floro to "pay some amount to the workers" cannot bind the private respondent since it has a personality separate and distinct from Gregory Floro.

Aggrieved, after his Motion for Reconsideration failed, petitioner filed this petition before us, alleging the issue :

THE ISSUE BEFORE US

I.

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE

OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE PETITIONER'S MONEY CLAIMS;

Petitioner argues that the allegation of serious business losses was not proven. Petitioner bewails the fact that FEI's statements of income for the years 2006 and 2007 were unaudited and do not bear the signature of the person who prepared the same. Moreover, there were no supporting documents to validate the figures appearing in the statements of income. Therefore, no evidentiary value should be accorded to the said documents. Without the accompanying signature of the certified public accountant or auditor, the documents should be treated as mere scraps of paper for being self-serving. Petitioner contends that it is entitled to its monetary claims. The general rule is that the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. The reason for the rule is that pertinent personnel files, records, remittances and other similar documents are in the custody and absolute control of the employer. Private respondent admitted its liability in the electronic mail dated June 23, 2011 sent by Gregory Floro to Jackie Blanclaver. Petitioner is therefore entitled to separation pay because private respondent was not able to prove that the cessation of business operations was due to serious business losses. Furthermore, petitioner was promised that his loyalty will be recognized and compensated after 24 years of service to the company. The award of attorney's fees is proper in this case pursuant to Section 6[6], Republic Act No. 9406.

In its Comment, private respondent asseverates that the factual issues raised by the petitioner is beyond the scope of a petition for certiorari. The termination of an employee on the ground of serious business losses requires: (1) that the biusiness losses must be real and serious; (2) that the DOLE be advised promptly. Here, private respondent presented sufficient evidence to prove that the closure was real and in good faith. Gregory Floro submitted a sworn affidavit and statementS of income and loss. Private respondent posits that DOLE was advised of FEI's closure and no unfavorable action had been taken by it against FEI. Private respondent denies that its evidence of loss is feigned and self-serving. Private respondent reiterates the doctrine that findings of fact of administrative agencies must be respected especially if they are supported by substantial evidence as in this case. Private respondent was constrained to close shop because despite Gregory Floro's efforts to get business orders from the USA, FEI continued to incur losses. Private respondent stresses that petitioner does not even contest that FEI's closure was in good faith. Anent the promise made by Gregory Floro in the electronic mail, private respondent claims that such financial consolation promised is not enforceable.

OUR RULING

The petition is partly meritorious.

Petitioner is not entitled to separation pay

We find that the termination of employment of the petitioner was due to an authorized cause - cessation of business operations due to financial losses. Hence, petitioner is not entitled to separation pay.

The closure of business may be considered as a reversal of an employer’s fortune

whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of the establishment, usually due to financial losses.[7] Under the Labor Code, it is treated as an authorized cause for termination, aimed at preventing further financial drain upon an employer who cannot anymore pay its employees since business has already stopped.[8] As a form of recompense, the employer is required to pay its employees separation benefits, except when the closure is due to serious business losses. Article 297 (formerly Article 283) of the Labor Code, as amended, states this rule:

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> "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 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 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 one (1) whole year."

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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. Here, FEI's alleged serious business losses and financial reverses were amply shown or proved.

An examination of the records reveals that FEI has consistently suffered staggering net losses prior to its cessation of business operations, to wit: (1) P9,699,495.72, Philippine Currency for the year 2006[9]; (2) P19,303,478.27 Philippine Currency for the year 2007[10]; (3) P13,182,253.81, Philippine Currency for the year 2008[11]. Contrary to the allegation of the petitioner, the statements of loss were submitted by the petitioner to the Bureau of Internal Revenue as shown by the BIR stamp on the first page. Private respondent also explained that it can no longer afford the services of a certified public accountant/ auditor which is why the financial statements were not signed by a certified public accountant/auditor. Being guided accordingly, we find that private respondent was fully justified in its cessation of business operations since it was experiencing huge financial reverses, not only for a