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**NWPC LAW GAZETTE**

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*NWPC Case No. E-12-002*

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**4. CAPITAL IMPAIRMENT**

**NWPC Case No. E-12-002**  
**[Case No. RBIII-16-11-13]**

14 February 2012

IN RE: APPLICATION FOR EXEMPTION UNDER WAGE  
ORDER NO. RBIII-16

SMART SHIRTS PHILS., INC., Applicant-Appellee

SMART SHIRTS PHILS., INC. WORKERS UNION (SSPIWU),  
Oppositor-Appellant.

*Wage Order; Application for Exemption; Capital Impairment Requirement.* - An applicant company may qualify for exemption as a distressed establishment when its deficit as of the last full accounting period immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period or when it registers a capital deficiency. In this case, the Applicant-Appellee's financial statements disclosed that it met the abovestated criteria as a distressed establishment for having incurred more than the required 20% deficit.

*Same; Same; Compliance with Notice.* - Applicant-Appellee complied with the notice requirements. A careful review of the records of the case showed that the Union President was duly notified of the exemption application through a memorandum as early as 20 July 2011, proof of which was attached to the application for exemption.

*Same; Same; Purpose of Granting Exemption.* - Under Section 2 of the NWPC Guidelines No. 02, Series of 2007 (NWPC Amended Rules on Exemption), an exemption may be granted in

## NWPC LAW GAZETTE

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*NWPC Case No. E-12-002*

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order to assist establishments experiencing temporary difficulties due to losses maintain the financial viability of their businesses and continued employment of their workers. Likewise, in *Radio Communications of the Philippines, Inc, vs. National Wages Council and Buklod ng Manggagawa sa RCPI-NFL* (G.R. No. 93044, March 26, 1992), the Supreme Court declared that the purpose of wage exemptions is to help financially distressed companies meet their labor costs without endangering the existence or viability of the firm upon which both management and labor depend for a living.

*Same; Same; Grave Abuse of Discretion.* - The Board did not commit abuse of discretion as its Decision was supported by evidence on record. Well settled is the rule that there is grave abuse of discretion amounting to lack of jurisdiction where a Board, tribunal or officer exercising judicial function exercised its judgment in a capricious, whimsical, arbitrary or despotic manner or failed to considered the evidence adduced by the parties (*PAL vs. Confessor*, 231 SCRA 41).

### **FACTS:**

In response to Applicant-Appellee's exemption application from compliance with Wage Order No. RBIII-16 as a distressed establishment, the Board granted to the former a full one year exemption for having incurred more than the required 20% deficit for the year 2010, the period under review. Oppositor-Appellant filed a motion for reconsideration but the same was denied by the Board hence, it filed an appeal on the ground of grave abuse of discretion. For its part, the Applicant-Appellee filed an opposition to the appeal seeking the denial and/or dismissal of the appeal.

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## NWPC LAW GAZETTE

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### **ISSUES:**

1. WHETHER OR NOT THE APPLICANT-APPELLEE IS A DISTRESSED ESTABLISHMENT.
2. WHETHER OR NOT THE APPLICANT-APPELLEE COMPLIED WITH THE NOTICE REQUIREMENT.
3. WHETHER OR NOT THE GRANT OF EXEMPTION IS CONTRARY TO LAW.
4. WHETHER OR NOT THE BOARD COMMITTED GRAVE ABUSE OF DISCRETION.

### **HELD:**

Appeal denied for lack of merit.

On the first issue, an applicant company may qualify for exemption as a distressed establishment when its deficit as of the last full accounting period immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period or when it registers a capital deficiency. In this case, the Applicant-Appellee's financial statements disclosed that it met the abovestated criteria as a distressed establishment for having incurred more than the required 20% deficit.

On the second issue, the Commission ruled that Applicant-Appellee complied with the notice requirements. A careful review of the records of the case showed that the Union President was duly notified of the exemption application through a memorandum as early as 20 July 2011, proof of which was attached to the application for exemption.

On the third issue, the Commission viewed that the assailed Decision of the Board was not contrary to law since the Applicant-Appellee submitted the documentary requirements and met the

## NWPC LAW GAZETTE

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*NWPC Case No. E-12-002*

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criteria for exemption. Under Section 2 of the NWPC Guidelines No. 02, Series of 2007 (NWPC Amended Rules on Exemption), an exemption may be granted in order to assist establishments experiencing temporary difficulties due to losses maintain the financial viability of their businesses and continued employment of their workers. Likewise, in *Radio Communications of the Philippines, Inc, vs. National Wages Council and Buklod ng Manggagawa sa RCPI-NFL* (G.R. No. 93044, March 26, 1992), the Supreme Court declared that the purpose of wage exemptions is to help financially distressed companies meet their labor costs without endangering the existence or viability of the firm upon which both management and labor depend for a living.

On the fourth issue, the Board did not commit abuse of discretion as its Decision was supported by evidence on record. Well settled is the rule that there is grave abuse of discretion amounting to lack of jurisdiction where a Board, tribunal or officer exercising judicial function exercised its judgment in a capricious, whimsical, arbitrary or despotic manner or failed to considered the evidence adduced by the parties (*PAL vs. Confessor*, 231 SCRA 41).

The Board's Decisions dated 22 September 2011 and 6 December 2011, respectively were **AFFIRMED**.

*Trasmonte (Chairman Designate); Bagtas, Diwa, Floro, Rondain (Commissioners); Lagunzad III (Member), voted to deny the appeal.*

*Paderanga (Vice-Chairman), took no part.*

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