



The Closure of BJ&B: Legal Considerations

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It bears clarifying that the Labor Code of the Dominican Republic only refers to the permanent closure of the operations of an enterprise in an indirect manner, in the context of economic assistance to workers, payable by the employer, in those instances set out in Article 82 of the Labor Code. Specifically, paragraph 5 of Article 82 states that workers will receive economic assistance in the case of “bankruptcy of the enterprise, provided it results in the complete cessation of business or *its closure* or definitive reduction of its workforce as a result of the lack of means to continue its operation, its economic unfeasibility, or some other analogous reason, with approval from the Department of Labor following the form established in Article 56 of the Labor Code.” There is no direct mention of the topic in the Code. Therefore, the granting of economic assistance allows one to define or deduce the conditions under which the definitive closure of operations of any enterprise might proceed.

Definitive Closure of Operations

In setting out the definitive closure of an enterprise as one of the reasons for granting economic assistance to workers, Paragraph 5 of Article 82 states that such closure must result from (a) the lack of means to continue its operation; (b) its economic unfeasibility; and (c) some

analogous reason. The Department of Labor will verify whether or not the alleged reason is valid and will issue a determination within 15 days. These provisions are applicable to all types of enterprises.

In addition to the aforementioned, Law 8-90 of January 10, 1990 on the Promotion of Free Trade Zones sets out other requirements that are directly applicable to operators and enterprises in free trade zones.

Free Trade Zone Enterprises: End of Operations and Legal Procedures

Pursuant to Article 44 of Law 8-90 of January 10, 1990, on the Promotion of Free Trade Zones, “enterprises in free trade zones that intend to end their operations in the country must notify their intention three months in advance to the National Council of Free Trade Zones. The latter institution in turn will inform: the Central Bank of the Dominican Republic, the State Secretariat of Finance, State Secretariat of Industry and Commerce, State Secretariat of Labor, Dominican Social Security Institute, National Directorate of Customs, and National Directorate of Internal Revenue.”

The aforementioned article states that enterprises that do not comply with it will not be able to retrieve their active assets (machinery and others) and if such assets are not retrieved without proper previous justification after 6 months from the time when operations were ended, they will be sold at public auction to cover any debts of the enterprise, if any, with any remainder going to the Dominican State. This procedure is carried out by the National Directorate of Customs.

In practice, in order to end their operations, enterprises in free trade zones need three certifications: (a) certification from the free trade zone industrial park where they are located that

it is up to date on payment of rent and other services; (b) certification from the National Directorate of Customs that they have met all of its requirements; and (c) certification from the State Secretariat of Labor that they have fulfilled all obligations to workers.

The Case of BJ&B

When it ended its operations, BJ&B had approximately 324 workers, compared with some 2,000 workers about seven years ago. A collective agreement providing better working conditions, signed on March 25, 2003, was in place and governed relations between the company and the union.

In view of information that we have gathered, we can set out the following considerations:

1. The enterprise BJ&B met all of the requirements of Law 8-90 of January 10, 1990, on the Promotion of Free Trade Zones, with respect to the termination of its operations. Thus, BJ&B requested and obtained certifications from the industrial Park where it was located, the National Directorate of Customs, and the State Secretariat of Labor.
2. The State Secretariat of Labor issued a resolution stating that the company met all of its legal obligations, particularly the payment of benefits and related acquired rights. In so doing, the National Directorate of Labor confirmed the reasons given by the company for the closure, pursuant to Articles 82, paragraph 5, and 56 of the Labor Code.
3. The labor law of the Dominican Republic does not create special obligations for companies that have unions. Having said that, Article 379 of the Labor Code states that “The enterprise union is legally dissolved upon the definitive closure of the

- enterprise with which it is associated.” This provision obligates enterprises to establish clearly with the union the reasons for the closure and to meet all of their legal obligations. In the case in point, the existence of the collective agreement, in particular clause 48, establishes that the enterprise BJ&B and union were required and obligated to execute and comply in good faith not only with the agreement, but also with all provisions of the Labor Code.
4. Good faith prevailed in the negotiating process between BJ&B and its union. There is no evidence to indicate that there were threats or coercion on the part of BJ&B.
 5. The agreement negotiated between the union and BJ&B appears to be superior to others negotiated in similar circumstances. The union itself recognizes that the enterprise agreed to provide “additional amounts not foreseen in the legal norms in order to benefit the former workers of the enterprise.”
 6. The agreement regarding definitive closure reached between the enterprise and the union is definitive between the parties. The State Secretariat of Labor accepts its validity as it has been agreed by the parties. It is practically impossible that an agreement of this nature could be rendered null or void due to the opinion of one or several union officials. To this day, the State Secretariat of Labor is not aware of any instance of a former worker of BJ&B who might have complained about the violation of his or her rights or of breach on the part of the enterprise. As a result, there is a strong presumption of compliance on the part of the employer.
 7. The opinion of the union with regard to this topic is, in our view, determinative. The communication of the BJ&B union, through its Secretary General Mr. Freddy de los

Santos, to the State Secretariat of Labor and any other public or private person, dated March 5, 2007, stands on its own. This communication establishes the following:

- a) That a definitive agreement has been reached with the representatives of the enterprise BJ&B, S.A., with regard to the termination of the employment contracts of each and every one of the officials of the union; such agreement has been executed to the full satisfaction of both parties.
- b) That the Union of Workers of the enterprise BJ&B, S.A., declares and recognizes that the enterprise BJ&B, S.A., has, in accordance with its legal rights, terminated the employment agreements that connected it with the workforce of the factory, fully complying with all legal obligations, and specifically the payment of labor benefits and corresponding acquired rights, and even granting additional payments not foreseen by labor law, in order to benefit the former workers of the enterprise.
- c) That the Union of Workers of the enterprise BJ&B, S.A., declares and recognizes that the enterprise BJ&B, S.A., has complied fully with the terms of the collective agreement between the parties, which, as a result of the definitive closure of operations of the enterprise BJ&B, S.A., in the Dominican Republic, is now devoid of legal value or standing, the same as the Union that emits the present declaration since it is an enterprise union.
- d) That the Union of Workers of the enterprise BJ&B, S.A., does NOT have any objection of any nature to the process of the definitive closure of operations of the enterprise BJ&B, S.A., in the Dominican Republic, a process that will culminate in mid-May 2007.

e) That the Union of Workers of the enterprise BJ&B, S.A., declares and recognizes that it does not have any past, present, or future claim of labor, civil, or any other nature, monetary or otherwise, as a result of the negotiation, execution, or termination of the collective agreement entered between the parties on March 25, 2003, or for any other reason, and therefore it holds harmless the enterprise BJ&B, S.A.

For the aforementioned reasons, our opinion is that the process of definitive closure of the enterprise BJ&B, S.A., complies with Dominican laws, particularly labor laws, and that in its implementation the rights of workers and of the union have been respected.

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