

**LYN HOLLY D. BURGOS, PHOEBE D. RIGOS, ALVIN T. ISRA, AND
PERLA MARIE S. CASTILLO, PETITIONERS, VS. NLRC-FIFTH DIVISION
AND PREMIER BPO, INC./MARK BRIGGS AND JEFF MICHEL,
RESPOND...**

Ponente: DIAMANTE, J.

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DIAMANTE, J.:

Elevated to this Court via a Petition for Certiorari under Rule 65 of the Rules of Court are the Decision[1] dated December 27, 2013 and Resolution[2] dated March 19, 2014, both issued by public respondent National Labor Relations Commission (NLRC) – Fifth Division, in NLRC NCR-07-10947-12/NLRC LAC No. 07-002223-13, ascribing grave abuse of discretion amounting to lack or in excess of jurisdiction in the issuance thereof.

The uncontroverted facts as summarized in the Decision of the NLRC follow:

“Respondent-appellant Premiere BPO, Inc., (“Premiere”, for brevity) is a company engaged in business process outsourcing services for international clients with inbound/outbound contact center operations. Meanwhile, individual respondent-appellants Mark Briggs and Jeff Michel are officers of Premiere. Among Premiere's clients was the Global NPO Inc./Atlas account, alternately known as the JHASS campaign, an entity dealing with financial mortgages or loans contracted in the United States.

All four complainant[s]-appellees, except Alvin T. Isra (who was hired on June 27, 2011), were hired last April 2011. At the time of their dismissal on June 18, 2012, appellee Lyn Holly D. Burgos was employed as a Training Supervisor; appellee Perla Marie S. Castillo was engaged as Quality Analyst; and appellees Phoebe D. Rigos and Alvin T. Isra were hired as Contact Agents. They were all assigned to the JHASS campaign which had a manpower complement of 52 staff consisting of 44 contact agents, 2 supervisors, 2 trainers (sic) (including the training supervisor) and 4 quality specialists as of May 15, 2012.

Sometime on May 2012, appellant Premiere avers that its client Global NPO advised them that they would need to reduce their manpower staff by 24 billable agents, from 38 to 14. Appellants immediately advised the concerned employees of the planned reduction of personnel.

Considering the financial implications of such reduction of billable agents from one of its biggest clients, JHASS, the following support positions were declared no longer necessary: one (1) supervisor, two (2) trainers, and four (4) quality specialists. Appellees' (sic) Burgos and Castillo were training supervisor and quality specialist, respectively.

The criteria for choosing who among the staff would be terminated were based on Total Number of Settlements, Average Handling Time, Quality Scores and Attendance. Except for appellees Burgos and Castillo who are support employees, the other appellees were ranked among those to be terminated based on the foregoing criteria.

In view thereof, appellees received notices of termination dated May 08, 2012 due to redundancy thirty (30) days after notice. Appellants likewise claim that the thirty (30) day notice to the Department of Labor and Employment (DOLE) was complied with. Further, appellants submitted proof that herein appellees signed

check vouchers evidencing their receipt of their separation pay. Finally, appellees also individually executed waiver, release and quitclaim documents acknowledging receipt of all amounts due them from the company, relinquishing their rights to reinstatement, and releasing appellant Premiere and its officers from any causes of action.

Despite receipt of separation pay and their execution of the waivers in favor of appellants, appellees filed their complaint for illegal dismissal with money claims against appellants on July 19, 2012. They questioned the validity of the redundancy program implemented by appellants citing the continuous hiring of new employees in the company and the promotion of probationary employees to the positions they vacated. They also pointed out that the notice to the DOLE was only received by said government agency on June 19, 2012, or almost two weeks after their termination had taken effect. They likewise reiterated that in the absence of any financial report showing serious business downturn, there was no justification for classifying their positions redundant. Finally, they argued that the criteria used by appellants in identifying them for termination was not clearly explained to them.

Appellants asserted though that appellees' claim that they were illegally dismissed was without any reference to specific circumstances in support thereof. Also, appellees'[] allegations that the company replaced them with new employees and that it continues to hire new employees have no basis. Appellants reiterated that they had complied with the requisites for a valid redundancy program, that the dismissal of appellees pursuant to such a redundancy program was legal, and that appellees were fully aware of, and never questioned nor protested, their termination, as evidenced by their signatures on the notices of termination and the vouchers for their receipt of their separation pay benefits.”[3]

Finding in favor of herein petitioners, Labor Arbiter Fedriel S. Panganiban rendered his Decision dated May 30, 2013, the fallo of which reads, to quote:

“WHEREFORE, premises considered, judgment is hereby rendered declaring the complainants to have been illegally dismissed on account of the invalid redundancy program adopted by the respondents. Concomitantly, respondents' (sic) are ordered to pay complainants' (sic) their back wages and separation pay which is temporarily computed up to the promulgation of this decision plus ten percent thereof by way and as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.”

The Labor Arbiter, in his Decision, ratiocinated that the records of the case do not indicate that the redundancy program implemented by private respondents was based on factual and legal bases. It was merely alleged that due to the downsizing of operations of Atlas Cooperative of which complainants were currently assigned, herein petitioners' position became redundant. Moreover, the Labor Arbiter noted that the notice requirements were not complied with for petitioners were terminated before the DOLE received the notice of redundancy filed by private respondents. Thus, the Labor Arbiter found petitioners' dismissal to be illegal.

On appeal by private respondents before the NLRC – Fifth (5[th]) Division, the NLRC was of the view that in the implementation of a redundancy program, private respondents were able to comply with the following requisites, namely: (1) written notice served on both the employees and the DOLE at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished. Anent the alleged late service of written notice to the DOLE, the NLRC opined that the legal ramification of the said failure did not invalidate or render ineffectual petitioners' dismissal for an authorized cause. The NLRC pointed out that the said failure to

fully comply with the one-month notice of termination of employment did not render the redundancy illegal but it only entitles petitioners to the award of nominal damages. Hence, on December 27, 2013, the NLRC disposed of the appeal as follows:

“WHEREFORE, premises considered, the instant appeal is GRANTED. The assailed decision of the Labor Arbiter dated 30 May 2013 finding that complainant[s]-appellees were illegally dismissed and are entitled to backwages and separation pay is hereby REVERSED and SET ASIDE. However, for respondent[s]-appellants['] failure to observe procedural due process, they are ordered to pay the four complainants the sum of Ten Thousand Pesos each (P10,000.00) by way of nominal damages.

SO ORDERED.”[4]

Petitioners filed a Motion for Reconsideration[5] from the aforesaid Decision but it was denied by the NLRC in a Resolution[6] dated March 19, 2014.

Hence, the present recourse premised on the following issues:[7]

- “1. WHETHER OR NOT COMPLAINANTS WERE ILLEGALLY DISMISSED[.]
2. WHETHER OR NOT COMPLAINANTS ARE ENTITLED TO BE REINSTATED WITHOUT LOSS OF THEIR SENIORITY RIGHTS AND WITHOUT DIMINUTION OF SALARY[.] AND
3. WHETHER OR NOT COMPLAINANTS ARE ENTITLED FOR THER (SIC) RECOVERY OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES[.]”

On September 16, 2014, private respondent Premier BPO, Inc. filed a Comment[8] to petitioners' Petition for Certiorari.

On January 12, 2015, the Court of Appeals Case Management Information System (CMIS) issued a report that per verification,[9] no Reply has been filed by the petitioners as required in Our November 17, 2014 Minute Resolution.[10] Hence, this case is submitted for decision sans petitioners' Reply.

The Labor Code of the Philippines authorizes redundancy as one of the causes for termination of employment. The pertinent provisions read:

“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 worker 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. Xxx.”

Prescinding from the foregoing, it is imperative that the employer must comply with the requirements for a valid implementation of the company's redundancy program, to wit: (a) the employer must serve a written notice to the affected employees and the Department of Labor and Employment (DOLE) at least one (1) month before the intended date of retrenchment; (b) the employer must pay the employees a separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (c) the employer must abolish the redundant positions in good faith; and (d) the employer must set fair and reasonable criteria in ascertaining which positions are redundant and may be abolished.

In the case at bench, private respondents claim that petitioners were validly dismissed on the ground of

redundancy. Private respondents assert that the procedure provided by law was observed and was done in good faith. In order to justify the dismissal of petitioners, private respondents presented the following: (1) Change Order prepared by the Client, Global NPO Management Group;[11] (2) Notification Letter – Memorandum dated May 8, 2012 received individually by petitioners;[12] (3) Establishment Termination Report as prescribed by the DOLE;[13] and (4) Receipt, Release and Quitclaim signed by petitioners.[14]

In claiming that they were illegally dismissed, petitioners proffer that there was no proper notice to the DOLE of their termination due to redundancy. Petitioners assert that the effective date of their termination was on June 8, 2012 considering that they received the notice on May 8, 2012. They argue since it is borne by the records that the DOLE was furnished with Establishment Termination Report only on June 19, 2012, the redundancy program implemented by private respondents was invalid because its implementation was without the imprimatur of the aforesaid agency. Petitioners insist that the notice to the affected employees and the DOLE must both be given at least one (1) month from the intended date of termination. Moreover, petitioners aver that while they were terminated on the ground of redundancy, private respondents have been continuously hiring new employees.

We rule for private respondents.

Jurisprudence is replete with cases declaring that there is redundancy when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as over hiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[15]

Records show that private respondent Premier BPO, Inc. (Premier) is engaged in business process outsourcing services. As such, it enters into a service contract with different companies overseas and provides the service that their clients are looking for. In the case at bench, Premier received a Change Order from a certain Jason Hass, CEO of its client Global NPO Management Group. The Change Order directed private respondent Premier to reduce the manpower staff by 24 billable agents, from 38 to 14. Corollary to the said order, it was determined that some support positions were no longer necessary, particularly that of one (1) Supervisor, two (2) Trainors and four (4) Quality Specialists. Petitioners Lyn Holly Burgos and Perla Marie S. Castillo were holding the positions of training supervisor and quality specialist, respectively. As to the rest of the staff that would have to be terminated, respondents decided that the basis would be the Total Number of Settlements, Average Handling Time, Quality Scores and Attendance. Resultantly, because of their low rating, petitioners Phoebe D. Rigos (Rigos) and Alvin T. Isra (Isra) were included in the list of contact agents to be terminated.[16]

We are of the view that the steps undertaken by private respondents in determining who will be terminated and who will be retained were not tainted with bad faith and was merely the result of the order received by Premier from its client. As aptly pointed out by public respondent NLRC, Premier, being in the BPO industry has a volatile clientele and is fully dependent on the labor or work capacity required by its clients. It would not be sound judgment to retain the same number of work force when the client requires the downsizing of employees for its account. In the case of *Benguet Electric Cooperative vs. Fianza*,[17] as cited in *Quevedo vs. Benguet Electric Cooperative, Incorporated and Verzosa*,[18] the Supreme Court held thus:

“[T]he abolition of a position deemed no longer necessary is a management prerogative, and this Court, absent any findings of malice and arbitrariness on the part of management, will not efface such privilege if only to protect the person holding that office.”

We also note that based on the criteria observed by private respondents, petitioners did not contest their low ratings nor questioned their lack of efficiency.

Be that as it may, petitioners, however, maintained that there was no valid termination on the ground of redundancy for after their dismissal, private respondents has been hiring new employees to the positions they vacated. Petitioners asseverate that it is easier on the part of private respondents to refute their claim of continuous hiring by presenting a record of the subject matter or a list of their employees in issue instead of requiring petitioners to present the list themselves.

Petitioners' claim deserves scant consideration. There is paucity of unswerving evidence on record which would establish that private respondents continuously hired new employees or promoted existing employees to the positions vacated by petitioners. In the case of *Luxuria Home, Inc. vs. Court of Appeals, et al.*,^[19] the Supreme Court emphasized the rule that “[h]e who alleges a fact has the burden of proving it and a mere allegation is not evidence.” As petitioners were the ones who alleged the fact of continuous hiring, the rule dictates that the burden of proof lies with them and not with private respondents.

Anent the belated filing of the notice of termination to the DOLE, We find no error on the part of public respondent when it declared that the same did not invalidate the dismissal of petitioners on the ground of redundancy. In the case of *Plastimer Industrial Corporation, et al. vs. Gopo, et al.*^[20] wherein the notice of termination sent by petitioner to the DOLE was short of the required one (1) month notice, the Highest Tribunal ruled that such failure to comply is only a procedural infirmity and does not render the retrenchment illegal. What is more important is that the affected employees were sufficiently informed as in the case at bench. Petitioners admitted that they were informed of their impending termination one month in advance. Thus, as propounded by the Supreme Court in the case of *Agabon vs. NLRC*,^[21] when the dismissal is for a just cause, the absence of proper notice should not nullify the dismissal or render it illegal or ineffectual. Instead, the employer should indemnify the employee for the violation of his statutory rights. For failure to comply with the required one (1) month notice to the DOLE, in the aforecited case of *Plastimer*, the Supreme Court declared that respondents are entitled to nominal damages. Thus, the amount of P10,000.00 awarded by public respondent NLRC to petitioners as nominal damages should be sustained.

With regards to the deletion of the award of backwages and separation pay in lieu of reinstatement, by public respondent NLRC, We find the same to be proper.

Generally, the finding of illegal dismissal entitles an employee to the twin remedies of reinstatement and payment of backwages. Article 279 of the Labor Code states, in part, that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. These twin remedies – reinstatement and payment of backwages – make the dismissed employee whole who can then look forward to continued employment.^[22]

In the case at bench, We already upheld public respondent NLRC's finding that petitioners' termination on the ground of redundancy was valid. Corollarily, petitioners are not entitled to payment of backwages.

On the other hand, under the Labor Code, separation pay may be given not only when there is illegal dismissal. In fact, it is also given to employees who are terminated for authorized causes, such as redundancy, retrenchment or installation of labor-saving devices under Article 283 of the Labor Code. Additionally, jurisprudence holds that separation pay may also be awarded for considerations of social justice, even if an employee has been terminated for a just cause other than serious misconduct or an act reflecting on moral character. The Court has also ruled

that separation pay may be awarded if it has become an established practice of the company to pay the said benefit to voluntarily resigning employees or to those validly dismissed for non-membership in a union as required in a closed-shop agreement.[23]

Records show that in the case at bench, petitioners were already paid their respective separation pays, *inter alia*. This fact is evinced by the Receipt, Release and Quitclaim which they individually signed. It appearing that the Receipt, Release and Quitclaim were signed by petitioners voluntarily and with full understanding of their import, We find the same to be valid and binding. Meanwhile, the separation pay awarded by the Labor Arbiter in his May 30, 2013 Decision refers to separation pay in lieu of reinstatement as a result of his finding of illegal dismissal. In awarding the same, the Labor Arbiter ratiocinated that the relationship between petitioners and private respondents was already strained. However, taking into consideration that petitioners termination was valid and due to an authorized cause, there is no reinstatement or payment of separation pay in lieu thereof to speak of. Hence, the order of public respondent NLRC in deleting the same should be sustained.

We note that in its Decision, public respondent made no mention about the payment of attorney's fees awarded by the Labor Arbiter. The fallo of the assailed Decision reversed and set aside the Decision of the Labor Arbiter which found herein petitioners to have been illegally dismissed and their entitlement to backwages and separation pay only. For its part, the Labor Arbiter anchored the grant of said attorney's fees on the engagement by herein petitioners of the services of a counsel.

The Supreme Court has repeatedly held that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer.[24] Taking into consideration that the termination of petitioners was valid, the award of attorney's fees should likewise be deleted.

WHEREFORE, in view of the foregoing, the instant appeal is hereby DENIED. The assailed Decision dated December 27, 2013 and Resolution dated March 19, 2014 issued by public respondent NLRC – Fifth Division, in NLRC NCR 07-10947-12/NLRC LAC No. 07-002223-13 are hereby AFFIRMED with MODIFICATION in that the attorney's fees awarded by the Labor Arbiter is, likewise, DELETED.

SO ORDERED.

Dimaampao, J.B., Chairperson and Manahan, C.S., J.J., concur.

[1] Rollo, pp. 34-43.

[2] *Id.* at 23-25.

[3] *Id.* at 35-37.

[4] *Id.* at 43.

[5] *Id.* at 26-32.

[6] *Supra*.

[7] Rollo, p. 8.

[8] *Id.* at 142-155.

[9] *Id.* at dorsal portion of 157.

[10] Id. at 157.

[11] Id. at 108.

[12] Id. at 116-119.

[13] Id. at 120-124.

[14] Id. at 125-132.

[15] *Asian Alcohol Corporation vs. National Labor Relations Commission*, 364 Phil. 912, 930 (1999) as cited in *AMA Computer College, Inc. vs. Garcia and Balla*, G.R. No. 166703, April 14, 2008. 16Result of the ranking and evaluation was not attached in the records of the case at bench but was cited in the Decision of the Labor Arbiter.

[17] 468 Phil. 980 (2004).

[18] G.R. No. 168927, September 11, 2009.

[19] G.R. No. 125986, January 28, 1999.

[20] G.R. No. 183390, February 16, 2011.

[21] 485 Phil. 248 (2004), as cited in *Plastimer Industrial Corporation, et al. vs. Gopo, et. al.*, *ibidem*.

[22] *St. Joseph Academy of Valenzuela Faculty Association -FUR Chapter-TUCP vs. St. Joseph Academy of Valenzuela and Lopez*, G.R. No. 182957, June 13, 2013.

[23] *7K Corporation vs. Albarico*, G.R. No. 182295, June 26, 2013.

[24] *Pepsi Cola Products Philippines, Inc. and Gochuico vs. Santos*, G.R. No. 165968, April 14, 2008.

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