

## **STEEL CORPORATION OF THE PHILIPPINES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, RODERICK B. JIMENEZ AND CECILIO A. PABATANG, JR., RESPONDENTS.**

Ponente: CASTILLO, M., J.

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### **CASTILLO, M., J.:**

This is a petition for certiorari seeking to annul and set aside the 31 May 2013 Decision[1] and 30 August 2013 Resolution,[2] both of the public respondent National Labor Relations Commission, in NLRC LAC No. 02-000719-13 [NLRC RAB IV Case No. 11-02062-10-B/NLRC RAB IV Case No. 12-02161-10-B], partially granting petitioner's appeal from the 12 November 2012 Decision of Executive Labor Arbiter Generoso V. Santos[3] and denying its motion for reconsideration, respectively.

The antecedents of this petition are:

Private respondents Roderick B. Jimenez (Jimenez) and Cecilio A. Pabatang, Jr. (Pabatang) were employees of the petitioner Steel Corporation of the Philippines (SCP) until they were separated from service effective 03 December 2010 pursuant to a retrenchment program implemented by the latter. Jimenez was hired by SCP on 25 August 1997 while Pabatang became an employee of petitioner corporation on 30 March 2007. At the time of the retrenchment, Jimenez occupied the position of Finishing Line (FL)/Recoiling Line (RCL) Sr. Supervisor. On the other hand, Pabatang was the Quality Assurance Inspector of SCP at the time of his termination.

Private respondents filed separate complaints for illegal dismissal and unfair labor practice against SCP and its Chairman/Chief Executive Officer Abeto A. Uy. Jimenez was joined by Dhennis A. Cudiamat as co-complainant in his separate complaint. They claimed that they were illegally dismissed from their work as the retrenchment was purportedly undertaken without compliance with the requirements prescribed by law for its validity; and that the same was just a ploy employed by the petitioner to bust the newly organized union for supervisory employees, the PACIWU-TUCP Steel Corporation Supervisory Chapter, of which Jimenez was the elected President while Pabatang was a member.

For its part, SCP maintained that the retrenchment of several of its employees, among them the private respondents, was its last ditch effort to survive a financial annihilation. It averred that sometime in 2006, it was placed under corporate rehabilitation as a result of the petition filed by Equitable PCI Bank (now Banco de Oro). Its financial troubles persisted such that in 2009, its independent auditors reported a net loss of P1,050,699,621.00. To make matters worse, on 07 December 2009, a fire gutted its Cold Rolling Mill Section which resulted in the closure of the same. The said section accounted for 25% of its plant's operations. Since the Cold Rolling Mill Section could no longer process the hot-rolled coils produced by the Push-Pull Pickle Line, SCP was constrained to shut down this line too. Fifty (50%) of its operations was consequently discontinued.

Petitioner further contended that private respondents were already precluded from questioning the termination of their services by the Quitclaim and Release they signed after they received their respective separation pay.

In a consolidated Decision dated 12 November 2012, the labor arbiter refused to address the issue of unfair labor practice raised by the private respondents. He declared that such issue was mooted by the delisting of PACIWU-TUCP Steel Corporation Supervisory Chapter from the roll of legitimate labor organizations by the Regional Director, Department of Labor Regional Office No. IV. The labor arbiter, however, sustained the private respondents' averred illegal dismissal upon finding that their retrenchment did not comply with the requisites laid down by law. He further held that they were not barred from instituting an action for illegal dismissal notwithstanding the quitclaims they signed and ruled that the separation pay private respondents received by reason thereof should be deducted in the computation of their monetary awards. The labor arbiter then decided the private respondents' complaints in this wise:[4]

WHEREFORE, premises considered, judgment is rendered finding complainants to have been illegally dismissed from the service. Accordingly, respondents are hereby ordered to jointly and severally pay complainants as follows:

1. Full backwages:

- a) Roderick Jimenez, Php432,000.00 and 13th month pay of Php36,000.00;
- b) Dhennis Cudiamat, Php384,000.00 and 13th month pay of Php32,000.00;
- c) Cecilio Pabatang, Jr. Php200,352.00 and 13th month pay of P16,696.00;

2. Separation pay computed at one (1) month salary for every year of service, a fraction of six (6) months to be considered as one (1) year as follows:

- a) Rhoderick Jimenez, Php288,000.00;
- b) Dhennis Cudiamat, Php118,560.00;
- c) Cecilio Pabatang, Jr., Php50,000.00;

3. Attorney's fees equivalent to ten percent of the total monetary award amounting to Php155,623.60.

The separation pay already received by complainants are to be deducted as advances which are to be deducted from their monetary award upon payment.

The charge of unfair labor practice is dismissed for lack of merit.

**SO ORDERED.**

Disgruntled with the 12 November 2012 Decision of the labor arbiter, SCP and Abeto Uy appealed the same to the public respondent NLRC, on the following grounds:[5]

**GROUND OF APPEAL**

I

The Labor Arbiter committed serious error when he concluded that the respondent failed to show that it undertook cost saving measures parallel to retrenchment;

II

The Labor Arbiter committed serious error when he concluded without factual basis that respondent did not have a reasonable criteria in selecting employees to be retrenched;

III

The Labor Arbiter seriously erred in ordering the respondents to pay, jointly and severally, the monetary award despite absence of any factual findings of the liability of respondent Abeto Uy.

In the assailed Decision, the NLRC affirmed with modification the awards of backwages and separation pay (less the amount already received) but only with respect to private respondents Jimenez and Pabatang. The public respondent noted that Dhennis Cudiamat did not affix his signature on the position paper submitted before the labor arbiter and accordingly dismissed his complaint for failure to prosecute. The public respondent further decreed that the computation of backwages and separation pay in favor of Jimenez and Pabatang should be up to 19 September 2012 only which was the date when SCP was dissolved. It also ruled that Abeto Uy should not be held solidarily liable with SCP in the absence of any showing that he acted with malice or in bad faith. The NLRC likewise ordered the deletion of the award of attorney's fees in favor of the private respondents as the same was not among the causes of action stated in their respective complaint. The dispositive portion of the 31 May 2013 Decision of the NLRC, reads:[6]

WHEREFORE, respondents' appeal is PARTLY GRANTED and the Decision dated 12 November 2012 is MODIFIED by:

- (1) DISMISSING the complaint of Dhennis A. Cudiamat for failure to prosecute;
- (2) REVERSING AND SETTING ASIDE the awards of backwages and separation pay to complainant Dhennis A. Cudiamat;
- (3) DECLARING Steel Corporation of the Philippines as solely liable to complainants Roderick B. Jimenez and Cecilio A. Pabatang, Jr.;
- (4) RECOMPUTING the backwages and separation pay of complainants Roderick B. Jimenez and Cecilio A. Pabatang, Jr., until 19 September 2012 only; and
- (5) DELETING the award of attorney's fees.

Attached as Annex 'A' is the recomputed backwages and separation pay of complainants Roderick B. Jimenez and Cecilio A. Pabatang, Jr.

SO ORDERED.

Still dissatisfied, the petitioner filed a Partial Motion for Reconsideration of the assailed Decision grounded as follows:[7]

I

The financial condition of the respondent prior to retrenchment shows that respondent could not afford to resort to other measures less drastic than retrenchment. Respondents acted in good faith in resorting to retrenchment as the only measure that could save the company from further losses as proven by subsequent events;

II

The Honorable Commission erred in awarding service incentive leave pay (SILP) to complainants even if this was not alleged in their verified complaint;

III

The separation pay paid to the complainants was not deducted from the money claim computation prepared by the Honorable Commission.

The aforementioned motion of the petitioner was denied by the NLRC in its assailed Resolution.

Hence, this petition.

Upon the lapse of the period granted by this Court to the private respondents for them to file their comment on the petition for certiorari without such comment being filed, the filing thereof was deemed waived and the case was submitted for decision.

Petitioner imputes grave abuse of discretion on the part of the public respondent NLRC, as follows:[8]

I.

The NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in insisting that the retrenchment was illegal because petitioner failed to resort first to measures less drastic than retrenchment.

II.

The NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in awarding service incentive leave pay (SILP) to private respondents even if this was not alleged in their verified complaint as a cause of action.

III.

The NLRC committed grave abuse of discretion when it ignored and disregarded existing jurisprudence on the validity of execution of quitclaim and release.

IV.

The NLRC committed grave abuse of discretion when the separation pay paid to the private respondents was not deducted from the money claim computation prepared by the NLRC.

Anent the first item abovestated, SCP argues that its dire financial state exempts it from the application of the rule requiring employers to adopt less drastic means prior to implementing a retrenchment program. It avers that its poor financial condition justifies an immediate resort to retrenchment.

Retrenchment is defined as the termination of employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.[9] It is one of the authorized causes to validly terminate an employment pursuant to Article 297 of the Labor Code,[10] which provides:

ART. 297. 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 closure 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 at least six (6) months shall be considered one (1) whole

year. (Emphasis supplied.)

Under the aforecited provision of the Labor Code, to properly effect a retrenchment, the employer is required to: (a) serve a written notice both to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (b) pay the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher.

Essentially, the prerogative of an employer to retrench its employees must be exercised only as a last resort, considering that it will lead to the loss of the employees' livelihood. It is justified only when all other less drastic means have been tried and found insufficient or inadequate.[11] Corollary thereto, the employer must prove the requirements for a valid retrenchment by clear and convincing evidence; otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning losses or reverses in their business ventures in order to ease out employees.[12] These requirements are:

1. That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
- (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;
- (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;
- (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and
- (5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[13]

In this case, the labor arbiter and the NLRC were one in holding that only the first three (3) requirements were satisfied. We have no reason to deviate from their finding.

Our own judicious examination of the record of this case before Us confirms both the labor arbiter's and the NLRC's observation that there is no showing that SCP used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among its employees. Notably, the SCP challenged the 12 November 2012 Decision of the labor arbiter for the supposed serious error he committed in concluding that SCP did not use such criteria in selecting the employees to be retrenched, among others, when it appealed to the NLRC. Petitioner appears to have subsequently bowed its head in submission to the NLRC's affirmation of the appealed Decision of the labor arbiter on this score. The pertinent portion of the assailed Decision of the NLRC reads:[14]

Fifth Requisite:

In selecting employees to be dismissed, fair and reasonable criteria must be used, such as but not limited to: (a) less preferred status (e.g., temporary employee); (b) efficiency and (c) seniority.

In the case at bar, respondents failed to show that a fair and reasonable criteria was used in ascertaining who would be retrenched.

Unquestionably, the uniformly worded 2 November 2010-letter sent to complainants did not indicate any criteria used in choosing them for retrenchment. In fact, respondents did not categorically deny complainants'

assertion that other supervisory employees with less seniority were not retrenched.

In *Oriental Petroleum and Minerals Corporation v. Fuentes*, the retrenchment was declared invalid for failure to show that the company had any standard in selecting the employees to be retrenched.

From the foregoing disquisitions, it is apparent that respondents failed to comply with all of the prescribed requisites for a valid retrenchment to exist. For this reason, complainants' retrenchment is illegal. xxx

Indeed, when it moved for a reconsideration of the assailed Decision before the NLRC, SCP no longer included as a ground therefor the public respondent's conclusion that it failed to comply with the fifth requirement for the validity of the retrenchment. Even in this petition, SCP is hushed on the matter. Just like in its motion for reconsideration before the NLRC, SCP in the instant petition merely insists that it is highly unjust to require it to resort to other cost-cutting measures before implementing the retrenchment program given its hemorrhaging finances.

Such being the case, even if We were to accept as satisfactory petitioner's theory that it was justified in immediately resorting to retrenchment, the outcome of the case would remain the same. The retrenchment would still be invalid because of its failure to show that it used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among its employees.

Significantly, in *Philippine Tuberculosis Society, Inc. v. National Labor Union*,<sup>[15]</sup> the Supreme Court sustained the finding of the NLRC that though petitioner therein was justified in ordering a retrenchment, its implementation of the scheme without taking seniority into account rendered such retrenchment invalid.

If the retrenchment undertaken by the Philippine Tuberculosis Society, Inc. in the above-cited case for failure to take seniority into account was stricken down, it is with more reason that the retrenchment in this case should be held invalid, considering that petitioner utterly failed to show that it had any standard at all in selecting the employees to be retrenched.

Similarly, We do not subscribe to petitioner's claim that the NLRC acted with grave abuse of discretion in not holding that the private respondents were already estopped from questioning their retrenchment by the respective quitclaim and release they individually signed.

Section 4(d), Rule VI of the 2011 Rules of Procedure of the NLRC, which was already in effect at the time the private respondents appealed the Labor Arbiter's decision, expressly provides that, on appeal, the NLRC shall limit itself only to the specific issues that were elevated for review, to wit:

RULE VI

Appeals

Section 4. Requisites for Perfection of Appeal. x x x.

x x x x

(d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

As a testament to its effectivity and the NLRC's continued implementation of this procedural policy, the same provision existed as Section 4(c), Rule VI of the 2002 Rules of Procedure of the NLRC and subsequently, as Section 4(d), Rule VI of its 2005 Revised Rules of Procedure.

Here, petitioner in its appeal to the NLRC, did not deem it prudent to bring to the attention of the latter the issue

of whether or not it was proper for the labor arbiter to hold that private respondents were not barred by their quitclaims from questioning their separation from service. It was only in this petition that SCP once again raised this issue.

Under the circumstances, the NLRC cannot thus be faulted for not addressing any question on the validity and ramification of the quitclaim and release in its assailed Decision. No grave abuse of discretion may properly be imputed to the public respondent for remaining faithful to the mandate of its own Rules.

At any rate, We share the labor arbiter's view that the private respondents are not precluded from questioning the validity of their dismissal. Like the labor arbiter, We find credence in their claim that economic necessity constrained them to accept SCP's monetary offer and sign the quitclaims. The fact that private respondents were supervisors and not rank-and-file employees did not make them less susceptible to financial offers, faced as they were with the prospect of unemployment.[16]

The foregoing notwithstanding, We find merit in petitioner's contention that the NLRC palpably erred in including service incentive leave pay in the computation (attached as Annex "A" to the assailed Decision) of the private respondents' monetary awards as this is not one of the causes of action mentioned in their separate complaints. The computation should therefore be rectified accordingly.

Also, the computation should reflect the amounts already received by the private respondent from SCP as deductions. This is but in conformity with the ruling of the NLRC, to wit:[17]

Third Requisite:

Complainants were duly paid their separation pay. In this regard, We concur with the Labor Arbiter's ruling regarding complainants' acceptance of their separation pay and execution of their quitclaims, viz:

" x x x As to the received separation pay, the same shall be treated as advances and will be deducted from the monetary award. x x x

WHEREFORE, the instant petition for certiorari is **PARTIALLY GRANTED**. The award of service incentive leave pay in favor of private respondents Roderick B. Jimenez and Cecilio A. Pabatang, Jr. is hereby **DELETED** while the amounts already received by them from petitioner Steel Corporation of the Philippines shall be **DEDUCTED** from their monetary award.

**SO ORDERED.**

Lazaro-Javier and Galapate-Laguilles, JJ., concur.

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[1] Rollo, pp. 295 - 313

[2] Rollo, pp. 293 - 294

[3] Rollo, pp. 177 - 190

[4] Rollo, pp. 189 - 190

[5] Memorandum of Appeal, Rollo, p. 192

[6] Rollo, p. 274

[7] Rollo, p. 278

[8] Petition for certiorari, Rollo, pp. 11 - 12

[9] Pepsi-Cola Products Philippines, Inc. v. Anecito Molon, et. al, G.R. No. 175002, February 18, 2013, citing Philippine Carpet Employees Association v. Secretary of Labor and Employment, G.R. No. 168719, February 22, 2006, 483 SCRA 128, 143, citing Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC, 338 Phil. 681, 688 (1997).

[10] Renumbered pursuant to Republic Act No. 10151.

[11] Pepsi- Cola Products Philippines, Inc. v. Anecito Molon, et. al, citing Plastimer Industrial Corporation v. Gopo, G.R. No. 183390, February 16, 2011, 643 SCRA 502, 509, citing Guerrero v. NLRC, 329 Phil. 1069, 1076 (1996); and Somerville Stainless Steel Corporation v. NLRC, 350 Phil. 859, 870 (1998).

[12] Id.

[13] Id. at 144-145, citing Asian Alcohol Corporation v. NLRC, 364 Phil. 912, 926-927 (1999).

[14] Rollo, p. 308

[15] 356 Phil. 63 (1998), cited in Oriental Petroleum and Minerals Corporation v. Marciano V. Fuentes, et. al., G.R. No. 151818, October 14, 2005

[16] Roberto O. Ariola, et. al. v. Philex Mining Corporation, et. al., G.R. No. 147756, August 9, 2005

[17] Assailed Decision, Rollo, p. 306

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