

AMA COMPUTER LEARNING CENTER – SHAW, INC. AND AMABLE C. AGUILUZ IX, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), EMMA RUTH V. AARON, MARY ANN S. DUATIN...

Ponente: DE LOS SANTOS, J.

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DE LOS SANTOS, J.:

Assailing the Decision rendered by the Labor Arbiter and the Resolution rendered by the National Labor Relations Commission (NLRC), petitioners come to this Court via the instant petition for certiorari.

Petitioners hired respondent Emma Ruth Verzon-Aaron as laboratory instructor on June 15, 1994 until the date of her termination on July 15, 1999; while respondent Amormita Rudita P. Caranto was employed as Assistant Instructor I on June 17, 1996. The latter was promoted as Career Placement and Training Officer, the position which she held up to the termination of her employment on June 17, 1999. Respondent Marifi V. Yanos was Assistant Instructor II and Area Coordinator when hired on June 17, 1996. She was terminated on June 17, 1999. Mary Anne S. Duatin was hired on April 24, 1997 as contractual Instructor I. She became the Guidance Counselor until her separation from the service on July 15, 1999.

Claiming they were experiencing severe and sudden drop in the enrollment and as an exercise of employers' prerogative, petitioners issued Memorandum to each of the respondents, which are similarly worded, informing them of the termination of their employment substantially quoted as follows :

"This is to formally inform you that due to the prevailing economic condition of our economy and as part of the austerity program of the company, the Top Management has decided to come up with a manpower review of the AMA Education System in order to streamline its operations and sustain the growth of our organization.

"In view of this, your position as LAN/LAB Administrator has been found no longer necessary for the reason that your functions may be handled by existing staff.

"Thus, we regret to inform you that effective July 15, 1999, your employment with the AMA Education System is hereby terminated. So as to give you time to explore other possibilities, you are not required to report for work after the 15th (day) of July 1999 with no prejudice and the salaries and wages due you until the 15th (day) of August 1999. May we advised (sic) you to accomplish the necessary clearance as soon as possible and turn-over all pertinent documents relative to your position to your Immediate Superior. Likewise, you shall be entitled to a separation pay in accordance with the provision of the Labor Code.

"We would like to take this opportunity for the services you have extended to the Learning Center. We pray for your success in all your endeavors.

"Thank you." (p. 62, rollo)

This prompted the private respondents to file their complaint before the Labor Arbiter (p. 70, rollo) for illegal dismissal, non-payment of overtime pay, premium and/or holiday pay, separation pay, and 13th month pay. After

the submission of position papers and other pleadings, the Labor Arbiter rendered his Decision, the dispositive portion of which reads:

“WHEREFORE, the respondents are hereby ordered to reinstate the complainants to their former positions with full backwages from the date their salaries were withheld until they are actually reinstated. As of this date, their backwages has reached the sum of P152,880.00 for Mary Anne S. Duatin, P227,987.50 for Marifi V. Yanos, P106,166.66 for Amormia Rudita Caranto and P107,683.33 for Emma Ruth Aaron. The respondents are, likewise ordered to pay the complainants their 13th month pay for 1999 in the sum of P5,460.00 for Duatin, P8,075.00 for Yanos, P3,791.66 for Caranto and P3,845.83 for Aaron. Complainant Yanos must be paid salary differential in the amount of P33,787.92. Finally, the respondents are assessed the sum of P64,967.78 representing 10% of the benefits awarded as attorney’s fees.

“SO ORDERED.” (p. 92, rollo)

Aggrieved by said decision of the Labor Arbiter, petitioners brought the same on appeal before the NLRC, which was dismissed on August 31, 2005 (pp. 29-35, rollo). The pertinent portions read as follows:

“In the present case, as borne by the records and as found by the Labor Arbiter below, the respondents did not even submit the personnel chart of the learning center to give this tribunal the factual basis for its evaluation of the urgent need to scrap the positions of the herein complainants. The only documentary evidence presented by the respondents to establish their allegation of valid cost-cutting measures are the memoranda, Annex “A” to “A-3”, Respondents’ Position Paper. The other evidence purport to show that complainants violated respondents’ rules and policies. These are not substantial enough to establish the above-enumerated standards to constitute valid retrenchment as an authorized cause to terminate the services of the herein complainants.

“Thus, We sustain the findings and conclusions of the Labor Arbiter, except with respect to the award of attorney’s fees which should only be based on the award of 13th month pay in accordance with Art. 111 of the Labor Code, as amended.

“WHEREFORE, in view of the foregoing, the respondents’ appeal is hereby DISMISSED and the assailed Decision dated 15 September 2000 AFFIRMED, except as to the award of a ten percent (10%) attorney’s fees which shall be based only on the award of 13th month pay in accordance with Art. 111 of the Labor Code, as amended.

“SO ORDERED.” (p. 34-35, rollo)

Petitioners’ motion for reconsideration of said judgment was denied in the Resolution issued on November 21, 2005 (pp. 38-39, rollo).

Not satisfied, petitioners come to this Court via the instant petition.

Raised to be resolved are the following issues:

“WHETHER OR NOT THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED RESOLUTIONS.

“WHETHER OR NOT THE PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED.

“WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT CORRECTLY DETERMINED THE ISSUES INVOLVED IN THE DISMISSAL OF THE PRIVATE RESPONDENTS.” (p. 11, rollo)

Petitioners could not agree with the findings of the public respondent that they failed to present substantial evidence to warrant the retrenchment of respondents’ employment.

The Labor Code prescribes the three (3) requisites which must concur, in order for retrenchment to be valid, namely:

- the retrenchment is necessary to prevent losses and the same is proven;
- written notice to the employees and to the DOLE at least one (1) month prior to the Intended date thereof; and
- payment of separation pay equivalent to one (1) month or at least ½ month pay for every year of service, whichever is higher (Trendline Employees Association etc. vs. NLRC, 272 SCRA 172, cited in “Abandonment and Retrenchment Distinguished” by Jose Agaton Sibal, 286 SCRA 322)

It is believed that the retrenchment effected by petitioners was necessary to prevent further losses, yet they failed to prove such loss. As mentioned by the Labor Arbiter and concurred in by the public respondent –

“From the above quoted reasons given by management for the dismissal of the complainants “the prevailing economic condition of our country and as part of the austerity program of the company” have been cited. The weakness of the respondents’ argument lies in the fact that they did not demonstrate how and up to what extend the prevailing economic condition has adversely affected the learning center. There was not even any financial statement of the firm showing adverse state to justify a resort to austerity program.

“Management did not even submit the personnel chart of the center to give this Office the basis for its evaluation of the need to scrap the positions of the complainants. It would appear that the respondents oversimplified on their approaches in the evaluation of the situation including the remedial recourse applied making their action against the complainants vulnerable to adverse evaluation.” (p. 91, rollo)

Petitioners aver that while the case was pending before public respondent NLRC, the Board of Directors of petitioner school decided to temporarily cease the operations of the school effective April 19, 2005. However, the alleged retrenchment of respondents happened in July, 1999. Of course, the temporary closure of the school and/or cessation of its operation by the year 2005 could not be made known to occur in 1999. Thus, the occurrence in 2005 could not be made the basis to over-turn the decision rendered in 2000 for the illegal act committed in 1999.

Retrenchment is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on volume of his business, a right consistently recognized and affirmed by the court. (Balbalec vs. NLRC, 251 SCRA 398; Columbia Dev’t. Corp. vs. Minister of Labor and Employment, 146 SCRA 421). While it is true that retrenchment is a management prerogative, it is subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence. And since retrenchment strikes at the very core of an individual’s employment, which may be the only lifeline on which he and his family depend for survival, the burden clearly falls upon the employer to prove economic or business losses with appropriate supporting evidence (Balbalec, *ibid*). In this case, the notice of dismissal (pp. 62-65, rollo), although dated July 15, 1999, the lay-off was effective on the same date of July 15, 1999. This is not the spirit and intent of the law.

Because of the cessation of the operations of petitioner school, instead of reinstatement, respondents are entitled to separation pay in addition to the backwages and other monetary benefits awarded under the questioned decision.

WHEREFORE, the petition is DISMISSED for lack of merit. The Decision subject of the instant petition is hereby MODIFIED, i.e. instead of reinstatement, separation pay shall be paid the respondents equivalent to one (1) month salary per year of service. The other aspects of the decision are AFFIRMED.

SO ORDERED.

Lampas Peralta and Dimaranan-Vidal, JJ., concur.

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