

FARLE P. ALMODIEL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), RAYTHEON PHILS., INC., RESPONDENTS.

G.R. No. 100641. June 14, 1993

Ponente: NOCON, J.

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NOCON, J.:

Subject of this petition for certiorari is the decision dated March 21, 1991 of the National Labor Relations Commission in NLRC Case No. 00-00645-89 which reversed and set aside the Labor Arbiter's decision dated September 27, 1989 and ordered instead the payment of separation pay and financial assistance of P100,000.00. Petitioner imputes grave abuse of discretion on the part of the Commission and prays for the reinstatement of the Labor Arbiter's decision which declared his termination on the ground of redundancy illegal.

Petitioner Farle P. Almodiel is a certified public accountant who was hired in October, 1987 as Cost Accounting Manager of respondent Raytheon Philippines, Inc. through a reputable placement firm, John Clements Consultants, Inc. with a starting monthly salary of P18,000.00. Before said employment, he was the accounts executive of Integrated Microelectronics, Inc. for several years. He left his lucrative job therein in view of the promising career offered by Raytheon. He started as a probationary or temporary employee. As Cost Accounting Manager, his major duties were: (1) plan, coordinate and carry out year and physical inventory; (2) formulate and issue out hard copies of Standard Product costing and other cost/pricing analysis if needed and required and (3) set up the written Cost Accounting System for the whole company. After a few months, he was given a regularization increase of P1,600.00 a month. Not long thereafter, his salary was increased to P21,600.00 a month.

On August 17, 1988, he recommended and submitted a Cost Accounting/Finance Reorganization, affecting the whole finance group but the same was disapproved by the Controller. However, he was assured by the Controller that should his position or department which was apparently a one-man department with no staff becomes untenable or unable to deliver the needed service due to manpower constraint, he would be given a three (3) year advance notice.

In the meantime, the standard cost accounting system was installed and used at the Raytheon plants and subsidiaries worldwide. It was likewise adopted and installed in the Philippine operations. As a consequence, the services of a Cost Accounting Manager allegedly entailed only the submission of periodic reports that would use computerized forms prescribed and designed by the international head office of the Raytheon Company in California, USA.

On January 27, 1989, petitioner was summoned by his immediate boss and in the presence of IRD Manager, Mr. Rolando Estrada, he was told of the abolition of his position on the ground of redundancy. He pleaded with management to defer its action or transfer him to another department, but he was told that the decision of management was final and that the same has been conveyed to the Department of Labor and Employment. Thus, he was constrained to file the complaint for illegal dismissal before the Arbitration Branch of the National Capital

Region, NLRC, Department of Labor and Employment.

On September 27, 1989, Labor Arbiter Daisy Cauton--Barcelona rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered declaring that complainant's termination on the ground of redundancy is highly irregular and without legal and factual basis, thus ordering the respondents to reinstate complainant to his former position with full backwages without loss of seniority rights and other benefits. Respondents are further ordered to pay complainant P200,000.00 as moral damages and P20,000.00 as exemplary damages, plus ten percent (10%) of the total award as attorney's fees." [1]

Raytheon appealed therefrom on the grounds that the Labor Arbiter committed grave abuse of discretion in denying its right to dismiss petitioner on the ground of redundancy, in relying on baseless surmises and self-serving assertions of the petitioner that its act was tainted with malice and bad faith and in awarding moral and exemplary damages and attorney's fees.

On March 21, 1991, the NLRC reversed the decision and directed Raytheon to pay petitioner the total sum of P100,000.00 as separation pay/financial assistance. The dispositive portion of which is hereby quoted as follows:

"WHEREFORE, the appealed decision is hereby set aside. In its stead, Order is hereby issued directing respondent to pay complainant the total separation pay/financial assistance of One Hundred Thousand Pesos (P100,000.00).

"SO ORDERED." [2]

From this decision, petitioner filed the instant petition averring that:

"The public respondent committed grave abuse of discretion amounting to (lack of) or in excess of jurisdiction in declaring as valid and justified the termination of petitioner on the ground of redundancy in the face of clearly established finding that petitioner's termination was tainted with malice, bad faith and irregularity." [3]

Termination of an employee's services because of redundancy is governed by Article 283 of the Labor Code which provides as follows:

"Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to 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 Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent 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 at least one (1) month pay or 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 as one (1) whole year."

There is no dispute that petitioner was duly advised, one (1) month before, of the termination of his employment on the ground of redundancy in a written notice by his immediate superior, Mrs. Magdalena B.D. Lopez sometime in the afternoon of January 27, 1989. He was issued a check for P54,863.00 representing separation pay but in view of his refusal to acknowledge the notice and the check, they were sent to him thru registered mail on January 30, 1989. The Department of Labor and Employment was served a copy of the notice of termination of petitioner in accordance with the pertinent provisions of the Labor Code and the implementing rules.

The crux of the controversy lies on whether bad faith, malice and irregularity crept in the abolition of petitioner's position of Cost Accounting Manager on the ground of redundancy. Petitioner claims that the functions of his position were absorbed by the Payroll/Mis/Finance Department under the management of Danny Ang Tan Chai, a resident alien without any working permit from the Department of Labor and Employment as required by law. Petitioner relies on the testimony of Raytheon's witness to the effect that corollary functions appertaining to cost accounting were dispersed to other units in the Finance Department. And granting that his department has to be declared redundant, he claims that he should have been the Manager of the Payroll/Mis/Finance Department which handled general accounting, payroll and encoding. As a B.S. Accounting graduate, a CPA with M.B.A. units, 21 years of work experience, and a natural born Filipino, he claims that he is better qualified than Ang Tan Chai, a B.S. Industrial Engineer, hired merely as a Systems Analyst Programmer or its equivalent in early 1987, promoted as MIS Manager only during the middle part of 1988 and a resident alien.

On the other hand, Raytheon insists that petitioner's functions as Cost Accounting Manager had not been absorbed by Ang Tan Chai, a permanent resident born in this country. It claims to have established below that Ang Tan Chai did not displace petitioner or absorb his functions and duties as they were occupying entirely different and distinct positions requiring different sets of expertise or qualifications and discharging functions altogether different and foreign from that of petitioner's abolished position. Raytheon debunks petitioner's reliance on the testimony of Mr. Estrada saying that the same witness testified under oath that the functions of the Cost Accounting Manager had been completely dispensed with and the position itself had been totally abolished.

Whether petitioner's functions as Cost Accounting Manager have been dispensed with or merely absorbed by another is however immaterial. Thus, notwithstanding the dearth of evidence on the said question, a resolution of this case can be arrived at without delving into this matter. For even conceding that the functions of petitioner's position were merely transferred, no malice or bad faith can be imputed from said act. A survey of existing case law will disclose that in *Wiltshire File Co., Inc. v. NLRC*,^[4] the position of Sales Manager was abolished on the ground of redundancy as the duties previously discharged by the Sales Manager simply added to the duties of the General Manager to whom the Sales Manager used to report. In adjudging said termination as legal, this Court said that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. The characterization of an employee's services as no longer necessary or sustainable, and therefore, properly terminable, was an exercise of business judgment on the part of the employer. The wisdom or soundness of such characterization or decision was not subject to discretionary review on the part of the Labor Arbiter nor of the NLRC so long, of course, as violation of law or merely arbitrary and malicious action is not shown.

In the case of *International Macleod, Inc. v. Intermediate Appellate Court*,^[5] this Court also considered the position of Government Relations Officer to have become redundant in view of the appointment of the International Heavy Equipment Corporation as the company's dealer with the government. It held therein that the determination of the need for the phasing out of a department as a labor and cost saving device because it was no longer economical to retain said services is a management prerogative and the courts will not interfere with the exercise thereof as long as no abuse of discretion or merely arbitrary or malicious action on the part of management is shown.

In the same vein, this Court ruled in *Bondoc v. People's Bank and Trust Co.*,^[6] that the bank's board of directors possessed the power to remove a department manager whose position depended on the retention of the trust and confidence of management and whether there was need for his services. Although some vindictive motivation might have impelled the abolition of his position, this Court expounded that it is undeniable that the bank's board of directors possessed the power to remove him and to determine whether the interest of the bank justified the

existence of his department.

Indeed, an employer has no legal obligation to keep more employees than are necessary for the operation of its business. Petitioner does not dispute the fact that a cost accounting system was installed and used at Raytheon subsidiaries and plants worldwide; and that the functions of his position involve the submission of periodic reports utilizing computerized forms designed and prescribed by the head office with the installation of said accounting system. Petitioner attempts to controvert these realities by alleging that some of the functions of his position were still indispensable and were actually dispersed to another department. What these indispensable functions that were dispersed, he failed however, to specify and point out. Besides, the fact that the functions of a position were simply added to the duties of another does not affect the legitimacy of the employer's right to abolish a position when done in the normal exercise of its prerogative to adopt sound business practices in the management of its affairs.

Considering further that petitioner herein held a position which was definitely managerial in character, Raytheon had a broad latitude of discretion in abolishing his position. An employer has a much wider discretion in terminating employment relationship of managerial personnel compared to rank and file employees.[7] The reason obviously is that officers in such key positions perform not only functions which by nature require the employer's full trust and confidence but also functions that spell the success or failure of an enterprise.

Likewise destitute of merit is petitioner's imputation of unlawful discrimination when Raytheon caused corollary functions appertaining to cost accounting to be absorbed by Danny Ang Tan Chai, a resident alien without a working permit. Article 40 of the Labor Code which requires employment permit refers to non-resident aliens. The employment permit is required for entry into the country for employment purposes and is issued after determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired. Since Ang Tan Chai is a resident alien, he does not fall within the ambit of the provision.

Petitioner also assails Raytheon's choice of Ang Tan Chai to head the Payroll/Mis/Finance Department, claiming that he is better qualified for the position. It should be noted, however, that Ang Tan Chai was promoted to the position during the middle part of 1988 or before the abolition of petitioner's position in early 1989. Besides the fact that Ang Tan Chai's promotion thereto is a settled matter, it has been consistently held that an objection founded on the ground that one has better credentials over the appointee is frowned upon so long as the latter possesses the minimum qualifications for the position. In the case at bar, since petitioner does not allege that Ang Tan Chai does not qualify for the position, the Court cannot substitute its discretion and judgment for that which is clearly and exclusively management prerogative. To do so would take away from the employer what rightly belongs to him as aptly explained in *National Federation of Labor Unions v. NLRC*: [8]

"It is a well-settled rule that labor laws do not authorize interference with the employer's judgment in the conduct of his business. The determination of the qualification and fitness of workers for hiring and firing, promotion or reassignment are exclusive prerogatives of management. The Labor Code and its implementing Rules do not vest in the Labor Arbiters nor in the different Divisions of the NLRC (nor in the courts) managerial authority. The employer is free to determine, using his own discretion and business judgment, all elements of employment, "from hiring to firing" except in cases of unlawful discrimination or those which may be provided by law. There is none in the instant case."

Finding no grave abuse of discretion on the part of the National Labor Relations Commission in reversing and annulling the decision of the Labor Arbiter and that on the contrary, the termination of petitioner's employment was anchored on a valid and authorized cause under Article 283 of the Labor Code, the instant petition for certiorari must fail.

WHEREFORE, the petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Rollo, p. 35.

[2] Penned by Commissioner Romeo B. Putong and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Vicente S.E. Veloso III, Rollo, pp. 21-22.

[3] Rollo, p. 6.

[4] G.R. No. 82249, February 7, 1991, 193 SCRA 665.

[5] G.R. No. 73287, May 18, 1987, 149 SCRA 641.

[6] G.R. No. 43835, March 31, 1981, 103 SCRA 599.

[7] Coca-Cola Bottlers Phils., Inc. v. NLRC, et al., G.R. No. 82580, April 25, 1989, 172 SCRA 751; D.M. Consunji, Inc. vs. NLRC, G.R. No. 71459, July 30, 1986, 143 SCRA 204.

[8] G.R. No. 90739, October 3, 1991, 202 SCRA 346.

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