

KIMBERLY CLARK PHILIPPINES, PETITIONER, VS. VOLUNTARY ARBITRATOR DANILO LORREDO AND UNITED KIMBERLY CLARK EMPLOYEES UNION- PTGWO, RESPONDENTS.

G.R. No. 103090. September 21, 1993

Ponente: VITUG, J.

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VITUG, J.:

A Voluntary Arbitrator's decision which is final and unappealable, as a rule[1], is assailed in this special civil action for certiorari under Rule 65 of the Rules of Court. Since the voluntary arbitrator regrettably has not expounded on what appears to be the threshold issue, we have decided to accept for consideration the petition.

Petitioner Kimberly-Clark Philippines, Inc. (KCPI), seeks to set aside the Resolutions of 15 October 1991 and 21 November 1991 of public respondent Voluntary Arbitrator Danilo Lorredo, holding that the nephew of a retired employee should be employed by KCPI as his replacement pursuant to Section 1, Article XX, of their Collective Bargaining Agreement ("CBA").

The pertinent provisions of the CBA[2], relevant to the controversy, is hereinafter quoted:

"Art. XX - Resignation, Retirement, Disability and Death.

Section 1. The COMPANY agrees to employ, the immediate member of the family of an employee provided qualified, upon the employee's resignation, retirement, disability or death. In case of resignation, however, employment of an immediate member of the family of an employee may be allowed provided the employee has rendered a service of ten (10) years and above and the resignation is not a forced resignation. For the purpose of this section, the phrase 'immediate member of the family of an employee' shall refer to the employee's legitimate children and in default thereof to the employee's collateral relative within the third civil degree. The recommendee of the retired/resigned employee shall, if qualified, be hired on probationary status."

Danilo L. Guerrero, an employee assigned as Operator B in KCPI's Finishing Section, voluntarily resigned on 02 January 1991, after thirteen (13) years and three (3) months of employment with the petitioner corporation.[3]

Pursuant to Section I, Article XX, of the aforementioned CBA, Guerrero, through the Union, recommended for hiring his nephew (name undisclosed from the records), who is a collateral relative within the third civil degree.

In a letter, dated 16 April 1991[4], KCPI informed the Union, through its President, that it could not act favorably on Guerrero's recommendee "(i)n as much as Mr. Danilo L. Guerrero has legitimate children * * *", namely: Joanne Guerrero (ten years of age), Mary Anne Guerrero (seven years of age) and Dianne Guerrero (three years of age). The private respondent argued that, since Guerrero's legitimate children are still minors, he could validly recommend for hiring his nephew.

Failing to agree on the proper interpretation of Article XX, Section 1, of the CBA and after exhausting remedies through the grievance machinery, the parties agreed to submit their dispute for voluntary arbitration.

A submission agreement[5] was then filed with the National Conciliation and Mediation Board, Regional Branch No. IV. Arbitrator Danilo Lorredo was assigned to resolve the central issue of how the above cited CBA provision should be construed.[6]

On 15 October 1991, after hearing and the submission of position papers, reply, rejoinder and counter-rejoinder, the voluntary arbitrator rendered his disputed resolution,[7] the pertinent portions of which read:

* * * * *

"Indeed the issue that needs resolution is not whether the Union's or the Company's interpretation is correct. What should be resolved is whether or not the implementation of the questioned provision of the CBA is well within the spirit of the provision. The relationships of the replacements with the retired employees should control. They are within the covered provision. Admittedly, they were hired as replacements of the concerned retired employees pursuant to the questioned CBA provision. We have to agree with the Union's posturing on this point. The Company's argument evades the issue. It maintains that these relatives who replaced the resigned employees were hired as contractual before they became regular employees. This fact is not is issue. In what status the replacement started at the company is not in issue. The issue is they were employed by the Company as replacements of the resigned, retired and dead employees. This has not been controverted. It is basic that mere denials cannot prevail over positive assertion.

In fine, the Company has implemented the questioned provision of the CBA in such a manner that retired employees have been replaced by their relatives within the degree allowed by the CBA. This is the fact of the matter. And no reason has been put forth why the nephew of Mr. Guerrero should be treated differently.

What has appeared as a sore thumb in the whole exercise is the lack of procedure in the replacement. There is no showing how the retired employee manifests his intent to be replaced. However, the fact remains that the replacements were hired at the instance of the retired employee. And the Company accepted them. We find nothing illegal or immoral in the manner the questioned CBA provision has been implemented. What is disturbing is why all of a sudden the Company now objects to the hiring of Mr. Guerrero's nephew as his replacement. We hold that the nephew of retired employee Danilo Guerrero should be employed by the Company as his replacement pursuant to Section 1, Article XX of the Collective Bargaining Agreement. (emphasis supplied)

* * * * *

SO ORDERED."

A motion for reconsideration was denied in the arbitrator's resolution of 21 November 1991.[8]

Hence, this petition.

The question, as aforesaid, focuses on the proper interpretation of the aforequoted Section 1, Article XX, of the Collective Bargaining Agreement. KCPI reiterates its stand that since Danilo Guerrero has legitimate children of his own, he cannot recommend his nephew for hiring under the pertinent provisions of the CBA. Private respondent, on the other hand, asserts that since Guerrero's children are still minors, he can recommend his nephew (a collateral relative within the third civil degree) for hiring, and the petitioner corporation is obligated to hire him under the same CBA provision.

A collective bargaining agreement, just like any other contract, is respected as the law between the contracting parties and compliance therewith in good faith is mandated.[9] Similarly, the rules embodied in the Civil Code[10] on the proper interpretation of contracts can very well govern.[11] The intention of the parties is primordial;[12] if the terms of the contract are clear, the literal meaning of the stipulations shall control,[13] but if the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.[14]

The company has agreed in its CBA with the employees "to employ (an) immediate member of the family provided qualified upon the employee's resignation, retirement, disability or death." This is its basic covenant. Covered by the term "(an) immediate member of the family" are the employee's legitimate children and, in default thereof, a collateral relative within the third civil degree; it is thus a definition by inclusion. As we see it, the phrase "in default thereof" has not been intended or contemplated by the parties as having a preclusive effect within the group. It simply sets a priority on who can possibly be recommendees for employment. The employee, in fine, need not be childless at all for him to be allowed to nominate a third degree collateral relative; otherwise, his ability to designate such relative is all but suddenly lost by the birth of an only child and regained by the latter's demise. This situation could not have been intended.

Even in government and corporate hierarchy, when a next ranking official is to take over the authorities and responsibilities of a superior, such as when the latter is "absent" (the literal and ordinary meaning of "in default of"), such absence merely means his non-availability, not necessarily that he be extant, in order to permit the former to assume the office.

We take note, furthermore, that KCPI is not obligated to unconditionally accept the recommendee since the latter must still meet the required employment standards theretofore set by it. And even when the recommendee is qualified, he, nonetheless, shall be hired only, pursuant to the agreement, on a "probationary status," an added measure, we assume, to further prove his worth for eventual regular employment. The company is not, therefore, left without its own safeguards under the agreement.

WHEREFORE, the petition is hereby DISMISSED. The questioned resolutions of 15 October 1991 and 21 November 1991 are hereby AFFIRMED. No costs.

SO ORDERED.

Bidin, (Acting Chairman), Romero, and Melo, JJ., concur.
Feliciano, J., (Chairman), on leave.

[1] *Eternit Employees and Workers Union v. De Veyra*, G.R. No. 50110, 189 SCRA 752/1990/.

[2] Annex "C", Petition, Rollo, 41.

[3] *Ibid.*, 45; 160.

[4] Annex "D", Petition, Rollo, p. 42.

[5] Annex E-1, *Ibid.*, 44.

[6] Annex "E", *Ibid.*, 43.

[7] Annex "A", *Ibid.*, 35-39.

[8] Annex "B", Petition, Rollo, 40.

[9] Article 1159, Civil Code; *Alex Ferrer v. NLRC*, G.R. No. 100898, 05 July 1993; *Marcopper Mining v. NLRC*, G.R. No. 83207, 200 SCRA 167/1991/; *Pe v. IAC*, 195 SCRA 137.

[10] Article 1370 to Article 1379, Civil Code.

[11] *Marcopper Mining v. NLRC*, 200 SCRA 167, *supra*.

[12] Article 1170, Civil Code; *Kasilag v. Rodriguez*, 69 Phil. 217/1939/.

[13] Ibid; Alim v. CA, 200 SCRA 450; Honrado, Jr. v. CA, 198 SCRA 326; Papa v. Alonzo, 198 SCRA 564.

[14] Article 1370, Civil Code; Sy vs. Court of Appeals, 131 SCRA 116.

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