

**DUSIT HOTEL NIKKO AND PHILIPPINE HOTELIERS, INC.,
PETITIONERS, VS. NATIONAL UNION OF WORKERS IN HOTEL,
RESTAURANT AND ALLIED INDUSTRIES (NUWHRAIN) – DUSIT
HOTEL NIKKO CHAPTER AN...**

G.R. NO. 160391. August 09, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 72006 which affirmed the Decision[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 014111-97 finding Dusit Hotel Nikko (Hotel) and Philippine Hoteliers, Inc. (PHI) of illegally terminating the employment services of respondent Rowena Agoncillo.

The Case for Rowena Agoncillo

The PHI owned and operated the Dusit Hotel Nikko. Since March 1, 1984, Rowena Agoncillo was employed by the Hotel. After some time, she was promoted as Supervisor of Outlet Cashiers and later promoted as Senior Front Office Cashier, with a monthly salary of P14,600.00, inclusive of service charge.[3] In January 1995, the Hotel decided to trim down the number of its employees from the original count of 820 to 750.[4]

On February 21, 1996, the Hotel, through an Inter-Office Memorandum signed by the general manager of Dusit, Yoshikazu Masuda, offered a Special Early Retirement Program (SERP) to all its employees. It was stated therein that the program was intended to "provide employees financial benefits prior to prolonged renovation period and, at the same time, to enable management to streamline the organization by eliminating redundant positions and having a more efficient and productive manpower complement." [5]

In a Letter dated February 26, 1996 addressed to the Hotel, the National Union of Workers in Hotel, Restaurant and Allied Industries, Hotel Nikko Manila Garden Chapter (Union), through its president, Mr. Reynaldo Rasing, sought "a commitment from the management that the employees terminated due to redundancy will not be replaced by new employees; nor will their positions be given to subcontractors, agencies or casual employees."

The Union received a Letter dated March 30, 1996 from Masuda confirming his earlier decision to separate 243 employees from the Hotel's services anchored on redundancy and that the separation of the said employees will take effect on April 30, 1996.[6] Consequently, a total of 243 employees, including Agoncillo, 161 of whom were Union officers and members, were separated from the Hotel's employment. As a result, the membership of the Union was substantially reduced.

On April 1, 1996, the Hotel wrote Regional Director Romeo Young of the Department of Labor and Employment (DOLE), National Capital Region, informing him that the Hotel terminated the employment of 243 employees due to redundancy. On the same day, Agoncillo was summoned by Hotel Comptroller Reynaldo Casacop, who gave her a letter of even date informing the latter of her "separation from service due to redundancy effective

close of office hours of April 30, 1996." [7]

Casacop advised Agoncillo to just avail of the Hotel's SERP, as embodied in the inter-office memorandum of Masuda. [8] He informed her that she had the option to avail of the program and that, in the meantime, he will defer the processing of her termination papers to give her time to decide. On April 3, 1996, Agoncillo finally told Casacop that she would not avail of the SERP benefits. By then, she had decided to file a complaint for illegal dismissal against the Hotel.

Meanwhile, the Hotel temporarily closed operations because of the renovation thereof.

When news spread among the hotel employees that Agoncillo would contest her termination before the NLRC, she was summoned by Personnel Manager Leticia Delarmente to a conference. The two met on May 21, 1996 in the presence of Willy Dizon, who later became the Director for Personnel and Training of the Hotel. At the said meeting, Delarmente and Dizon repeatedly asked Agoncillo to give back the original copy of the April 1, 1996 termination letter. Agoncillo told them that the letter was already in the possession of her counsel. Agoncillo was relieved when she was given another letter of even date stating that, by reason of her non-availing of the SERP, she was still considered an employee but on temporary lay-off due to the ongoing renovation of the Hotel [9] and that she will just be advised accordingly of her work schedule when the Hotel reopens. [10]

But her relief was shortlived. Delarmente and Dizon offered to reinstate Agoncillo but not to her former position as Senior Front Office Cashier. Agoncillo objected but informed them that she could accept the position of Reservation Clerk. [11] However, no response was received.

Meanwhile, the Hotel hired six (6) Front Office Cashiers on October 1, 1996. [12] On October 21, 1996, Agoncillo received a telegram from the Human Resources Department of the Hotel directing her to report to Dizon as soon as possible. [13] She was told by Dizon that the Hotel was willing to reinstate her but as an Outlet Cashier. Dizon explained that the Hotel had already hired new employees for the positions of Reservation Clerks. Agoncillo, however, pointed out that she was already an Outlet Cashier Supervisor before her promotion as Senior Front Office Cashier and that if she accepted the position, it would be an unjustified demotion on her part. Dizon, however, explained that the management wanted "new graduates" as "front liners," i.e., new graduates who would occupy the front desks and other sections exposed to guests. On the other hand, Agoncillo reiterated that she could accept the lower position of Reservation Clerk, but Dizon rejected the suggestion. Dizon countered that Agoncillo could be reinstated as a Room Service Cashier "para nakatago." At this point, Agoncillo was irked by the comments of Dizon and asked, "Bakit Sir, nakakaperhuwisyo ba ang physical appearance ko?" As to which Dizon replied, "Kasi ikaw, nagpabaya ka sa katawan mo." The conversation between them transpired in the presence and within hearing distance of other hotel employees, including Reynaldo Rasing, the president of the Union. [14]

After Agoncillo's meeting with Dizon on October 22, 1996, the latter kept on promising to find a suitable position for her. In those meetings, Dizon always offered reinstatement to positions that do not require guest exposure like Linen Dispatcher at the hotel basement or Secretary of Roomskeeping. When Agoncillo refused, Dizon just instructed her to return. Agoncillo had no specific position or assigned task to perform.

On November 1, 1996, the Hotel resumed operations. On November 11, 1996, the Union filed a Notice of Strike for unfair labor practice with the DOLE. [15] On November 12, 1996, Agoncillo with the assistance of the Union, filed a Complaint against the PHI and Dusit Hotel Nikko for illegal dismissal before the NLRC.

Meantime, the Secretary of Labor and Employment (SOLE) assumed jurisdiction over the dispute on November 29, 1996 after the requisite strike-vote was conducted. [16] The case was docketed as NCMB-NCR-NS-11-425-96.

On January 5, 1997, the Hotel published an advertisement in the newspaper Manila Bulletin inviting prospective

applicants as guest relations agents, bell service agents/valet parkers, housekeeping agents, and sales executives. The Hotel hired 135 additional employees, mostly on probationary and contractual bases. These new workers performed tasks according to the reclassified positions under the new Job Code, in violation of the Collective Bargaining Agreement (CBA) between the Hotel and the Union.[17] A total of 215 workers replaced the previously dismissed employees, including Agoncillo.

The Case for the Hotel

The petitioner Hotel, formerly known as Hotel Nikko Manila Garden, was owned and managed by the PHI, a corporation substantially owned by Japan Airlines (JAL). In November 1995, JAL formally turned over its majority shareholdings in PHI to a Thai corporation, Dusit Thani Public Co., Ltd. (Dusit). This gave Dusit the managerial control over the Hotel, which was then renamed Dusit Hotel Nikko.[18]

With the very stiff competition in the hotel industry in mind, Dusit has set a twofold objective, namely: (1) the total renovation of the Hotel, where it had earmarked the amount of about P300,000,000.00; and (2) a complete reorganization of the Hotel's manpower complement. The renovation of the Hotel, which called for its closure, began on May 1, 1996 and ended six months thereafter. On the other hand, the reorganization was done to standardize the Hotel's organizational set-up with all Dusit Hotels around the world and train the employees for their eventual deployment to its other chain of hotels. The reorganization program started with a staff reduction program wherein employees were given the chance to voluntarily avail of the SERP. As per its guidelines, the SERP is a one-time program offered by the Hotel to its regular employees who had at least one year of service as of April 30, 1996, in order to achieve the following:

a.)

realize optimum operational productivity and efficiency through a reorganization that will eliminate redundant position;

b.)

reduce expenses of the company; and

c.)

provide employees the opportunity to receive lump-sum benefits for their immediate use before the 6-month closure.[19]

Pursuant to the reorganization program, a reclassification of positions ensued upon resumption of the Hotel's operation. Consequently, the position of Agoncillo as Senior Front Office Cashier was abolished and a new position of Guest Services Agent absorbing its functions was created. Considering that the new position requires skills in both reception and cashiering operations, respondent Hotel deemed it necessary to transfer Agoncillo to another position as Outlet Cashier, which does not require other skills aside from cashiering.[20]

The transfer of Agoncillo from Senior Front Office Cashier to Outlet Cashier does not entail any diminution of salary or rank. Despite which, she vehemently refused the transfer and insisted that she be reinstated to her former position. Since Agoncillo was not amenable to the said transfer, she did not assume her new position and since then had stopped reporting for work despite the Hotel's patient reminder to act on the contrary. Instead, she filed a complaint to question the prerogative of the management to validly transfer her to another position as she considers the transfer an act of constructive dismissal amounting to illegal termination and unfair labor practice in the form of union busting.[21]

Proceedings before the Labor Arbiter, NLRC and the CA

On September 18, 1997, the Labor Arbiter rendered judgment dismissing the complaint for unfair labor practice and constructive dismissal. The Labor Arbiter ruled that the reassignment of the complainant was done by management in the valid exercise of management prerogative, and that management has not dismissed her in any way.[22] On October 27, 1997, the complainant appealed the decision to the NLRC.

In the meantime, on January 6, 1998, the SOLE issued an Order in NCMB-NCR-NS-11-425-96 in favor of the Union. The fallo of the Order reads:

WHEREFORE, judgment is hereby rendered:

- Declaring the termination of 243 employees, including 161 Union officers and members on April 1, 1996, illegal;
- Ordering the immediate reinstatement of the 243 employees, without loss of seniority rights and with full backwages and benefits from the time of their termination until actual reinstatement, less the amounts received by them on account of the Company's Special Early Retirement Program;
- Declaring the Company guilty of unfair labor practice for:
 - implementing an illegal redundancy program in the guise of a Special Early Retirement Program, terminating in the process 243 employees, including 161 Union officers and members;
 - implementing a New Job and Wage Classification and Manning Standards, in violation of Article 1, Section VII of the parties' Collective Bargaining Agreement; and
 - violation of the CBA provisions on entry rates of new employees and rice subsidy for retained employees who were on duty during the renovation of the Hotel.
- Ordering the Company to cease and desist from further continuing with its commission of the unfair labor practice acts herein complained of.

SO ORDERED.[23]

The respondents therein filed a motion for the reconsideration of the order but the SOLE denied the same. On March 10, 2000, the Union and the Hotel executed a Memorandum of Agreement (MOA) in which the Hotel agreed to pay P15,000.00 to each member of the Union by way of amicable settlement of NCMB-NCR-NS-11-425-96 in addition to the redundancy pay earlier paid to them and that they shall file with the DOLE a motion praying for the following:

a.

Dismissal of the case with prejudice in regard to:

(i)

illegal redundancy as to those who have received the settlement pay above and signed the Special Power of Attorney and Release, Waiver and Quitclaim;

(ii)

all ULP charges; and

b.

Dismissal of the case without prejudice as to those who have not yet received the settlement pay.[24]

However, the MOA was not submitted to the NLRC for its approval. Neither did Agoncillo receive any monetary benefits based on the MOA.

After due proceedings, the NLRC rendered judgment on January 30, 2002, reversing the appealed decision of the Labor Arbiter, dated September 18, 1997. The fallo of the decision reads:

WHEREFORE, the appealed decision is SET ASIDE. Judgment is hereby rendered ordering respondent to:

- immediately reinstate complainant to her former or equivalent position without loss of seniority rights and benefits; and
- to pay complainant full backwages computed from the time it was illegally withheld from her as a result of her illegal dismissal up to the time she is actually reinstated.

SO ORDERED.[25]

The NLRC ruled that Agoncillo was illegally dismissed. It relied principally on the evidence of the complainant and the Order of the SOLE dated January 6, 1998. The respondents filed a motion for reconsideration,[26] which the NLRC denied. Hence, they filed before the Court of Appeals a Petition for Certiorari with Very Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction,[27] which is anchored on the following grounds, to wit:

I

WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION GRAVELY ERRED WHEN IT RULED THAT PRIVATE RESPONDENT AGONCILLO WAS ILLEGALLY DISMISSED CONSIDERING THAT, IN THE FIRST PLACE, PRIVATE RESPONDENT AGONCILLO WAS NEVER DISMISSED, CONSTRUCTIVELY OR OTHERWISE;

II

CONTRARY TO THE RULING OF THE HONORABLE COMMISSION, PRIVATE RESPONDENT AGONCILLO'S TRANSFER FROM THE POSITION OF SENIOR FRONT OFFICE CASHIER TO THE POSITION OF OUTLET CASHIER WAS A VALID EXERCISE OF MANAGEMENT PREROGATIVE;

III

EVEN ASSUMING IN GRATIA ARGUMENTI THAT PRIVATE RESPONDENT AGONCILLO WAS INDEED SEPARATED FROM THE HOTEL, HER SEPARATION DUE TO REDUNDANCY WAS VALID AND/OR LEGAL. CONTRARY TO THE RULING OF THE HONORABLE COMMISSION, THE REDUNDANCY PROGRAM IMPLEMENTED BY THE HOTEL IS VALID. FURTHERMORE, PRIVATE RESPONDENTS ARE BOUND BY THE COMPROMISE AGREEMENT BETWEEN THE UNION AND THE HOTEL WHICH, AMONG OTHERS, RECOGNIZES THE VALIDITY OF THE SAID PROGRAM;

IV

CONSIDERING THE FOREGOING, THE PETITIONERS ARE NOT GUILTY OF UNFAIR LABOR PRACTICE. PRIVATE RESPONDENT AGONCILLO, ON THE OTHER HAND, IS NOT ENTITLED TO REINSTATEMENT WITH FULL BACKWAGES.[28]

On June 26, 2003, the CA rendered judgment dismissing the petition on the ground that no grave abuse of discretion was committed by the respondents therein.

The petitioners' motion for reconsideration[29] was denied by the CA. They forthwith filed their petition for review alleging that:

THE HONORABLE COURT OF APPEALS ERRED IN RENDERING THE ASSAILED DECISION AND RESOLUTION, HAVING DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, CONSIDERING THAT -

I

THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT RESPONDENT AGONCILLO WAS ILLEGALLY DISMISSED BECAUSE, IN THE FIRST PLACE, SHE WAS NEVER DISMISSED, CONSTRUCTIVELY OR OTHERWISE.

II

RESPONDENT AGONCILLO'S TRANSFER FROM THE POSITION OF SENIOR FRONT OFFICE CASHIER TO THE POSITION OF OUTLET CASHIER WAS A VALID EXERCISE OF MANAGEMENT PREROGATIVE.

III

EVEN ON THE ASSUMPTION THAT RESPONDENT AGONCILLO WAS INDEED SEPARATED FROM THE HOTEL, HER SEPARATION DUE TO A REDUNDANCY PROGRAM WAS LEGAL. THE REDUNDANCY PROGRAM IMPLEMENTED BY THE HOTEL IS LIKEWISE VALID. FURTHERMORE, RESPONDENTS ARE BOUND BY THE COMPROMISE AGREEMENT BETWEEN THE UNION AND THE HOTEL WHICH, AMONG OTHERS, RECOGNIZES THE VALIDITY OF THE SAID PROGRAM.

IV

IN LIGHT OF THE FOREGOING, THE PETITIONERS ARE NOT GUILTY OF ILLEGAL DISMISSAL, MUCH LESS UNFAIR LABOR PRACTICE. HENCE, RESPONDENT AGONCILLO CANNOT BE ENTITLED TO REINSTATEMENT NOR TO FULL BACKWAGES.[30]

The Court's Ruling

The petition is unmeritorious.

The issues for resolution are factual and Rule 45 of the Rules of Court provides that only questions of law may be raised in a petition for review on certiorari. The *raison d'être* is that the Court is not a trier of facts. It is not to reexamine and reevaluate the evidence on record. Moreover, the factual findings of the NLRC, as affirmed by the CA, are accorded high respect and finality unless the factual findings and conclusions of the Labor Arbiter clash with those of the NLRC and the CA in which case, the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.[31]

The petitioners reiterate their submission that respondent Agoncillo had never been dismissed; she was merely transferred to another position, that of Outlet Cashier. She had been temporarily laid off because of the renovation of the hotel but she remained as an employee of the hotel. Following the completion of the renovation of the hotel, she was offered the position of outlet cashier; but she already filed her complaint before the Hotel was able to determine what position she could occupy which was mutually acceptable. The petitioners aver that the transfer of the respondent to the position of Outlet Cashier was a valid exercise of management prerogative based on its assessment of her qualification, aptitude and competence, absent any showing to be contrary to law, morals or public policy, unreasonable, inconvenient and prejudicial to the employee. The petitioners insist that the transfer of Agoncillo was pursuant to its objective of completely reorganizing its manpower component. It did not entail

any diminution in salary, benefits, privileges or job level. The petitioners also maintain that even if the respondent was separated from the Hotel, it was justified to do so due to redundancy. The validity of the said program was even recognized by the respondents in the MOA executed by petitioner Hotel and the respondent Union. The petitioners maintain that the respondents are bound by the MOA.

The contentions are untenable. It is plain as day that the petitioners terminated the employment of respondent Agoncillo effective April 30, 1996, as evidenced by their letter which reads:

April 1, 1996

Ms. Rowena Agoncillo
26 A. Soriano, B.F. Homes
Parañaque, Metro Manila

Dear Ms. Agoncillo:

We have recently conducted a study of the Hotel's organizational structure and found the need to reorganize the same and eliminate many positions that have become redundant.

As a result of such study, it was determined that your position as Senior Front Office Cashier is redundant. In this connection, please be advised of your separation from service due to redundancy, effective close of office hours of April 30, 1996. You will receive not later than April 30, 1996 the separation pay provided for under the law, plus the amount of P19,000.00.

We take this opportunity to thank you for your service to Hotel Nikko Manila Garden and extend to you our best wishes for your next endeavors.

Very truly yours,

(Sgd.)

PEARL V. ARAGON

Director for Administration[32]

The letter of the petitioners terminating the employment of Agoncillo on the ground of redundancy was rejected by the Order of the SOLE in NCMB-NCR-NS-11-425-96 where he ruled that the petitioners' redundancy program was but a ploy, a contrivance cunningly scripted by them to subvert the Union and unlawfully dismiss many of its employees. The SOLE declared that, by their acts, the petitioners were guilty of unfair labor practice.

Redundancy exists 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 overhiring 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.[33] As found by the SOLE, the NLRC and the CA, the position of respondent Agoncillo was not abolished or declared redundant. In fact, the petitioners hired an entirely new set of employees to perform the tasks of respondent Agoncillo, namely:

Don Vincent Hembrador - hired on October 1, 1996

Reynaldo Pajarito - hired on October 1, 1996

Eliza De Venecia - hired on October 1, 1996

Scarlet Galve - hired on October 1, 1996

Dheeny Laggui - hired on October 1, 1996

Eric Galos - hired on October 1, 1996

Carlota Pineda - hired on January 25, 1997[34]

We agree with the contention of the petitioners that it is the prerogative of management to transfer an employee from one office to another within the business establishment based on its assessment and perception of the employee's qualification, aptitude and competence, and in order to ascertain where he can function with the maximum benefit to the company. However, this Court emphasized that:

But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay.[35]

There is constructive dismissal when there is a demotion in rank and/or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[36]

In the present case, the petitioners recalled the termination of respondent Agoncillo when they learned that she was going to file a complaint against them with the NLRC for illegal dismissal. However, instead of reinstating her to her former position, she was offered the position of Linen Dispatcher in the hotel basement or Secretary of the Roomskeeping Section, positions much lower than that of a Supervisor of Outlet Cashiers which the respondent held before she was promoted as Senior Front Office Cashier. With the said positions, the respondent would not certainly be receiving the same salary and other benefits as Senior Front Office Cashier.

We agree with the ruling of the NLRC that the offers by the petitioners to transfer respondent Agoncillo to other positions were made in bad faith, a ploy to stave off a suit for illegal dismissal. In fact, respondent Agoncillo had not been transferred to another position at all.

Six months from the time the petitioners made offers to respondent Agoncillo, the latter never heard from the petitioners again.

While the hotel gave complainant Rowena Agoncillo a second letter advising her that she was still an employee who was merely on temporary lay-off, the circumstances surrounding the issuance of such second letter is highly suspicious. To date, complainant Agoncillo's affidavit (Annex F) on the issuance of the second letter remains undisputed. It cannot be gainsaid that the second letter was issued merely to entice complainant Agoncillo to return the termination letter. The said second letter did not make mention of the termination letter. If, as claimed by the hotel, the second letter was a withdrawal of the first letter, why was there no clear statement to this effect when it could have easily been done? Why was it also necessary for the hotel's officers to retrieve the termination letter that it had issued to complainant? What we can gather from here is that the hotel had tried to cover its tracks in order to rectify an error. Certainly, good faith cannot be attributed on the part of the hotel in issuing the second letter.[37]

...

Even assuming, for the sake of argument, that the hotel had a valid ground for dismissing [the] complainant and that it had merely spared her such fate, the hotel is still guilty of illegal dismissal. Had the hotel made the transfer of complainant in good faith and in the normal course of its operation, it would have been justified. In this case, however, the supposed transfer was made only after complainant had been earlier terminated. Complainant's statement in her affidavit that she was summoned by the hotel after news of her plan to contest her dismissal circulated remains unrefuted. Furthermore, the hotel has not explained why there was no official memorandum issued to complainant formally informing her of her "transfer". All these lead to only one conclusion - that the alleged transfer was not made in good faith as a valid exercise of management prerogative but was intended as a settlement offer to complainant to prevent her from filing a case.[38]

The offers made by the petitioners could not have the effect of validating an otherwise arbitrary dismissal.[39]

We reject the contention of the petitioners that respondent Agoncillo is bound by the MOA executed by the petitioners and respondent Union. There is no denying the right of the Union and the petitioners under Article 227 of the Labor Code to enter into and execute a compromise agreement with the assistance of the DOLE; and that such agreement is binding not only on the Union generally but on its individual members.[40]

However, a plain reading of the MOA will readily show that it is not binding on respondent Agoncillo. The MOA reads:

- The Hotel shall pay the amount of P15,000.00 each to the members of the bargaining unit who are represented by the Union in this case by way of amicable settlement of the case and in addition to the redundancy pay already earlier given to such members.
- For security purposes and an orderly proceeding, only claimants or their authorized representatives shall be allowed entry into the premises of the Hotel accompanied by Union representative.
- On the date of application and actual payment, the claimants shall execute sworn release, waiver and quitclaim as well as a special power of attorney authorizing the Union president to amicably settle this case.
- Unclaimed settlement pay after 15 April 2000 shall be turned over to the Union for its disposition on condition that the Union shall take care of paying other claimants if any should show up to lay their claim thereafter.
- Following the execution of this Agreement, the Union and the Hotel shall file a manifestation and motion with the DOLE, attached this Agreement, praying for the following:

a.

Dismissal of the case with prejudice in regard to:

(i.)

illegal redundancy as to those who have received the settlement pay above and signed the Special Power of Attorney and Release, Waiver and Quitclaim;

(ii.)

all ULP charges; and

b.

Dismissal of the case without prejudice as to those who have not yet received the settlement pay.[41]

The Union executed the MOA in behalf of the members of the bargaining unit. There is no showing that Agoncillo is a member of that unit. The MOA applies only to the members of the bargaining unit who agreed to the termination of their employment based on redundancy and received redundancy pay. Agoncillo did not receive any redundancy pay or any monetary benefits under the MOA or executed any deed or waiver or release in favor of the petitioners.

The MOA executed by the petitioners and the Union settled only the case of the parties before the SOLE for unfair labor practice and for illegal redundancy. It did not settle the case between the petitioners and Agoncillo before the NLRC. This is the reason why the MOA was never submitted by the parties therein to the NLRC for its approval. Although the petitioners sought a reconsideration of the decision of the NLRC based, *inter alia*, on the MOA, the NLRC denied the said motion. Indeed, the NLRC acted in accord with case law that:

First, even if a clear majority of the union members agreed to a settlement with the employer, the union has no authority to compromise the individual claims of members who did not consent to such settlement. Rule 138, Section 23 of the 1964 Revised Rules of Court requires a special authority before an attorney may compromise his client's litigation. "The authority to compromise cannot lightly be presumed and should be duly established by evidence."

In the case at bar, minority union members did not authorize the union to compromise their individual claims. Absent a showing of the union's special authority to compromise the individual claims of private respondents for reinstatement and back wages, there is no valid waiver of the aforesaid rights. As private respondents did not authorize the union to represent them in the compromise settlement, they are not bound by the terms thereof.

Second, whether minority union members who did not consent to a compromise agreement are bound by the majority decision approving a compromise settlement has been resolved in the negative.

In *La Campana*, we explicitly declared:

"Money claims due to laborers cannot be the object of settlement or compromise effected by a union or counsel without the specific individual consent of each laborer concerned. The beneficiaries are the individual complainants themselves. The union to which they belong can only assist them but cannot decide for them."

The case of *La Campana* was re-affirmed in the *General Rubber* case as follows:

"In the instant case, there is no dispute that private respondent has not ratified the Return-to-Work Agreement. It follows, and we so hold, that private respondents cannot be held bound by the Return-to-Work Agreement. The waiver of money claims, which in this case were accrued money claims, by workers and employees must be regarded as a personal right, that is, a right that must be personally exercised. For a waiver thereof to be legally effective, the individual consent or ratification of the workers or employees involved must be shown. Neither the officers nor the majority or the union had any authority to waive the accrued rights pertaining to the dissenting minority members, even under a collective bargaining agreement which provided for a "union shop". The same considerations of public policy which impelled the Court to reach the conclusion it did in *La Campana*, are equally compelling in the present case. The members of the union need the protective shield of this doctrine not only vis-à-vis their employer but also, at times, vis-a-vis the management of their own union, and at other times even against their own imprudence impecuniousness."

We have consistently ruled that "a compromise is governed by the basic principle that the obligations arising therefrom have the force of law between the parties."

Consequently, private respondents may pursue their individual claims against petitioners before the Labor Arbiter.

The judgment of the Labor Arbiter based on the compromise agreement in question does not have the effect of res judicata upon private respondent who did not agree thereto.

"A compromise, once approved by final orders of the court has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery." A compromise is basically a contract perfected by mere consent. "Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract." A compromise agreement is not valid when a party in the case has not signed the same or when someone signs for and in behalf of such party without authority to do so.

In *SMI Fish Industries, Inc. vs. NLRC*, this Court declared that where the compromise agreement was signed by only three of the five respondents, the non-signatories cannot be bound by that amicable settlement. This is so as a compromise agreement is a contract and cannot affect third persons who are not parties to it.

Private respondents were not parties to the compromise agreement. Hence, the judgment approving such agreement cannot have the effect of res judicata upon them since the requirement of identity of parties is not satisfied. A judgment upon a compromise agreement has all the force and effect of any other judgment, hence, conclusive only upon parties thereto and their privies.^[42]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Juan Q. Enriquez, Jr. and Hakim S. Abdulwahid, concurring.

[2] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo, concurring.

[3] Rollo, p. 115.

[4] Id. at 340.

[5] Id. at 138-139.

[6] Rollo, p. 137.

[7] Id. at 130.

[8] Id. at 138-139.

[9] Rollo, p. 142.

[10] Ibid.

[11] Id. at 117.

[12] Rollo, p. 119.

[13] Id. at 143.

[14] Id. at 200.

[15] Rollo, p. 349.

- [16] Id. at 341.
- [17] Rollo, pp. 341-342.
- [18] Id. at 160-176, 201-212.
- [19] Rollo, p. 196.
- [20] Id. at 10.
- [21] Rollo, p. 11.
- [22] Id. at 261-262.
- [23] Rollo, pp. 346-347.
- [24] Id. at 365-366.
- [25] Rollo, p. 108.
- [26] Id. at 110-111.
- [27] Id. at 58-93.
- [28] Rollo, pp. 61-62.
- [29] Id. at 367-390.
- [30] Rollo, pp. 6-7.
- [31] Union Motor Corporation v. NLRC, G.R. No. 159738, 9 December 2004, 445 SCRA 683.
- [32] Rollo, p. 290.
- [33] Asian Alcohol Corporation v. NLRC, G.R. No. 131108, 25 March 1999, 305 SCRA 416.
- [34] Rollo, p. 119.
- [35] Blue Dairy Corporation v. NLRC, G.R. No. 129843, 14 September 1999, 314 SCRA 401.
- [36] Escobio v. NLRC, G.R. No. 118159, 15 April 1998, 289 SCRA 48; Philippine Wireless, Inc. (Pocketbell) v. NLRC, G.R. No. 112963, 20 July 1999, 310 SCRA 653.
- [37] Rollo, pp. 102-103.
- [38] Id. at 105.
- [39] Hantex Trading, Co., Inc. v. Court of Appeals, G.R. No. 148241, 27 September 2002, 390 SCRA 181.
- [40] Dionela vs. Court of Industrial Relations, G.R. No. L-18334, 31 August 1963, 8 SCRA 832; Chua v. NLRC, G.R. Nos. 89971-75, 17 October 1990, 190 SCRA 558.
- [41] Rollo, pp. 365-366.
- [42] Golden Donuts, Inc. v. NLRC, G.R. Nos. 113666-68, 19 January 2000, 322 SCRA 294.

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