

**NELSON A. CULILI, PETITIONER, VS. EASTERN  
TELECOMMUNICATIONS PHILIPPINES, INC., SALVADOR HIZON  
(PRESIDENT AND CHIEF EXECUTIVE OFFICER), EMILIANO JURADO  
(CHAIRMAN OF THE BOARD), ...**

*G.R. No. 165381. February 09, 2011*

Ponente: LEONARDO-DE CASTRO, J.

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**LEONARDO-DE CASTRO, J.:**

Before Us is a petition for review on certiorari[1] of the February 5, 2004 Decision[2] and September 13, 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 75001, wherein the Court of Appeals set aside the March 1, 2002 Decision[4] and September 24, 2002 Resolution[5] of the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiter's Decision[6] dated April 30, 2001.

Respondent Eastern Telecommunications Philippines, Inc. (ETPI) is a telecommunications company engaged mainly in the business of establishing commercial telecommunications systems and leasing of international datalines or circuits that pass through the international gateway facility (IGF).[7] The other respondents are ETPI's officers: Salvador Hizon, President and Chief Executive Officer; Emiliano Jurado, Chairman of the Board; Virgilio Garcia, Vice President; and Stella Garcia, Assistant Vice President.

Petitioner Nelson A. Culili (Culili) was employed by ETPI as a Technician in its Field Operations Department on January 27, 1981. On December 12, 1996, Culili was promoted to Senior Technician in the Customer Premises Equipment Management Unit of the Service Quality Department and his basic salary was increased.[8]

As a telecommunications company and an authorized IGF operator, ETPI was required, under Republic Act. No. 7925 and Executive Order No. 109, to establish landlines in Metro Manila and certain provinces.[9] However, due to interconnection problems with the Philippine Long Distance Telephone Company (PLDT), poor subscription and cancellation of subscriptions, and other business difficulties, ETPI was forced to halt its roll out of one hundred twenty-nine thousand (129,000) landlines already allocated to a number of its employees.[10]

In 1998, due to business troubles and losses, ETPI was compelled to implement a Right-Sizing Program which consisted of two phases: the first phase involved the reduction of ETPI's workforce to only those employees that were necessary and which ETPI could sustain; the second phase entailed a company-wide reorganization which would result in the transfer, merger, absorption or abolition of certain departments of ETPI.[11]

As part of the first phase, ETPI, on December 10, 1998, offered to its employees who had rendered at least fifteen years of service, the Special Retirement Program, which consisted of the option to voluntarily retire at an earlier age and a retirement package equivalent to two and a half (2½) months' salary for every year of service.[12] This offer was initially rejected by the Eastern Telecommunications Employees' Union (ETEU), ETPI's duly recognized bargaining agent, which threatened to stage a strike. ETPI explained to ETEU the exact details of the Right-Sizing Program and the Special Retirement Program and after consultations with ETEU's members, ETEU

agreed to the implementation of both programs.[13] Thus, on February 8, 1999, ETPI re-offered the Special Retirement Program and the corresponding retirement package to the one hundred two (102) employees who qualified for the program.[14] Of all the employees who qualified to avail of the program, only Culili rejected the offer.[15]

After the successful implementation of the first phase of the Right-Sizing Program, ETPI, on March 1, 1999 proceeded with the second phase which necessitated the abolition, transfer and merger of a number of ETPI's departments.[16]

Among the departments abolished was the Service Quality Department. The functions of the Customer Premises Equipment Management Unit, Culili's unit, were absorbed by the Business and Consumer Accounts Department. The abolition of the Service Quality Department rendered the specialized functions of a Senior Technician unnecessary. As a result, Culili's position was abolished due to redundancy and his functions were absorbed by Andre Andrada, another employee already with the Business and Consumer Accounts Department.[17]

On March 5, 1999, Culili discovered that his name was omitted in ETPI's New Table of Organization. Culili, along with three of his co-employees who were similarly situated, wrote their union president to protest such omission.[18]

In a letter dated March 8, 1999, ETPI, through its Assistant Vice President Stella Garcia, informed Culili of his termination from employment effective April 8, 1999. The letter reads:

March 8, 1999

To: N. Culili

Thru: S. Dobbin/G. Ebue

From: AVP-HRD

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As you are aware, the current economic crisis has adversely affected our operations and undermined our earlier plans to put in place major work programs and activities. Because of this, we have to implement a Rightsizing Program in order to cut administrative/operating costs and to avoid losses. In line with this program, your employment with the company shall terminate effective at the close of business hours on April 08, 1999. However, to give you ample time to look for other employment, provided you have amply turned over your pending work and settled your accountabilities, you are no longer required to report to work starting tomorrow. You will be considered on paid leave until April 08, 1999.

You will likewise be paid separation pay in compliance with legal requirements (see attached), as well as other benefits accruing to you under the law, and the CBA. We take this opportunity to thank you for your services and wish you well in your future endeavors.

(Signed)

Stella J. Garcia[19]

This letter was similar to the memo shown to Culili by the union president weeks before Culili was dismissed. The memo was dated December 7, 1998, and was advising him of his dismissal effective January 4, 1999 due to the Right-Sizing Program ETPI was going to implement to cut costs and avoid losses.[20]

Culili alleged that neither he nor the Department of Labor and Employment (DOLE) were formally notified of his termination. Culili claimed that he only found out about it sometime in March 1999 when Vice President Virgilio Garcia handed him a copy of the March 8, 1999 letter, after he was barred from entering ETPI's premises by its armed security personnel when he tried to report for work.[21] Culili believed that ETPI had already decided to

dismiss him even prior to the March 8, 1999 letter as evidenced by the December 7, 1998 version of that letter. Moreover, Culili asserted that ETPI had contracted out the services he used to perform to a labor-only contractor which not only proved that his functions had not become unnecessary, but which also violated their Collective Bargaining Agreement (CBA) and the Labor Code. Aside from these, Culili also alleged that he was discriminated against when ETPI offered some of his co-employees an additional benefit in the form of motorcycles to induce them to avail of the Special Retirement Program, while he was not.[22]

ETPI denied singling Culili out for termination. ETPI claimed that while it is true that they offered the Special Retirement Package to reduce their workforce to a sustainable level, this was only the first phase of the Right-Sizing Program to which ETEU agreed. The second phase intended to simplify and streamline the functions of the departments and employees of ETPI. The abolition of Culili's department - the Service Quality Department - and the absorption of its functions by the Business and Consumer Accounts Department were in line with the program's goals as the Business and Consumer Accounts Department was more economical and versatile and it was flexible enough to handle the limited functions of the Service Quality Department. ETPI averred that since Culili did not avail of the Special Retirement Program and his position was subsequently declared redundant, it had no choice but to terminate Culili.[23] Culili, however, continued to report for work. ETPI said that because there was no more work for Culili, it was constrained to serve a final notice of termination[24] to Culili, which Culili ignored. ETPI alleged that Culili informed his superiors that he would agree to his termination if ETPI would give him certain special work tools in addition to the benefits he was already offered. ETPI claimed that Culili's counter-offer was unacceptable as the work tools Culili wanted were worth almost a million pesos. Thus, on March 26, 1999, ETPI tendered to Culili his final pay check of Eight Hundred Fifty-Nine Thousand Thirty-Three and 99/100 Pesos (P859,033.99) consisting of his basic salary, leaves, 13<sup>th</sup> month pay and separation pay.[25] ETPI claimed that Culili refused to accept his termination and continued to report for work.[26] ETPI denied hiring outside contractors to perform Culili's work and denied offering added incentives to its employees to induce them to retire early. ETPI also explained that the December 7, 1998 letter was never given to Culili in an official capacity. ETPI claimed that it really needed to reduce its workforce at that time and that it had to prepare several letters in advance in the event that none of the employees avail of the Special Retirement Program. However, ETPI decided to wait for a favorable response from its employees regarding the Special Retirement Program instead of terminating them.[27]

On February 8, 2000, Culili filed a complaint against ETPI and its officers for illegal dismissal, unfair labor practice, and money claims before the Labor Arbiter.

On April 30, 2001, the Labor Arbiter rendered a decision finding ETPI guilty of illegal dismissal and unfair labor practice, to wit:

WHEREFORE, decision is hereby rendered declaring the dismissal of complainant Nelson A. Culili illegal for having been made through an arbitrary and malicious declaration of redundancy of his position and for having been done without due process for failure of the respondent to give complainant and the DOLE written notice of such termination prior to the effectivity thereof.

In view of the foregoing, respondents Eastern Telecommunications Philippines and the individual respondents are hereby found guilty of unfair labor practice/discrimination and illegal dismissal and ordered to pay complainant backwages and such other benefits due him if he were not illegally dismissed, including moral and exemplary damages and 10% attorney's fees. Complainant likewise is to be reinstated to his former position or to a substantially equivalent position in accordance with the pertinent provisions of the Labor Code as interpreted in the case of Pioneer Texturing [Pioneer Texturizing Corp. v. National Labor Relations Commission], G.R. No. 11865[1], 16 October 1997. Hence, Complainant must be paid the total amount of TWO MILLION SEVEN HUNDRED FORTY[-]FOUR THOUSAND THREE [HUNDRED] SEVENTY[-]

NINE and 41/100 (P2,744,379.41), computed as follows:

I. Backwages (from 16 March 1999 to 16 March 2001)

a. Basic Salary (P29,030 x 24 mos.) P696,720.96

b. 13<sup>th</sup> Month Pay (P692,720.96/12) 58,060.88

c. Leave Benefits

1. Vacation Leave (30 days/annum)

P1,116.54 x 60 days 66,992.40

2. Sick Leave (30 days/annum)

P1,116.54 x 60 days 66,992.40

3. Birthday Leave (1 day/annum)

P1,116.54 x 2 days 2,233.08

d. Rice and Meal Subsidy

16 March - 31 July 1999

(P1,750 x 4.5 mos. = P7,875.00)

01 August 1991 - 31 July 2000

(P1,850 x 12 mos. = P22,200.00)

01 August 2000 - 16 March 2001

(P1,950 x 7.5 mos. = P14,625.00) 44,700.00

e. Uniform Allowance

P7,000/annum x 2 years 14,000.00

P949,699.72

II. Damages

a. Moral.....P500,000.00

b. Exemplary.....P250,000.00

III. Attorney's Fees (10% of award) \_\_94,969.97

GRAND TOTAL: P2,744,379.41[28]

The Labor Arbiter believed Culili's claim that ETPI intended to dismiss him even before his position was declared redundant. He found the December 7, 1998 letter to be a telling sign of this intention. The Labor Arbiter held that a reading of the termination letter shows that the ground ETPI was actually invoking was retrenchment and not redundancy, but ETPI stuck to redundancy because it was easier to prove than retrenchment. He also did not believe that Culili's functions were as limited as ETPI made it appear to be, and held that ETPI failed to present any reasonable criteria to justify the declaration of Culili's position as redundant. On the issue of unfair labor practice, the Labor Arbiter agreed that the contracting out of Culili's functions to non-union members violated Culili's rights as a union member. Moreover, the Labor Arbiter said that ETPI was not able to dispute Culili's claims of discrimination and subcontracting, hence, ETPI was guilty of unfair labor practice.

On appeal, the NLRC affirmed the Labor Arbiter's decision but modified the amount of moral and exemplary damages awarded, viz:

WHEREFORE, the Decision appealed from is AFFIRMED granting complainant the money claims prayed for including full backwages, allowances and other benefits or their monetary equivalent computed from the time of his illegal dismissal on 16 March 1999 up to his actual reinstatement except the award of moral and exemplary damages which is modified to P200,000.00 for moral and P100,000.00 for exemplary damages. For this purpose, this case is REMANDED to the Labor Arbiter for computation of backwages and other monetary awards to complainant.[29]

ETPI filed a Petition for Certiorari under Rule 65 of the Rules of Civil Procedure before the Court of Appeals on the ground of grave abuse of discretion. ETPI prayed that a Temporary Restraining Order be issued against the NLRC from implementing its decision and that the NLRC decision and resolution be set aside.

The Court of Appeals, on February 5, 2004, partially granted ETPI's petition. The dispositive portion of the decision reads as follows:

WHEREFORE, all the foregoing considered, the petition is PARTIALLY GRANTED. The assailed Decision of public respondent National Labor Relations Commission is MODIFIED in that petitioner Eastern Telecommunications Philippines Inc. (ETPI) is hereby ORDERED to pay respondent Nelson Culili full backwages from the time his salaries were not paid until the finality of this Decision plus separation pay in an amount equivalent to one (1) month salary for every year of service. The awards for moral and exemplary damages are DELETED. The Writ of Execution issued by the Labor Arbiter dated September 8, 2003 is DISSOLVED.[30]

The Court of Appeals found that Culili's position was validly abolished due to redundancy. The Court of Appeals said that ETPI had been very candid with its employees in implementing its Right-Sizing Program, and that it was highly unlikely that ETPI would effect a company-wide reorganization simply for the purpose of getting rid of Culili. The Court of Appeals also held that ETPI cannot be held guilty of unfair labor practice as mere contracting out of services being performed by union members does not per se amount to unfair labor practice unless it interferes with the employees' right to self-organization. The Court of Appeals further held that ETPI's officers cannot be held liable absent a showing of bad faith or malice. However, the Court of Appeals found that ETPI failed to observe the standards of due process as required by our laws when it failed to properly notify both Culili and the DOLE of Culili's termination. The Court of Appeals maintained its position in its September 13, 2004 Resolution when it denied Culili's Motion for Reconsideration and Urgent Motion to Reinstate the Writ of Execution issued by the Labor Arbiter, and ETPI's Motion for Partial Reconsideration.

Culili is now before this Court praying for the reversal of the Court of Appeals' decision and the reinstatement of the NLRC's decision based on the following grounds:

I

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE APPLICABLE LAW AND JURISPRUDENCE WHEN IT REVERSED THE DECISIONS OF THE NLRC AND THE LABOR ARBITER HOLDING THE DISMISSAL OF PETITIONER ILLEGAL IN THAT:

- CONTRARY TO THE FINDINGS OF THE COURT OF APPEALS, RESPONDENTS' CHARACTERIZATION OF PETITIONER'S POSITION AS REDUNDANT WAS TAINTED BY BAD FAITH.
- THERE WAS NO ADEQUATE JUSTIFICATION TO DECLARE PETITIONER'S POSITION AS REDUNDANT.

II

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW

AND JURISPRUDENCE IN FINDING THAT NO UNFAIR LABOR PRACTICE ACTS WERE COMMITTED AGAINST THE PETITIONER.

III

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN DELETING THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PETITIONER AND IN DISSOLVING THE WRIT OF EXECUTION DATED 8 SEPTEMBER 2003 ISSUED BY THE LABOR ARBITER.

IV

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN ABSOLVING THE INDIVIDUAL RESPONDENTS OF PERSONAL LIABILITY.

V

CONTRARY TO APPLICABLE LAW AND JURISPRUDENCE, THE COURT OF APPEALS, IN A CERTIORARI PROCEEDING, REVIEWED THE FACTUAL FINDINGS OF THE NLRC WHICH AFFIRMED THAT OF THE LABOR ARBITER AND, THEREAFTER, ISSUED A WRIT OF CERTIORARI REVERSING THE DECISIONS OF THE NLRC AND THE LABOR ARBITER EVEN IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.[31]

Procedural Issue: Court of Appeals'

Power to Review Facts in a Petition

For Certiorari under Rule 65

Culili argued that the Court of Appeals acted in contravention of applicable law and jurisprudence when it reexamined the facts in this case and reversed the factual findings of the Labor Arbiter and the NLRC in a special civil action for certiorari.

This Court has already confirmed the power of the Court of Appeals, even on a Petition for Certiorari under Rule 65,[32] to review the evidence on record, when necessary, to resolve factual issues:

The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for Certiorari has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*. This Court held that the proper vehicle for such review was a Special Civil Action for Certiorari under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980), the Court of Appeals -- pursuant to the exercise of its original jurisdiction over Petitions for Certiorari -- is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[33]

While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed[34] or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.[35]

In the case at bench, the Court of Appeals found itself unable to completely sustain the findings of the NLRC

thus, it was compelled to review the facts and evidence and not limit itself to the issue of grave abuse of discretion.

With the conflicting findings of facts by the tribunals below now before us, it behooves this Court to make an independent evaluation of the facts in this case.

Main Issue: Legality of Dismissal

Culili asserted that he was illegally dismissed because there was no valid cause to terminate his employment. He claimed that ETPI failed to prove that his position had become redundant and that ETPI was indeed incurring losses. Culili further alleged that his functions as a Senior Technician could not be considered a superfluity because his tasks were crucial and critical to ETPI's business.

Under our laws, an employee may be terminated for reasons involving measures taken by the employer due to business necessities. Article 283 of the Labor Code provides:

Art. 283. 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 Department 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 closures 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 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.

There is redundancy when the service capability of the workforce is greater than what is reasonably required to meet the demands of the business enterprise. A position becomes redundant when it is rendered superfluous by any number of factors such as over-hiring of workers, decrease in volume of business, or dropping a particular product line or service activity previously manufactured or undertaken by the enterprise.[36]

This Court has been consistent in holding that the determination of whether or not an employee's services are still needed or sustainable properly belongs to the employer. Provided there is no violation of law or a showing that the employer was prompted by an arbitrary or malicious act, the soundness or wisdom of this exercise of business judgment is not subject to the discretionary review of the Labor Arbiter and the NLRC.[37]

However, an employer cannot simply declare that it has become overmanned and dismiss its employees without producing adequate proof to sustain its claim of redundancy.[38] 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,[39] such as but not limited to: preferred status, efficiency, and seniority.[40]

This Court also held that the following evidence may be proffered to substantiate redundancy: the new staffing pattern, feasibility studies/ proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring.[41]

In the case at bar, ETPI was upfront with its employees about its plan to implement a Right-Sizing Program. Even in the face of initial opposition from and rejection of the said program by ETEU, ETPI patiently negotiated with ETEU's officers to make them understand ETPI's business dilemma and its need to reduce its workforce and

streamline its organization. This evidently rules out bad faith on the part of ETPI.

In deciding which positions to retain and which to abolish, ETPI chose on the basis of efficiency, economy, versatility and flexibility. It needed to reduce its workforce to a sustainable level while maintaining functions necessary to keep it operating. The records show that ETPI had sufficiently established not only its need to reduce its workforce and streamline its organization, but also the existence of redundancy in the position of a Senior Technician. ETPI explained how it failed to meet its business targets and the factors that caused this, and how this necessitated it to reduce its workforce and streamline its organization. ETPI also submitted its old and new tables of organization and sufficiently described how limited the functions of the abolished position of a Senior Technician were and how it decided on whom to absorb these functions.

In his affidavit dated April 10, 2000,[42] Mr. Arnel D. Reyel, the Head of both the Business Services Department and the Finance Department of ETPI, described how ETPI went about in reorganizing its departments. Mr. Reyel said that in the course of ETPI's reorganization, new departments were created, some were transferred, and two were abolished. Among the departments abolished was the Service Quality Department. Mr. Reyel said that ETPI felt that the functions of the Service Quality Department, which catered to both corporate and small and medium-sized clients, overlapped and were too large for a single department, thus, the functions of this department were split and simplified into two smaller but more focused and efficient departments. In arriving at the decision to abolish the position of Senior Technician, Mr. Reyel explained:

11.3. Thus, in accordance with the reorganization of the different departments of ETPI, the Service Quality Department was abolished and its functions were absorbed by the Business and Consumer Accounts Department and the Corporate and Major Accounts Department.

11.4. With the abolition and resulting simplification of the Service Quality Department, one of the units thereunder, the Customer Premises Equipment Maintenance ("CPEM") unit was transferred to the Business and Consumer Accounts Department. Since the Business and Consumer Accounts Department had to remain economical and focused yet versatile enough to meet all the needs of its small and medium sized clients, it was decided that, in the judgment of ETPI management, the specialized functions of a Senior Technician in the CPEM unit whose sole function was essentially the repair and servicing of ETPI's telecommunications equipment was no longer needed since the Business and Consumer [Accounts] Department had to remain economical and focused yet versatile enough to meet all the multifarious needs of its small and medium sized clients.

11.5. The business reason for the abolition of the position of Senior Technician was because in ETPI's judgment, what was needed in the Business and Consumer Accounts Department was a versatile, yet economical position with functions which were not limited to the mere repair and servicing of telecommunications equipment. It was determined that what was called for was a position that could also perform varying functions such as the actual installation of telecommunications products for medium and small scale clients, handle telecommunications equipment inventory monitoring, evaluation of telecommunications equipment purchased and the preparation of reports on the daily and monthly activation of telecommunications equipment by these small and medium scale clients.

11.6. Thus, for the foregoing reasons, ETPI decided that the position of Senior Technician was to be abolished due to redundancy. The functions of a Senior Technician was to be abolished due to redundancy. The functions of a Senior Technician would then be absorbed by an employee assigned to the Business and Consumer Accounts Department who was already performing the functions of actual installation of telecommunications products in the field and handling telecommunications equipment inventory monitoring, evaluation of telecommunications equipment purchased and the preparation of reports on the daily and monthly activation of telecommunications equipment. This employee would then simply add to his many other functions the duty of repairing and servicing telecommunications equipment which had been previously performed by a Senior

Technician.[43]

In the new table of organization that the management approved, one hundred twelve (112) employees were redeployed and nine (9) positions were declared redundant.[44] It is inconceivable that ETPI would effect a company-wide reorganization of this scale for the mere purpose of singling out Culili and terminating him. If Culili's position were indeed indispensable to ETPI, then it would be absurd for ETPI, which was then trying to save its operations, to abolish that one position which it needed the most. Contrary to Culili's assertions that ETPI could not do away with his functions as long as it is in the telecommunications industry, ETPI did not abolish the functions performed by Culili as a Senior Technician. What ETPI did was to abolish the position itself for being too specialized and limited. The functions of that position were then added to another employee whose functions were broad enough to absorb the tasks of a Senior Technician.

Culili maintains that ETPI had already decided to dismiss him even before the second phase of the Right-Sizing Program was implemented as evidenced by the December 7, 1998 letter.

The December 7, 1998 termination letter signed by ETPI's AVP Stella Garcia hardly suffices to prove bad faith on the part of the company. The fact remains that the said letter was never officially transmitted and Culili was not terminated at the end of the first phase of ETPI's Right-Sizing Program. ETPI had given an adequate explanation for the existence of the letter and considering that it had been transparent with its employees, through their union ETEU, so much so that ETPI even gave ETEU this unofficial letter, there is no reason to speculate and attach malice to such act. That Culili would be subsequently terminated during the second phase of the Right-Sizing Program is not evidence of undue discrimination or "singling out" since not only Culili's position, but his entire unit was abolished and absorbed by another department.

#### Unfair Labor Practice

Culili also alleged that ETPI is guilty of unfair labor practice for violating Article 248(c) and (e) of the Labor Code, to wit:

Art. 248. Unfair labor practices of employers. - It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x

c. To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;

x x x x

e. To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent.

Culili asserted that ETPI is guilty of unfair labor practice because his functions were sourced out to labor-only contractors and he was discriminated against when his co-employees were treated differently when they were

each offered an additional motorcycle to induce them to avail of the Special Retirement Program. ETPI denied hiring outside contractors and averred that the motorcycles were not given to his co-employees but were purchased by them pursuant to their Collective Bargaining Agreement, which allowed a retiring employee to purchase the motorcycle he was assigned during his employment.

The concept of unfair labor practice is provided in Article 247 of the Labor Code which states:

Article 247. Concept of unfair labor practice and procedure for prosecution thereof. ----- Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interest of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

In the past, we have ruled that "unfair labor practice refers to `acts that violate the workers' right to organize.' The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA." [45] We have likewise declared that "there should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization." [46] Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. [47]

There is no showing that ETPI, in implementing its Right-Sizing Program, was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize. In fact, ETPI negotiated and consulted with ETEU before implementing its Right-Sizing Program.

Both the Labor Arbiter and the NLRC found ETPI guilty of unfair labor practice because of its failure to dispute Culili's allegations.

According to jurisprudence, "basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same." [48] By imputing bad faith to the actuations of ETPI, Culili has the burden of proof to present substantial evidence to support the allegation of unfair labor practice. Culili failed to discharge this burden and his bare allegations deserve no credit.

#### Observance of Procedural Due Process

Although the Court finds Culili's dismissal was for a lawful cause and not an act of unfair labor practice, ETPI, however, was remiss in its duty to observe procedural due process in effecting the termination of Culili.

We have previously held that "there are two aspects which characterize the concept of due process under the Labor Code: one is substantive -- whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural -- the manner in which the dismissal was effected." [49]

Section 2(d), Rule I, Book VI of the Rules Implementing the Labor Code provides:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

x x x x

For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination.

In *Mayon Hotel & Restaurant v. Adana*,<sup>[50]</sup> we observed:

The requirement of law mandating the giving of notices was intended not only to enable the employees to look for another employment and therefore ease the impact of the loss of their jobs and the corresponding income, but more importantly, to give the Department of Labor and Employment (DOLE) the opportunity to ascertain the verity of the alleged authorized cause of termination.<sup>[51]</sup>

ETPI does not deny its failure to provide DOLE with a written notice regarding Culili's termination. It, however, insists that it has complied with the requirement to serve a written notice to Culili as evidenced by his admission of having received it and forwarding it to his union president.

In *Serrano v. National Labor Relations Commission*,<sup>[52]</sup> we noted that "a job is more than the salary that it carries." There is a psychological effect or a stigma in immediately finding one's self laid off from work.<sup>[53]</sup> This is exactly why our labor laws have provided for mandating procedural due process clauses. Our laws, while recognizing the right of employers to terminate employees it cannot sustain, also recognize the employee's right to be properly informed of the impending severance of his ties with the company he is working for. In the case at bar, ETPI, in effecting Culili's termination, simply asked one of its guards to serve the required written notice on Culili. Culili, on one hand, claims in his petition that this was handed to him by ETPI's vice president, but previously testified before the Labor Arbiter that this was left on his table.<sup>[54]</sup> Regardless of how this notice was served on Culili, this Court believes that ETPI failed to properly notify Culili about his termination. Aside from the manner the written notice was served, a reading of that notice shows that ETPI failed to properly inform Culili of the grounds for his termination.

The Court of Appeals, in finding that Culili was not afforded procedural due process, held that Culili's dismissal was ineffectual, and required ETPI to pay Culili full backwages in accordance with our decision in *Serrano v. National Labor Relations Commission*.<sup>[55]</sup> Over the years, this Court has had the opportunity to reexamine the sanctions imposed upon employers who fail to comply with the procedural due process requirements in terminating its employees. In *Agabon v. National Labor Relations Commission*,<sup>[56]</sup> this Court reverted back to the doctrine in *Wenphil Corporation v. National Labor Relations Commission*<sup>[57]</sup> and held that where the dismissal is due to a just or authorized cause, but without observance of the due process requirements, the dismissal may be upheld but the employer must pay an indemnity to the employee. The sanctions to be imposed however, must be stiffer than those imposed in *Wenphil* to achieve a result fair to both the employers and the employees.<sup>[58]</sup>

In *Jaka Food Processing Corporation v. Pacot*,<sup>[59]</sup> this Court, taking a cue from *Agabon*, held that since there is a clear-cut distinction between a dismissal due to a just cause and a dismissal due to an authorized cause, the legal implications for employers who fail to comply with the notice requirements must also be treated differently:

Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.<sup>[60]</sup>

Hence, since it has been established that Culili's termination was due to an authorized cause and cannot be considered unfair labor practice on the part of ETPI, his dismissal is valid. However, in view of ETPI's failure to comply with the notice requirements under the Labor Code, Culili is entitled to nominal damages in addition to his separation pay.

## Personal Liability of ETPI's Officers And Award of Damages

Culili asserts that the individual respondents, Salvador Hizon, Emiliano Jurado, Virgilio Garcia, and Stella Garcia, as ETPI's officers, should be held personally liable for the acts of ETPI which were tainted with bad faith and arbitrariness. Furthermore, Culili insists that he is entitled to damages because of the sufferings he had to endure and the malicious manner he was terminated.

As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. To pierce this fictional veil, it must be shown that the corporate personality was used to perpetuate fraud or an illegal act, or to evade an existing obligation, or to confuse a legitimate issue. In illegal dismissal cases, corporate officers may be held solidarily liable with the corporation if the termination was done with malice or bad faith. [61]

In illegal dismissal cases, moral damages are awarded only where the dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[62] Exemplary damages may avail if the dismissal was effected in a wanton, oppressive or malevolent manner to warrant an award for exemplary damages.[63]

It is our considered view that Culili has failed to prove that his dismissal was orchestrated by the individual respondents herein for the mere purpose of getting rid of him. In fact, most of them have not even dealt with Culili personally. Moreover, it has been established that his termination was for an authorized cause, and that there was no bad faith on the part of ETPI in implementing its Right-Sizing Program, which involved abolishing certain positions and departments for redundancy. It is not enough that ETPI failed to comply with the due process requirements to warrant an award of damages, there being no showing that the company's and its officers' acts were attended with bad faith or were done oppressively.

WHEREFORE, the instant petition is DENIED and the assailed February 5, 2004 Decision and September 13, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 75001 are AFFIRMED with the MODIFICATION that petitioner Nelson A. Culili's dismissal is declared valid but respondent Eastern Telecommunications Philippines, Inc. is ordered to pay petitioner Nelson A. Culili the amount of Fifty Thousand Pesos (P50,000.00) representing nominal damages for non-compliance with statutory due process, in addition to the mandatory separation pay required under Article 283 of the Labor Code.

### **SO ORDERED.**

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 59-76; penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Perlita J. Tria Tirona and Rosalinda Asuncion-Vicente, concurring.

[3] Id. at 78-81.

[4] Id. at 611-624; penned by Commissioner Alberto R. Quimpo with Presiding Commissioner Roy V. Seneres and Commissioner Vicente S.E. Veloso, concurring.

[5] Id. at 656.

- [6] Id. at 472-487; penned by Labor Arbiter Luis D. Flores.
- [7] Id. at 976.
- [8] Id. at 255.
- [9] Id. at 976.
- [10] Id. at 165-166.
- [11] Id. at 979.
- [12] Id. at 102.
- [13] Id. at 104.
- [14] Id. at 169.
- [15] Id. at 980.
- [16] Id. at 980-981.
- [17] Id. at 981-982.
- [18] Id. at 16.
- [19] Id. at 260.
- [20] Id. at 259.
- [21] Id. at 16-17.
- [22] Id. at 21-40.
- [23] Id. at 105-115.
- [24] Id. at 175.
- [25] CA rollo, Vol. I, pp. 185-186.
- [26] Rollo, pp. 114-115.
- [27] Id. at 101-105.
- [28] Id. at 485-488.
- [29] Id. at 623-624.
- [30] Id. at 75.
- [31] Id. at 19-20.
- [32] 1997 Rules of Civil Procedure.
- [33] PICOP Resources, Inc. v. Tañeca, G.R. No. 160828, August 9, 2010.
- [34] Alcazaren v. Univet Agricultural Products, Inc., G.R. No. 149628, November 22, 2005, 475 SCRA 626, 650.
- [35] R & E Transport, Inc. v. Latag, 467 Phil. 355, 364-365 (2004).
- [36] Soriano, Jr. v. National Labor Relations Commission, G.R. No. 165594, April 23, 2007, 521 SCRA 526, 543.

- [37] *Asufrin, Jr. v. San Miguel Corporation*, 469 Phil. 237, 244 (2004).
- [38] *Id.* at 244-245.
- [39] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 264.
- [40] *Panlilio v. National Labor Relations Commission*, 346 Phil. 30, 35 (1997).
- [41] *AMA Computer College, Inc. v. Garcia*, *supra* note 39 at 264-265.
- [42] *Rollo*, pp. 145-162.
- [43] *Id.* at 159-161.
- [44] *Id.* at 171.
- [45] *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, Inc.*, G.R. No. 162025, August 3, 2010.
- [46] *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, 362 Phil. 452, 464 (1999).
- [47] *Id.*
- [48] *Central Azucarera De Bais Employees Union-NFL [CABEU-NFL] v. Central Azucarera De Bais, Inc. [CAB]*, G.R. No. 186605, November 17, 2010.
- [49] *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010.
- [50] 497 Phil. 892 (2005).
- [51] *Id.* at 921.
- [52] 387 Phil. 345 (2000).
- [53] *Id.* at 354.
- [54] *CA rollo*, Vol. II, p. 867.
- [55] *Supra* note 52.
- [56] G.R. No. 158693, November 17, 2004, 442 SCRA 573.
- [57] 252 Phil. 73 (1989).
- [58] *Agabon v. National Labor Relations Commission*, *supra* note 56.
- [59] 494 Phil. 114 (2005).
- [60] *Id.* at 121.
- [61] *Bogo Medellin Sugarcane Planters Association, Inc. v. National Labor Relations Commission*, 357 Phil. 110, 127 (1998).
- [62] *Ford Philippines, Inc. v. Court of Appeals*, 335 Phil. 1, 10-11 (1997).
- [63] *Maquiling v. Philippine Tuberculosis Society, Inc.*, 491 Phil. 43, 61 (2005).

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