

**MIRIAM B. ELLECCION VDA. DE LECCIONES, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, NNA PHILIPPINES CO.,
INC. AND MS. KIMI KIMURA, RESPONDENTS.**

G.R. No. 184735. September 17, 2009

Ponente: BRION, J.

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BRION, J.:

We resolve the motion for reconsideration[1] of our Resolution[2] dated December 8, 2008 denying the petition for review on certiorari[3] filed on November 10, 2004 by petitioner Miriam B. Elleccion Vda. de Lecciones.

The case arose on November 8, 2002 when the petitioner filed a complaint[4] for illegal dismissal with several money claims against the NNA Philippines Co., Inc. (respondent). The respondent, a research and translation service company with less than ten (10) employees, is a wholly-owned subsidiary of NNA Japan Co., Ltd.[5] (NNA Japan).

The respondent employed the petitioner on August 1, 1997, and she held various positions in the company, the latest of which as Administrator.[6] Additionally, she served as Corporate Secretary until July 3, 2002. She alleged that she usually worked from 9:00 a.m. to 10:00 p.m. - 12:00 midnight and sometimes even until 2:00 a.m. or 9:00 a.m.[7] She claimed that the respondent promised to compensate her for extra hours, as well as for doing tasks other than that what she was contracted for.

On May 17, 2002, the Board of Directors of NNA Japan decided to streamline the operations of its subsidiaries including the respondent, and thus issued a memorandum directing the respondent to transfer the corporate secretary's functions to the external counsel. The memorandum also gave management the discretion to determine which positions should be declared redundant.[8]

On July 4, 2002, the respondent's Board of Directors held an organizational meeting where the petitioner was not re-elected as corporate secretary. The board also directed the respondent's President at the time, Ms. Kimi Kimura (Kimura), to reorganize the corporation and abolish any redundant position.[9]

On October 17, 2002, the petitioner received a notice of termination of employment on the ground that her position as Administrator had been declared redundant.[10] On the same day, the respondent filed a report of the petitioner's separation from service with the Office of the Department of Labor and Employment in the National Capital Region (DOLE-NCR).[11]

On November 15, 2002, the respondent issued the petitioner a memorandum advising her of the release of checks in her favor representing her salary and accrued benefits including her separation pay.[12] On the same day, she accepted the checks for her last salary (P23,097.13); 13[th] month pay (P46,084.00); unused leave credits for seven (7) days (P8,028.10); year-end tax refund (P803.24); and reimbursement of advances made to the company (P71,197.05). She refused to accept the check representing her separation pay in the amount of P244, 182.07 (based on her salary and allowances).[13]

On January 16, 2004, Labor Arbiter Aliman D. Mangandog dismissed the complaint for lack of merit, but ordered the respondent to pay the petitioner separation pay computed at one (1) month's salary for every year of service.[14] The petitioner appealed the decision to the National Labor Relations Commission (NLRC).

In a decision promulgated on May 15, 2006,[15] the NLRC affirmed the petitioner's separation from the service; modified the monetary benefits awarded to her; and affirmed the Arbiter's denial of the petitioner's claim for additional compensation as corporate secretary on the ground that it was an intra-corporate matter. In addition to the separation pay of P244,182.07, the NLRC ordered the petitioner reimbursement of cash advances made by the petitioner to the company amounting to P248,712.72.

The petitioner moved for a partial reconsideration of the NLRC decision, but the NLRC denied the motion on June 30, 2006.[16] The petitioner then elevated the case to the Court of Appeals (CA) through a petition for certiorari under Rule 65 of the Rules of Court.

In its decision of August 28, 2008,[17] the CA denied the petition. The appellate court held that "the decision was rendered on the basis of credible evidence and existing law. Petitioner was validly terminated from employment." The CA set aside the NLRC's ruling that the petitioner's money claims involved an intra-corporate matter which was outside of its jurisdiction. It held that the labor tribunals had jurisdiction over the claim since it was made by the petitioner as an employee, not as a corporate officer. Nonetheless, the CA denied her claim for overtime pay on the main ground that, as a managerial employee, she is not entitled to overtime pay under the law and the rules.[18]

The petitioner moved for reconsideration of the CA's decision, but was denied through a resolution issued on September 26, 2008.[19] The petitioner appealed to this Court on November 10, 2008 pursuant to Rule 45 of the Rules of Court.[20]

In a Resolution dated December 8, 2008,[21] we denied the petition "for failure to sufficiently show any reversible error in the questioned judgment"; there was "failure [by] petitioner to show any cogent reason why the actions of the Labor Arbiter, the NLRC and the CA, which have passed upon the same issue, should be reversed. The petitioner failed to show that their findings are not based on substantial evidence, or that their decisions are contrary to applicable law and jurisprudence."

On February 17, 2009, the petitioner moved for reconsideration[22] of the Court's ruling, contending that: (1) the dismissal of an employee on the ground of the redundancy based on mere allegation and without supporting evidence is invalid; (2) the assailed decisions run counter to rulings of the Court that "failure to appraise the employee of a fair and reasonable criteria is a violation of due process," and; (3) the respondent terminated the employment of the petitioner not for any authorized cause but with evident malice and bad faith.

In view of the motion for reconsideration, the Court required the respondent to file a comment,[23] which it did on June 1, 2009. The respondent, along with its co-respondent Kimura, prays for the denial of the motion for its failure to raise new arguments or compelling reasons to warrant a reversal of the Court's resolution.

We deny the motion for reconsideration.

The arguments raised by the petitioner are not materially different from those she presented in the compulsory arbitration and before the CA. Nonetheless, we again carefully examined the parties' submissions, and we are convinced that the rulings sought to be overturned are supported by substantial evidence and are not contrary to law and applicable jurisprudence, as we stressed in our Resolution of December 8, 2008.

The separation of the petitioner by reason of redundancy was supported by the evidence on record. She was

separated from the service after the respondent's reorganization where her position as Administrator was declared redundant. She was served notice within the statutory period of thirty (30) days and so was the DOLE-NCR. The petitioner was assured of all the benefits under the law.

The petitioner imputes bad faith and malice on the respondent in declaring her position as Administrator redundant, but failed to present convincing proof that the respondent abused its prerogative in terminating her employment or that it was motivated by ill-will in doing so. It was a business decision arrived at in the face of financial losses being suffered by the company at the time.[24]

As aptly cited by the CA:

The general rule is that the characterization by an employer of an employee's services as no longer necessary or sustainable is an exercise of business judgment on the part of the employer. The wisdom or soundness of such a characterization or decision is not, as a general rule, subject to discretionary review on the part of the Labor Arbiter, the NLRC and the CA. Such characterization may, however, be rejected if the same is found to be in violation of the law or is arbitrary or malicious.[25]

We find no violations of law in the respondent's actions against the petitioner, nor was the respondent arbitrary or influenced by malice in terminating the petitioner's employment for redundancy. This ground for termination is a legitimate exercise of management prerogative unless attended to by arbitrariness or by the failure to follow statutory requirements. No arbitrariness or any violations took place in the present case.

On the petitioner's claim for overtime pay, the CA correctly took cognizance of the issue, since this was raised by the petitioner in her capacity as an employee, not as a corporate officer. At the same time, we affirm the CA's denial of the claim, as the petitioner was a managerial employee who is not entitled to such pay.

Finally, as the CA did, we find no basis for the petitioner's claim for moral damages and attorney's fees.

WHEREFORE, premises considered, we hereby DENY the petitioner's motion for reconsideration for lack of substantial arguments to warrant a reconsideration of our ruling of December 8, 2008. This denial is immediately final, and we shall not entertain any further pleadings. Let entry of judgment be made in due course.

SO ORDERED.

[**]Carpio-Morales, (Acting Chairperson), [*]Ynares-Santiago, Del Castillo, and Abad, JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

[1] Rollo, pp. 87-100.

[2] Id., p. 85-86.

[3] Id., pp. 10-29.

[4] NLRC Records, p. 2.

[5] Id., p. 148.

[6] Id., p. 38.

[7] Id., pp. 57-87.

[8] Id., p. 46.

[9] Id., pp. 99-101.

[10] Id., p. 50.

[11] Id., pp. 47-49.

[12] Id., p. 106.

[13] Id., p. 107.

[14] Rollo, pp. 31-51.

[15] Id., pp. 52-62.

[16] Id., pp. 63-64.

[17] Id., pp. 65-84; penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Sesonando E. Villon.

[18] LABOR CODE, Article 82 and Implementing Rules, Book III, Rule I, Section 2 (C).

[19] Rollo, p. 30.

[20] Id., pp. 10-29.

[21] Supra note 2.

[22] Id., pp. 87-100.

[23] Id., pp. 113-132.

[24] Id., pp. 173-177; Audited Financial Statement for 2001-2002.

[25] Lopez Sugar Corporation v. Franco, G.R. No. 148195, May 16, 2005, 458 SCRA 515.

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