

NEC SYSTEM INTEGRATED CONSTRUCTION (NESIC) PHILS., INC., PETITIONER, VS. RALPH T. CRISOLOGO, RESPONDENT.

G.R. No. 201535. October 05, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This Petition for Review on Certiorari[1] seeks to nullify the November 18, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 108873 which annulled the November 11, 2008 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 043319-05, as well as the CA's April 12, 2012 Resolution[4] denying petitioner's Motion for Reconsideration[5] thereon.

Factual Antecedents

On May 3, 1993, respondent Ralph T. Crisologo was employed by petitioner NEC System Integrated Construction Phils., Inc. (NESIC), a Philippine corporation wholly owned by NEC System Integration & Construction, Ltd., of Japan (NESIC Japan), a business engaged in providing specialty and technical telecommunications services. He was assigned as Manager of petitioner's Communication Facilities Engineering Department.

Due to his exemplary work performance, respondent was promoted several times: as Deputy Manager of the Corporate Planning Office directly under the office of the President; as Department Manager for Transmission Systems; as Head of Data Communications Department; as Assistant Vice-President, and eventually as Vice-President, of the Information Network Group; and as Vice-President of the Production Engineering Group[6] - which is composed of the Telecommunications Group and the Information Network Group.[7]

Sometime in July 2001, respondent was appointed as Executive Senior Manager - Quality Control and Training,[8] with a gross monthly salary of P93,596.84 including allowances.[9] Although respondent was reluctant to accept the new position as this was a demotion from his position at that time as Vice-President, he nevertheless accepted the new position at the special request of then NESIC President Noriyuki Yamashita (Yamashita) in order to specifically train a certain Nakahata of Engineering and Operations Group for possible appointment as General Manager of NESIC Japan. In a July 3, 2001 Memorandum[10] to Yamashita, respondent voiced his reservations about being effectively demoted yet expressed his willingness to train Nakahata on condition that his salary "remain the same," and that he would still be Head of the line functions for the ISED, or the Integrated Systems Engineering Department (Production Engineering Group). Respondent also expressed the "hope" that the appointment is only temporary. Respondent's memorandum is phrased as follows:

Sir,

As per our initial verbal conversation concerning the above subject, I would like to state my concern[s] as follows:

a.) Although I feel bad about my position as long as my salary scale would remain the same this might be

acceptable.

b.) I am willing to train and assist Mr. Nakahata as General Manager so he would improve his skills and perform better when he would be ultimately be [sic] sent back to NESIC Japan.

c.) I would still be a line function as HEAD for ISED.[11]

d.) I just hope that this would be on a temporary basis.

Thanks for your continued support and trust in me.[12] (Emphasis supplied)

In his July 18, 2001 reply to respondent's July 3, 2001 memorandum, Yamashita thanked respondent for accepting his new position, acknowledged that respondent was "already a very good General [sic] Manager as Vice-President" and reiterated his special request to "train and assist Nakahata san [to] become [a] very good x x x GM." [13]

Although respondent assumed his position as Executive Senior Manager -Quality Control and Training as early as July 2001 - his formal appointment as such came out only on April 16, 2003, as shown in a Memorandum of even date issued by Yamashita.[14]

On July 7, 2003, NESIC Japan appointed Hideaki Amakawa (Amakawa) as petitioner's new President, thus replacing Yamashita, who retired.

On November 13, 2003, petitioner hired an outsider - Chester Genobaten (Genobaten) - as new Assistant General Manager for its Engineering and Operations Group. In the meantime, respondent ostensibly remained Executive Senior Manager - Quality Control and Training.

In an August 12, 2003 "Executive Order,"[15] Amakawa announced the implementation of cost-cutting measures, specifically terminating all project and contractual employees effective September 2003; reducing the number of vehicles rented by 50%; putting on hold purchases of office supplies, except those that were extremely necessary for the continued operations of the business; and reducing communications expenses by 30%. According to Amakawa, these measures "are the company's initial response to the need of a long-term cost reduction and increased profitability program to ensure future progress." [16]

In line with the above directive, the NESIC General Manager drafted a cost reduction plan,[17] which petitioner implemented. Thus, the employees' health care plan was downgraded two steps; office space was reduced; all company-issued mobile phones were retrieved; landline phones and telefaxes were reduced from seven to four; air and sea carrier preference was downgraded to those that offered cheaper fares; parking slots were reduced from nine to only four; the company Christmas party was cancelled; and the giving of year-end bonus was withheld. Other cost-cutting measures were deferred.[18]

Notwithstanding its cost-cutting measures, petitioner's financial statements[19] revealed a P25,814,677.00[20] net loss for the year ending December 31, 2003.

In a March 4, 2004 Memorandum,[21] the NESIC President announced its retrenchment program. On even date, petitioner notified the Department of Labor and Employment (DOLE) in writing of its retrenchment program and submitted an Establishment Termination Report, which included respondent as among the 17 employees it was terminating from employment.[22]

On March 5, 2004 petitioner sent respondent a termination letter via registered mail,[23] which could not be served personally as respondent was then absent. But on March 8, 2004, respondent personally received a copy of the letter when he reported for work. The letter reads in part:

x x x [W]e regret to inform you that the Company will undergo an organizational change that will involve the company-wide restructuring of work assignments and the abolition of certain positions from various departments. In this regard, it is also very unfortunate that you are among the employees that we have to let go and this shall take effect on April 5, 2004.

We would like you to understand that this move is brought about by the financial losses that we had in the previous year and the continued decrease in major projects. Although we have implemented cost reduction measures, these have not been substantial to keep the Company financially stable. Based on the latest sales forecasts and the trend in the currency fluctuations, the current Company situation is likely to continue in 2004. Thus, it is imperative that the Company implement drastic cost reduction measures to make its business viable in the coming year. It is for this reason that the Company has to reduce its existing headcount in order to significantly reduce operating costs.

The Company offers you the Separation Pay (non-taxable): 100% of the latest monthly basic salary for every year of service wherein any fraction of over six (6) months shall be considered as one (1) year. This is to be released on or before March 12, 2004.

You will be receiving the following as part of your Last Pay (net of accountabilities to the Company), on or before April 30, 2004:

- Salary (including overtime if applicable) and allowances for March 1 - April 5, 2004
- Conversion of Earned Leave Balances for CY2004 (Vacation Leave and Sick Leave)
- 13th month pay (computed at 3 months/12 months) and Tax Refund for CY2004[24]

In petitioner's own words, respondent was retrenched because -

upon evaluation of the company's organizational structure, [petitioner] found that the position of Executive Senior Manager - Quality Control and Training - was superfluous and in excess of the needs of the company. Since the position of Executive Senior Manager - Quality Control and Training is not a line position -[petitioner] determined that the line managers of [petitioner's] Engineering and Operations Group could review their own quality systems and processes, while [petitioner's] Support Group could handle the training of employees. As [respondent's] position was superfluous based on the foregoing findings, [petitioner found it necessary to abolish] the position of Executive Senior Manager - Quality Control and Training - as part of the company reorganization. At the same time, such abolition was in line with the Retrenchment Program's goal to prevent or reduce substantial business losses.[25]

On March 12, 2004, respondent received P1,002,065.24 representing his separation pay and other benefits up to March 5, 2004. He executed a Waiver and Quitclaim and a receipt for said amount.[26] However, on realizing that respondent received the termination letter only on March 8, 2004 but that his termination became effective on April 5, 2004, or less than the required one month from receipt of notice of termination, petitioner adjusted his effective date of termination to April 10, 2004.

Respondent sought reconsideration of petitioner's decision to retrench him, to no avail.[27]

On April 5, 2004, petitioner announced, among other things, that it hired Suzette Mendoza, Fredes Marie Lucas and Larry Balonsay as additional personnel to fill positions within the company.

On June 9, 2004, Genobaten was appointed General Manager of the Engineering and Operations Group.

Ruling of the Labor Arbiter

On April 12, 2004, respondent filed a Complaint[28] against petitioner and Amakawa for illegal dismissal and

recovery of backwages, allowances, benefits, moral and exemplary damages, and attorney's fees. This was docketed as NLRC Case No. 00-04-04652-04.

In his Position Paper[29] and Comment/Rejoinder,[30] respondent claimed that there was no basis for the petitioner's retrenchment program as the latter's claimed loss was not substantial and constituted merely 3.17% of its forecast revenue. He also asserted that the retrenchment program was an unjustified drastic measure adopted by Amakawa who was then not familiar with the peculiarities of the business, as he was only eight months into his tenure as President; besides, salary increases were implemented in April 2003, and a mid-year bonus was given in July of the same year - proof that petitioner was not in dire financial straits.[31] He contended that based on the company's 2004 annual budget[32] - prepared in February 2004 - petitioner was not suffering substantial losses. Respondent also alleged that despite his credentials, performance, loyalty, and years of service with petitioner, he was terminated, even as additional personnel were hired; that despite his qualifications and performance, petitioner bypassed him when it hired an outsider (Genobaten) to fill the position that he previously held, and to add insult to injury Genobaten was almost at once also appointed as General Manager. Moreover, respondent argued that petitioner's retrenchment program was not premised on fair and reasonable criteria, considering that he (respondent) was an exemplary senior management employee who had served the petitioner for more than 10 years; and that in dismissing him, petitioner and Amakawa acted in bad faith and in wanton disregard of the law.

In their joint Position Paper,[33] Reply,[34] and Rejoinder,[35] petitioner and Amakawa countered that they acted in accordance with law in effecting the retrenchment program. They maintained that petitioner's 2003 net loss of P25,814,677.00 was substantial; that the projected loss for 2004 would be even greater, amounting to P28,455,106.00, necessitating farther cost-cutting measures such as the retrenchment of personnel; that with retrenchment, projected 2004 losses would be reduced by at least P5,443,101.00; and that when it became apparent in August 2003[36] that petitioner was in a precarious financial situation, cost-cutting measures were immediately instituted, but proved to be insufficient a petitioner continued to suffer business reverses. They also averred that respondent's position - Executive Senior Manager - Quality Control and Training, which is responsible for the review of quality systems and processes within the Engineering and Operations Group - is superfluous because the line managers of the Engineering and Operations Group could conduct their own review of their quality systems and processes, while the Support Group could handle the training of employees. They maintained that no criteria were required in determining whether to retain or dismiss respondent since his position was unique and unlike any other within the company, given that there are no other employees occupying similar positions; that Genobaten's hiring was a valid exercise of petitioner's management prerogative, and petitioner was under no legal compulsion to appoint respondent to the position given to Genobaten; that additional personnel (in Suzette Mendoza and Fredes Marie Lucas) were hired precisely to augment petitioner's Marketing Department and neutralize decreasing sales, and thus reduce losses. They also pointed out that before termination, the required notices and documents were submitted to the DOLE, and respondent was given a termination letter. They stressed that respondent voluntarily accepted his separation pay and other benefits and executed a quitclaim and waiver for valuable consideration; that respondent was even given additional compensation for his extended employment up to April 10, 2004; that since respondent's retrenchment was legal, respondent is no longer entitled to his claims; and that Amakawa may not be held personally liable for respondent's claims, since Amakawa acted in good faith and within his authority as Company President. Thus, petitioner and Amakawa prayed that respondent's Complaint be dismissed.

On November 30, 2004, the Labor Arbiter rendered his Decision[37] dismissing respondent's Complaint for lack of merit, thus:

The sole issue for resolution in the instant case is: WHETHER XXX THE RETRENCHMENT MEASURE ADOPTED BY THE RESPONDENTS WHICH RESULTED TO [sic] THE TERMINATION OF THE COMPLAINANT WAS JUST AND VALID.

There are formidable obstacles to a finding against the validity of the retrenchment program implemented by the respondent company. The evidence on record amply supports this conclusion.

The duly audited Financial Statements for December 31, 2003 and 2002 and the Report of Independent Auditors of the Sycip Gorres Velayo and Co., clearly [indicate] that the respondent company suffered a net loss of Php25,814,677.00 in calendar year 2003 despite implementing cost reduction program for the second half of said year. Pursuant to the Memorandum issued by the President on August 12, 2003 x x x, the following measures composed the company's cost reduction plans, to wit:

"1. All Project/Contractual Employees shall be terminated effective September 2003. x x x

"2. Existing number [of] rented vehicles must be reduced by 50%. x x x

"3. Office supplies purchases will be put on hold except those that are extremely necessary in the operations of the company x x x.

"4. Communication expenses such as mobile phones must be reduced by 30%. x x x

Thus, in line with the cost reduction plan of the respondent company, various measures calculated to reduce operating expenses were undertaken x x x.

Despite the implementation of all the cost reduction measures, the respondent company still incurred business losses by the end of 2003. Respondents might not be faulted for taking the ultimate measure of retrenchment of workers.

The respondents justified the retrenchment of the complainant, as follows:

"15. Upon evaluation of the company's organization[al] structure, NPI's management found that the position of Executive Senior Manager - Quality Control and Training was superfluous and in excess of the needs of the company, xxx NPI determined that the line managers of NPI's Engineering and Operations Group could review their own quality systems and processes, while NPI's Support Group could handle the training of employees. As complainant's position was superfluous based on the foregoing findings, NPI's management [abolished it. S]uch abolition was in line with the Retrenchment Program's goal to prevent or reduce substantial business losses."

This Arbitration Branch finds merit in the respondents' arguments. The characterization of an employee's services as no longer necessary or sustainable, and therefore properly terminable, is an exercise of business judgment x x x. The wisdom or soundness of such characterization or decision is not subject to discretionary review on the part of Labor Arbiters [of] the NLRC provided of course, that violation of law on arbitrary or malicious action is not shown (Golden Thread Knitting vs. NLRC, G.R. No. 119157, March 11, 1999, citing Wiltshire File Co., Inc. vs. NLRC, G.R. No. 83349, 7 February 1991, 193 SCRA 655).

What militates strongly against the complainant's argument of illegal dismissal is that he executed a "Waiver and Quitclaim," which states:

"2. That in connection with my former employment with NPI, for valuable consideration in the amount of [PESOS:] ONE MILLION TWO THOUSAND SIXTY FIVE & 24/100 ONLY (Php1,002,065.24), by these presents, I hereby release, waive and forever discharge NPI, its officers, directors, representatives or employees from any action for sums of money or other obligations arising from my previous employment with NPI. I acknowledge that I have received all amounts that are now or in the future may be due from NPI. I

therefore undertake not to do any act prejudicial to the interest of NPI, its branches, or its projects here in the Philippines, or abroad arising from my previous employment."

Complainant as a senior managerial employee very well knew the implications and significance of said waiver and quitclaim. As a matter of fact, he did not dispute the validity and due execution of the said waiver and quitclaim. Moreover, this Arbitration Branch finds that complainant in the execution of the said waiver and quitclaim received a valuable consideration which is not considered unconscionable under the circumstances.

Finally, complainant's claim for service incentive leave pay may not be granted considering that complainant was a managerial employee and pursuant to Art. 82 of the Labor Code, he is excepted from the enjoyment of said benefit. Likewise, his claim for 13[th] month [pay] for 2004 has already been included in his final terminal pay.

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.[38]

Ruling of the National Labor Relations Commission

Respondent appealed to the NLRC,[39] thereat docketed as NLRC NCR CA No. 043319-05. On November 11, 2008, the NLRC handed down a Decision[40] containing the following pronouncement:

The main thrust of complainant's appeal is whether x x x he was validly dismissed on the ground of retrenchment to prevent losses.

It must be stressed that retrenchment is a management prerogative, a means to protect and preserve the employer's viability and ensure [its] survival. This Court [sic] has always respected this prerogative during trying times but there must be faithful compliance by management with the substantive and procedural requirements laid down by law and jurisprudence (Central Azucarera delaCarlotavs. NLRC, G.R. No. 100092, December 19, 1995).

The Labor Code, as amended, recognizes retrenchment as a mode of terminating an employment relationship. The Code provides as follows:

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 Ministry of Labor and Employment at least one (1) month before the intended date thereof. 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.

Under this provision, there are three basic requisites for a valid retrenchment. These are: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one month pay or at least one-half (1/2) month's pay for every year of service, whichever is higher.

It is undisputed in the instant case that the second requirement of written notice to the DOLE and the employees concerned at least a month before the retrenchment has been satisfactorily fulfilled by respondents x x x. What needs close examination is the first requirement, i.e. that the retrenchment is necessary to prevent losses and that

such losses are proven.

There are four standards of retrenchment that must be observed to comply with the law. First, the losses expected should be substantial and not merely de minimis. Second, the substantial loss apprehended must be reasonably imminent, as perceived objectively and in good faith by the employer. Third, because of the consequential nature of retrenchment, it must be reasonably necessary and likely to prevent the expected losses. Fourth, the alleged losses, if already incurred, must be proved by sufficient and convincing evidence x x x.

In his appeal, complainant avers that NPI's actual losses amounting to P25,814,677 cannot be considered substantial because NPI is such a big Japanese Multinational Company with an average yearly sales of over P300,000,000 and the incurred loss for CY 2003 of P25,814,677 is x x x a mere 9% of its revenue; that NPI's projected losses for 2004 were not reasonably imminent because NPI's Income Statement as of February of 2004 showed an expected loss for CY 2004 of P8,081,190; and that retrenchment was not valid because NPI even hired and regularized three personnels [sic] namely, Ms. Suzette Mendoza, Ms. Fredes Marie Lucas and Mr. Chester Genobaten.

We agree with the Labor Arbiter in his findings that respondents should not be faulted for taking the ultimate measure of retrenchment of workers. Records show that in line with the cost production [sic] plan of the respondents [sic] company, various measures calculated to reduce operating expenses were already undertaken xxx.

Moreover, it cannot be disputed that prior to complainant's dismissal, NPI actually suffered substantial losses in calendar year 2003 amounting to P25,814,677 as shown in the Financial Statements (December 31, 2003 and 2002) and Report of Independent Auditors prepared by Sycip Gorres Velayo and Co. x x x. We agree with the respondents that the said actual loss is substantial by any account and cannot be considered de minimis. It should also be noted that NPI's actual loss in 2003 constituted more than half of its P50,000,000.00 authorized capital stock x x x.

Further, the assertion by the complainant that NPI's projected losses for the year 2004 were not reasonably imminent deserves scant consideration. In fact, x x x the Financial Statements x x x and Report of Independent Auditors x x x reveals [sic] that NPI actually suffered P30,745,801 x x x.

If the Labor Code allows retrenchment in cases where the employer foresees imminent losses, then retrenchment is all the more justified when the employer has actually incurred substantial losses. In the case at bar, NPI did not only suffer losses of P25,814,677 in 2003. NPI also projected and, in fact, actually suffered losses of P30,745,801 in 2004.

Anent the allegation of complainant regarding the hiring of new employees by the respondents, the same is substantially justified by the respondents. Ms. Suzette Mendoza and Ms. Fredes Marie Lucas were respectively hired in September and October of 2003 in order to augment NPI's Marketing and Sales Department. On the other hand, Mr. Chester Genobaten who was allegedly hired as complainant's replacement was hired in November of 2003 as the successor of an Assistant General Manager who was scheduled to retire in December of 2003. When NPI re-hired Mr. Genobaten in November of 2003, complainant's Quality Control and Training position was not yet being considered for abolition x x x. NPI validly exercised management prerogative.

Be that as it may, We cannot ignore the fact that complainant signed a Waiver and Quitclaim. The Labor Arbiter is correct in stating that the complainant is bound by the Quitclaim he executed. Considering that he received a valuable consideration in the amount of P1,002,065.24; that he executed the said Quitclaim three days after he received a copy of his termination [notice], or after he had sufficient time to reflect on the validity of his

dismissal; that complainant is not an ordinary rank and file employee but occupying a managerial position, We cannot believe complainant's claim that he was made to sign the Waiver and Quitclaim under pressure. Undisputably [sic], it was voluntarily executed by the complainant. In *Periquet vs. NLRC*, 186 SCRA 724, the Supreme Court held that not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents reasonable settlement, it is binding on the parties and may not later be discarded simply because of a change of mind.

WHEREFORE, premises considered, the appeal of complainant is DISMISSED. Accordingly, the Decision of Labor Arbiter Jose G. De Vera dated November 30, 2004 is hereby AFFIRMED.

SO ORDERED.[41]

Respondent moved for reconsideration, but the NLRC stood its ground.[42]

Proceedings before the Court of Appeals

Via a Petition for Certiorari[43] before the CA, thereat docketed as CA-G.R. SP No. 108873, respondent assailed the above dispositions of the NLRC and prayed that the CA declare his dismissal by petitioner illegal and that petitioner be moreover ordered to pay him full backwages, and other benefits from the time of his dismissal up to his actual reinstatement, plus reasonable moral and exemplary damages as well as attorney's fees. Respondent insisted that petitioner did not suffer substantial losses that justified the implementation of a retrenchment program; that it was illegal and improper for petitioner to hire Genobaten and thereafter fire him (respondent), when he could have been the one appointed to the position filled by Genobaten since he was a senior employee who possessed the qualifications and experience required for the position; that worse, Genobaten was promoted just after he (respondent) was dismissed; that his dismissal had no basis other than petitioner's excuse of management prerogative; and that his quitclaim and waiver are ineffective and did not constitute estoppel.

In their Comment,[44] petitioner and Amakawa asked that the Petition be dismissed. They argued that the identical findings of the Labor Arbiter and the NLRC are binding and conclusive upon the appellate court; that the NLRC's Decision was not tainted with grave abuse of discretion; that the retrenchment program was valid; that when Genobaten was hired, respondent's position was not yet considered for abolition; that since respondent's position was "unique" and not a line position, no criteria for dismissing his services were required; that the quitclaim and waiver executed by respondent are valid and binding on him; and that respondent is not entitled to his money claims. They likewise asserted that respondent's Petition was defective as it did not contain adequate evidence of respondent's identity other than his community tax certificate.

In his Reply,[45] respondent attached photocopies of his driver's license[46] and his Social Security System (SSS) identification card.

On November 18, 2011, the CA rendered the assailed Decision granting the Petition, decreeing thus:

WHEREFORE, in view of the foregoing, the petition is GRANTED. The assailed Decision of the public respondent NLRC is hereby ANNULLED and SET ASIDE. In lieu thereof, a new one is rendered ordering private respondents as follows -

1. To pay petitioner full backwages x x x;
2. To pay petitioner separation pay in lieu of reinstatement, x x x with the corresponding deduction of whatever amount he had already received from private respondents as separation pay;
3. To pay petitioner his Salary (including overtime if applicable) and allowances for 01 March - 10 April 2004, the Conversion of Earned Leave Balances for CY2004 (Vacation Leave and Sick Leave), and 13th month pay

(for the covered period of CY2004) and Tax Refund for CY2004; and

4. To pay petitioner attorney's fees equivalent to ten percent (10%) of the total monetary award.

The other reliefs prayed for are denied for lack of merit.

x x x x

SO ORDERED.[47]

In reversing the Labor Arbiter and the NLRC, the CA essentially declared that while petitioner complied with four of the five requirements for a valid retrenchment — substantial losses, actual and imminent, were being suffered; written notices were duly sent to the employees and to the DOLE and for the required period; good faith attended the retrenchment; and respondent had been paid the corresponding separation pay and other benefits for retrenched employees - the last requirement, viz., that fair and reasonable criteria were used in ascertaining who would be dismissed and who would be retained, had not been observed. Thus, it held:

As for the fifth requirement listed above, private respondents[48] were not able to show x x x reasonable criteria as to why petitioner[49] was one of the seventeen (17) employees laid off. They merely stated that there was no need for them to adopt a set of criteria, as these [are applicable] only if the employer has to choose whom to terminate among several employees occupying similar positions.

We hold that private respondents failed to use fair and reasonable criteria in determining which employees shall be retrenched or retained. Private respondents have not explained why petitioner had to be laid off without considering his many years of service with private respondents - eleven (11) years. The fact that petitioner had been in private respondents' employ for so long a time indicates that he had been retained because of his loyal and efficient service. Moreover, there is no showing also that petitioner's job performance is below par. The absence of criteria in the selection of an employee to be dismissed renders the dismissal arbitrary.

Private respondents' allegation that petitioner's position was superfluous and in excess of the needs of the company should not be given any credit. There was no substantial evidence presented by private respondents to justify petitioner's dismissal due to redundancy. In private respondents' letter addressed to the DOLE, they mentioned "the company-wide restructuring which has, x x x, resulted in a reorganization of work assignments and the abolition of certain positions that are no longer needed in the new organizational set up" "in the face of losses in millions and continued decrease in major projects." In the letter addressed to petitioner, private respondents also alleged that "the Company will undergo an organizational change that will involve the company-wide restructuring of work assignments and the abolition of certain positions from various departments." These letters do not satisfy the requirement of substantial evidence, that is, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirement of the enterprise. It is the burden of private respondents, as employer, to prove the factual and legal basis for the dismissal of their employee, i.e., petitioner, on the ground of redundancy.

It is however not enough for a company to merely declare that positions have become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees. In *Panlilio v. NLRC*, the Supreme Court said 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." In another case, it was held that the company sufficiently established the fact of redundancy through "affidavits executed by the officers of the respondent [company], explaining the reasons and necessities for the implementation of the redundancy program."

The employer must comply with the following requisites to ensure the validity of the implementation of a

redundancy program: (1) a written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month (sic) pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished. In several instances, the Court has held that it is important for a company to have fair and reasonable criteria in implementing its redundancy program, such as but not limited to, (a) preferred status, (b) efficiency and (c) seniority. This[,] private respondents failed to do.

We find that private respondents failed to establish either redundancy or retrenchment. Hence, petitioner's termination from employment was illegal.

Finally, the Supreme Court, in the case of *Ariola vs. Philex Mining Corporation*, invalidated a retrenchment program for its improper implementation despite proof of financial losses, x x x

xxxx

Thus, from the foregoing, the NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in finding that the retrenchment of petitioner was valid.

Article 279 of the Labor Code pertinently provides:

Art. 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[50]

The CA held, nonetheless, that reinstatement could not be done, as respondent's position no longer existed after the restructuring; hence, the CA ordered that respondent be paid backwages and separation pay. The CA also ruled that respondent was also entitled to attorney's fees pursuant to Article 111 of the Labor Code[51] and Article 2208 of the Civil Code.[52]

Petitioner filed a motion for reconsideration, but the CA denied the same in its April 12, 2012 Resolution. Hence, the instant Petition.

In an April 3, 2013 Resolution,[53] this Court resolved to give due course to the Petition.

Issues

Before this Court, petitioner now raises the following issues for resolution:

I.

THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO, [AND] MORE SO IN GRANTING, THE PETITION FOR CERTIORARI NOTWITHSTANDING RESPONDENT'S DEFECTIVE VERIFICATION/ CERTIFICATION.

II.

THE COURT OF APPEALS ERRED IN GRANTING THE PETITION FOR CERTIORARI [AND IN REJECTING] THE FINDINGS OF FACT OF THE LABOR ARBITER AND THE NLRC.

III.

THE COURT OF APPEALS ERRED IN GRANTING THE PETITION FOR CERTIORARI DESPITE THE

ABSENCE OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE NLRC.

IV.

THE COURT OF APPEALS ERRED IN GRANTING THE PETITION FOR CERTIORARI [AND IN HOLDING] THAT PETITIONER FAILED TO COMPLY WITH THE REQUISITES OF A VALID TERMINATION ON THE GROUNDS OF RETRENCHMENT AND/OR REDUNDANCY.

- a. All the requisites of a valid termination on the grounds of retrenchment and/or redundancy are present.
- b. Petitioner complied with the 30-day notice rule.
- c. Respondent was terminated based on fair and reasonable criteria.
- d. Petitioner presented substantial evidence to prove redundancy.

V.

THE COURT OF APPEALS ERRED IN GRANTING THE PETITION FOR CERTIORARI NOTWITHSTANDING RESPONDENT'S EXECUTION OF A VALID QUITCLAIM AND WAIVER.

VI.

THE COURT OF APPEALS ERRED IN AWARDING RESPONDENT FULL BACKWAGES AND SEPARATION PAY.

VII.

THE COURT OF APPEALS ERRED IN AWARDING RESPONDENT ATTORNEY'S FEE'S.[54]

Petitioner's Arguments

In its Petition and Consolidated Reply and Comment,[55] petitioner argues that it was error for the CA to have entertained respondent's defective Petition for Certiorari as it did not show adequate evidence of his identity apart from his community tax certificate, in violation of the 2004 Rules on Notarial Practice;^[56] that respondent's belated submission to the CA of copies of his driver's license and SSS card did not cure the defective Petition; that the CA may not ignore the identical findings of the Labor Arbiter and the NLRC, which are final and binding upon it; that there was no grave abuse of discretion on the part of the NLRC; that its (petitioner's) retrenchment program was valid; that Genobaten was lawfully hired when respondent's position was still subsisting, and that Genobaten did not supplant respondent at all; that fair and reasonable criteria were observed in deciding to retrench respondent after it became apparent that his "unique" position and functions had become superfluous, unnecessary, and redundant, and could be absorbed by other departments within the company; that respondent's quitclaim/waiver was valid and binding, and bars respondent from recovering additional monetary benefits; and that since petitioner's retrenchment program was valid, and since respondent had freely and voluntarily executed a quitclaim/waiver and had already received the proper separation pay, respondent is therefore no longer entitled to backwages, damages and attorney's fees.

Respondent's Arguments

In a Motion to Dismiss Petition^[57] which this Court treated as his comment to the Petition,^[58] respondent counters that petitioner raised factual issues which are not proper in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure; and that the CA did not err in arriving at its conclusions. Aside from praying for the dismissal of the Petition, respondent asks that petitioner be required to post a bond to guarantee payment of his monetary claims.

Our Ruling

The Petition is meritorious.

We take the view that basic to and at the core of a just resolution of the instant controversy is the respondent's subscribing to the document/deed captioned "WAIVER AND QUITCLAIM SEPARATION PAY"[59] and his acceptance of the benefits thereunder. Dated March 12, 2004, this deed/document is now marked as Annex "J" and it reads:

That I, RALPH T. CRISOLOGO, of legal age, Filipino and with address at 100 AMR. U.P.C. VILL. T. SORA QC, on my own free will, and for valuable consideration, hereby declare and manifest:

1. That I have ceased to be employed at NESIC Philippines, Inc. (NPI) due to retrenchment resulting from reorganization at the close of business hours of April 5, 2004.
2. That in connection with my former employment with NPI, for valuable consideration in the amount of [PESOS:] ONE MILLION TWO THOUSAND SIXTY FIVE & 24/100 ONLY (Php 1,002,065.24), by these presents, I hereby release, waive and forever discharge NPI, its officers, directors, representatives or employees from any action for sums of money or other obligations arising from my previous employment with NPI. I acknowledge that I have received all amounts that are now or in the future may be due me from NPI. I therefore undertake not to do any act prejudicial to the interest of NPI, its branches, or its projects here in the Philippines or abroad arising from my previous employment.
3. That I acknowledge that I have no cause of action whatsoever, criminal, civil or otherwise against NPI, its officers, agents or representatives or project employees with respect to any matter arising from or cessation of my employment with NPI. I further warrant that I will institute no action and will not continue to prosecute, pending actions, if any against NPI, its officers, agents or representatives or project employees.

IN WITNESS WHEREOF, I have hereunto set my hand this 12 day of March, 2004 at Makati City.

(Signed)

RALPH T. CRISOLOGO

Employee's Signature over Printed Name[60]

(Emphases supplied)

Read as worded, respondent thereunder declared and manifested of his own free will and for valuable consideration"[61] -

- (1) That he ceased to be employed by the petitioner because of retrenchment resulting from reorganization, effective at the close of office hours of April 5, 2004;
- (2) That in connection with his former employment with petitioner, for valuable consideration to the tune of PESOS: ONE MILLION TWO THOUSAND SIXTY FIVE & 24/100 (P1,002,065.24) and because of his execution of this document he has released, waived and forever discharged petitioner, its officers, directors, representatives or employees from any action for sums of money or other obligations arising from his previous employment with petitioner; and that he indeed has acknowledged that he had received all amounts that are now or in the future may be due him from petitioner; hence, he promised "not to do any act prejudicial to the interest of [petitioner], its branches or its projects here in the Philippines or abroad arising from [his] my previous employment." [62]
- (3) What is more, respondent acknowledged that he has "no cause of action whatsoever, criminal, civil or otherwise against [petitioner], its officers, agents or representatives or project employees with respect to any matter arising from or cessation of [his] employment with [petitioner]." [63] Finally, he vowed that he "will

institute no action and will not continue to prosecute pending actions, if any, against [petitioner], its officers, agents or representatives or project employees."[64]

And, the consideration for all the foregoing: as shown in Annex "K,"[65] respondent acknowledged "receipt of RCBC MC No. 0000070301" representing payment of P1,002,065.24, on March 10, 2004.

After this, it appeared that additional blessings still came respondents' way. For on March 31, 2004 respondent received this letter[66] from Amakawa:

March 31, 2004

Mr. RALPH T. CRISOLOGO
100 Ambuklao Rd., NPC Village
Tandang Sora, Quezon City

Dear Mr. Crisologo,

We would like to inform you that we are adjusting the effectivity of your retrenchment to April 10, 2004 instead of April 5, 2004 in consideration of the actual receipt of the Original Copy of the Retrenchment Letter dated March 5, 2004 sent to your [residence] through registered mail on the same date and basing on the certification issued by the QC Central Post Office.

In addition to the Separation Pay you have received on March 12, 2004, you shall be receiving the following as part of your Last Pay (net of accountabilities to the Company), on or before April 30, 2004:

- Salary (including overtime if applicable) and allowances for March 1 - April 10, 2004
- Conversion of Earned Leave Balances for CY2004 (Vacation Leave and Sick Leave)
- 13th month pay (for the covered period of CY2004) and Tax Refund for CY 2004

Your Certificate of Employment shall be reflecting your service to the Company from your hiring date up to April 10, 2004.

Again, THANK YOU and we wish you luck in all your future endeavors.

Very sincerely,

(Signed)
HIDEAKI AMAKAWA
President[67]

Thus, it can hardly be doubted that from its end petitioner had dealt at arms length with respondent in the matter of duly compensating the latter for the services he had rendered the petitioner during the 11 years or so that he had been under its employ.

Turning now to the deed of waiver/quitclaim cum separation pay; prefatorily, what must not escape our notice and attention is the fact that what Annex "J" mentions is both a Waiver and a Quitclaim rolled into one. In other words, it is not only the one but also the other. More than that this waiver and quitclaim is supported by a valuable consideration; this valuable consideration being the separation pay itself in the amount of P1,002,065.24; and of course, it is no inconsequential matter that to this amount of P1,002,065.24 should be added the still-to-be computed "Last Pay" (net of accountabilities to the Company) spoken of in Annex "L," the March 31, 2004 letter of Amakawa to respondent.

The records of the case yield no evidence that respondent had ever been tricked or hoodwinked into affixing his

signature upon the said deed of waiver-quitclaim cum separation pay; indeed, respondent has not put forward any such claim. And if he did, it should suffice to point to Annex "6"[68] authored and accomplished by the respondent himself, wherein he attested to these facts -

- (1) He graduated from the University of the Philippines, Diliman, Quezon City with the college degree B.S. Electrical Engineering.
- (2) He pursued post-graduate studies at the same university and earned 30 units in his M.S. Industrial Engineering course, without, however submitting his thesis.
- (3) He did further post-graduate work at the Asian Institute of Management, graduating at the top of his class in the 70[th] Basic Management Program in February 1995.
- (4) He placed seventh highest (with a rating of 91.4%) in the Government Assistant Electrical Engineering Licensure Examination in May 1982.

These impressive credentials are of course ample proof of authentic high level academic achievement, indicative of a by-no-means middling or common place intellectual power. For this reason, this Court cannot accept respondent's claim that he did not thoroughly apprehend the full scope, thrust and import of the waiver-quitclaim cum separation pay that he freely, voluntarily and intelligently forged and fashioned with petitioner. The combination of all these circumstances thus repels the suggestion that respondent might not have fully or thoroughly grasped or understood the plain meaning, intent and significance of the deed/document to which he affixed his signature, and from the obvious and inevitable effects of which he now seeks to rid or extricate himself. That by his free and voluntary act and deed he chose or opted to deed away his patrimonial rights he has only himself to blame.

In *Periquet v. National Labor Relations Commission*, [69] this Court set the guidelines and doctrinal policy relative to waiver and quitclaim, thus -

Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. As in this case.

And in *Samaniego v. National Labor Relations Commission*, [70] this Court noted that therein petitioners were "not ordinary laborers or rank-and-file personnel who may not be able to completely comprehend and realize the consequences of their acts, x x x [that in fact, therein] petitioners are managerial employees holding responsible positions; and that moreover] they are educated individuals:" [71] basic considerations which impelled this Court into concluding that: "it can hardly be said that they were coerced into resigning from the company." [72]

Herein respondent's situation is not much different from therein petitioners' situation in the *Periquet* [73] and *Samaniego* [74] cases. To the same effect: *Mendoza, Jr. v. San Miguel Foods, Inc.* [75] *Sicangco v. National Labor Relations Commission* [76] *Casimiro v. Stern Real Estate, Inc.* [77] and *Sarocam Interorient Maritime Ent., Inc.* [78]

Under the same parity of reasoning, the case law rulings announced in the above-mentioned cases apply to the present case.

WHEREFORE, the Petition is hereby GRANTED. The November 18, 2011 Decision of the Court of Appeals in

CA-G.R. SP No. 108873 and its April 12, 2012 Resolution are hereby ANNULLED and SET ASIDE. The November 11, 2008 Decision of the National Labor Relations Commission in NLRC NCR CA No. 043319-05 is hereby REINSTATED.

SO ORDERED.

Brion,[*] Peralta,**]Leonen, and Jardeleza,[***] JJ., concur.

[*] Designated as Acting Chief Justice, per Special Order No. 2235 dated September 29, 2015; designated as Acting Chairperson, per Special Order No. 2222 dated September 29, 2015.

[**] Per Special Order No. 2223 dated September 29, 2015.

[***] Per Special Order No. 2246 dated October 5, 2015.

[1] Rollo, pp. 31-72.

[2] Id. at 74-91; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro.

[3] Id. at 146-152; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioner Perlita P. Velasco.

[4] Id. at 93-95.

[5] Id. at 96-120.

[6] Id. at 709.

[7] Id. at 679-684; 701-716, 724, 726-727.

[8] Id. at 681-682.

[9] Id. at 745-746.

[10] Id. at 712.

[11] Integrated Systems Engineering Department (Production Engineering Group).

[12] Rollo, p. 712.

[13] Id. at 711; presumably, Yamashita intended "GM" to mean "General Manager."

[14] Id. at 717.

[15] Id. at 282.

[16] Id.

[17] Id. at 283-284.

[18] Id. at 285-286.

[19] Id. at 287-304.

[20] Id. at 290.

[21] Id. at 305.

[22] Id. at 306-308.

[23] Id. at 309.

[24] Id.

[25] Id. at 256; also, at 37-38.

[26] Id. at 310-311.

[27] Id. at 128-129; 731-732.

[28] Id. at 249-250.

[29] Id. at 679-699.

[30] Id. at 829-853.

[31] Id. at 784, 786.

[32] Id. at 769-781.

[33] Id. at 251-276.

[34] Id. at 325-348.

[35] Id. at 390-419.

[36] Id. at 332.

[37] Id. at 424-430; penned by Labor Arbiter Jose G. de Vera.

[38] Id. at 427-430.

[39] Id. at 199-215; Memorandum of Appeal.

[40] Id. at 146-152.

[41] Id. at 148-152.

[42] Id. at 490-491; Resolution dated February 27, 2009.

[43] Id. at 121-145.

[44] Id. at 221-247.

[45] Id. at 492-506.

[46] Id. at 508.

[47] Id. at 89-91.

[48] Herein petitioner and Amakawa.

[49] Herein respondent.

[50] Rollo, pp. 82-86.

[51] ART. 111. Attorney's fees. - (a) In cases of unlawful withholding of wages, the culpable party may be

assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered

[52] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) hi criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) hi actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

[53] Rollo, pp. 1135-1136.

[54] Id. at 42-43.

[55] Id. at 1108-1126.

[56] Citing *Altres v. Empleo*, 594 Phil. 246 (2008).

[57] Rollo, pp. 967-981.

[58] Id. at 1026; Resolution dated October 10, 2012.

[59] Id. at 310.

[60] Id.

[61] Id.

[62] Id.

[63] Id.

[64] Id.

[65] Id. at 311.

[66] Id. at 312.

[67] Id.

[68] Entitled "Profile and Working Experience with NESIC Philippines, Inc., id. at 321-324.

[69] 264 Phil. 1115, 1122 (1990).

[70] G.R. No. 93059, June 3, 1991, 198 SCRA 111.

[71] Id. at 119.

[72] Id.

[73] Supra note 65.

[74] Supra note 66.

[75] 497 Phil. 945 (2005).

[76] G.R. No. 110261, August 4, 1994, 235 SCRA 96.

[77] 519 Phil. 438 (2006).

[78] 526 Phil 448 (2006).

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