

FEATI UNIVERSITY, PETITIONER, VS. ANTOLIN PANGAN, RESPONDENT.

G.R. No. 202851. September 09, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

This is a Petition for Review on Certiorari[1] under Rule 45, assailing the Decision[2] dated September 29, 2011 and Resolution[3] dated July 19, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 107499, which affirmed the Decision[4] dated June 30, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 047142-06 (NLRC NCR Case No. 00-08- 07502-05).

The Factual Antecedents

On September 17, 1970, FEATI University (petitioner) hired Antolin Pangan (respondent) as a canteen bookkeeper. Respondent was later on promoted as Assistant Cashier and then as University Cashier in 1995.[5]

Alleging decline in enrolment for the past 25 years, petitioner offered a voluntary early retirement program to all its employees on August 27, 2002. This, according to petitioner, was to ensure viability and to realign its budgetary deficiency.[6]

On even date, respondent availed of the early retirement program. On August 30, 2002, respondent's early retirement application was approved. On September 1, 2002, respondent received his retirement pay amounting to P93,140.04 and executed a Release and Quitclaim in favor of petitioner.[7]

Meanwhile, prior to the approval of respondent's application to avail of the early retirement program, respondent was re-hired as University Cashier on August 28, 2002. Alleging, however, that the functions of the University Cashier was subsequently transferred to the Accounting Department as part of the cost-cutting measures that petitioner undertook, petitioner re-assigned respondent as Assistant Program Coordinator of the Graduate Studies on April 15, 2004.[8]

On August 6, 2005, respondent was terminated from employment on the ground of redundancy. According to petitioner, respondent's position became redundant due to the progressive decline of enrolment in the Graduate Program and as such, the Graduate Program Coordinator can adequately handle the tasks without a need for an assistant.[9]

Aggrieved, respondent filed a complaint for illegal dismissal and other monetary claims against petitioner before the Labor Arbiter.

The Labor Arbiter's Ruling

The Labor Arbiter subscribed to petitioner's contention that the decline in its enrolment resulted to financial losses and to redundancy of some positions in the university. The Labor Arbiter found that due to the decline of enrollees, the Program Coordinator can adequately meet the needs of the students without a need for an assistant. Respondent's dismissal on the ground of redundancy was, thus, justified according to the Labor Arbiter.

The dispositive portion of the Labor Arbiter's Decision[10] dated November 30,2005, reads as follows:

WHEREFORE, premises considered, the above case for illegal dismissal is hereby DISMISSED for being devoid of legal merit.

[Petitioner] FEATI University, however, is directed to pay [respondent], as follows:

- 1.) Appropriate termination pay for [respondent's] separation from employment due to redundancy in the sum of [P]37,800.00.
- 2.) Proportionate 13[th] month pay (January to August 6, 2005) in the sum of [P]7,518.00.

SO ORDERED. [11]

The NLRC Decision

On appeal, the NLRC reversed and set aside the Labor Arbiter's Decision. While the NLRC found the allegations of decline in enrolment, financial losses, and the redundancy of respondent's position as Assistant Program Coordinator of petitioner's Graduate Studies substantiated, the NLRC found respondent's transfer to the said position to be "dubious to the extent of being anomalous." [12] The NLRC found it incredible for the petitioner to offer respondent an early retirement program and re-hire him for the same position two days before the approval of his early retirement. The NLRC opined that if respondent's services as University Cashier were indispensable as he was re-hired for the same position, petitioner should have simply not included respondent to those who availed of the early retirement program as a cost-cutting measure. [13]

The NLRC also found it baffling that respondent opted to avail of petitioner's early retirement program when what was offered was equivalent only to less than his quarter month's pay for every year of his 32 years of service at that time. [14]

Further, the NLRC found no explanation as to why during the period when petitioner's financial losses from school operations were increasing, it would create the position of an Assistant Program Coordinator in the Graduate School, for the sole purpose of transferring respondent from being the University Cashier. [15]

The NLRC concluded, thus, that respondent was illegally dismissed as petitioner did not fairly and equitably deal with respondent's severance from employment. [16]

Finding that reinstatement was no longer feasible as the position was already occupied by another, the NLRC ordered for the award of separation pay, computing the same at the rate of one month's salary for every year of service reckoned from September 17, 1970, [17] up to the finality of the decision, less the early retirement pay that respondent already received (P93,140.04). The NLRC also awarded backwages and benefits computed from the date of respondent's illegal dismissal on August 6, 2005, up to the finality of the decision. Attorney's fees were also awarded as respondent was compelled to litigate to protect his rights. [18]

The NLRC disposed, thus:

WHEREFORE, the appeal is GRANTED and the Decision of the Labor Arbiter dated 30 November 2005 is hereby REVERSED and SET ASIDE. In lieu thereof, a new order is issued declaring [respondent] to have been illegally dismissed by [petitioner] university. Accordingly, it is directed to pay [respondent] the following:

1. Additional separation pay computed at the rate of one (1) month salary for every year of service from 17 September 1990 (sic) up to the finality of this decision, which as of 30 April 2008 already amounted to [P]385,659.96;

2. Backwages and benefits computed from the date [respondent] was illegally dismissed on 06 August 2005 up to the finality of this decision, which as of 30 April 2008 already amounted to P (sic) [P]425,810.00; and

3. Attorney's fees in the amount of [P]50,000.00.

The 13th month pay in the amount of [P]7,518.00 awarded by the Labor Arbiter in the assailed Decision is AFFIRMED, there being no question as to its propriety.

SO ORDERED.[19]

Petitioner's motion for reconsideration was denied by the NLRC in its October 31, 2008 Resolution: [20]

WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion of the same nature shall be entertained.

SO ORDERED. [21]

The CA Decision

Ascribing grave abuse of discretion on the part of the NLRC, petitioner sought refuge from the CA to question the NLRC Decision. The CA, however, affirmed the NLRC's ruling in its entirety, disposing of petitioner's Petition for Certiorari as follows:

WHEREFORE, finding the instant petition not impressed with merit, the same is DENIED DUE COURSE and is hereby DISMISSED.

SO ORDERED.[22]

Petitioner's motion for reconsideration was likewise denied in the CA's July 19, 2012 assailed Resolution:

WHEREFORE, the instant Motion for Reconsideration is hereby DENIED.

SO ORDERED.[23]

Undaunted, petitioner filed the instant Petition, maintaining that respondent was validly dismissed from employment on the ground of redundancy. Petitioner argues that it was able to prove that it suffered serious financial reverses, which resulted to reducing the number of its personnel. Petitioner also argues that the NLRC and the CA erred in doubting its intentions when it re-assigned respondent from being the University Cashier to an Assistant Coordinator Position as there was no evidence that respondent was coerced to give his consent for the transfer. Petitioner alleges that it actually demonstrated good faith when it exerted effort to find another position for respondent when his functions as University Cashier were transferred to the Accounting Department. At that point, according to petitioner, respondent could have already been dismissed for redundancy.

The Issue

The pivotal issue in this case is whether or not respondent was validly dismissed from employment on the ground of redundancy.

The Court's Ruling

The petition lacks merit.

Well-settled is the rule that the burden of proving that the dismissal of an employee was for a valid or authorized cause rests on the employer. Substantial evidence must be presented to prove that the termination of employment was validly made. Failure to discharge this duty would lead to the conclusion that the dismissal is illegal.[24]

In this case, petitioner justifies respondent's dismissal on the ground of redundancy. Indeed, in our jurisdiction,

redundancy is a recognized authorized cause to validly terminate employment.[25] The determination of whether the employee's services are no longer necessary or sustainable, and thus, terminable has been recognized to be a management prerogative. The employer's exercise of such prerogative is, however, not an unbridled right that cannot be subjected to the court's scrutiny.

Thus, the Court has laid down certain guidelines for the valid dismissal of employees on the ground of redundancy, to wit: (1) written notice served on both the employee and the Department of Labor and Employment (DOLE) at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant.[26]

It is undisputed that petitioner served the required notice to respondent and the DOLE. The issue raised by the petitioner as to the payment of separation pay shall be addressed after the discussion on the third and fourth guidelines, these being the crux of the present controversy.

The Court has, in several occasions, emphasized the importance of these last two guidelines. These guidelines ensure good faith in abolishing redundant positions.[27] To establish good faith, the employer must provide substantial proof that the services of the employee are in excess of what is needed by the company and that fair and reasonable criteria, such as but not limited to (a) less preferred status, e.g., temporary employee; (b) efficiency; and (c) seniority, were used to determine which positions are to be considered redundant or who among the employees are to be redundated.[28]

Indeed, an employer cannot simply declare that it has become overmanned and dismiss its employees without adequate proof to sustain its claim of redundancy.[29] Neither can an employer merely claim that it has reviewed its organizational structure and decided that a certain position has become redundant. It bears stressing that adequate proof of redundancy and criteria in the selection of the employees to be affected must be presented to dispel any suspicion of bad faith on the part of the employer.[30]

In this case, petitioner merely presented financial audits and enrolment lists to justify respondent's dismissal due to redundancy. As correctly held by the NLRC and the CA, at best, these pieces of evidence prove only the fact of financial losses and decline in enrolment. They do not, in any way, prove that fair and reasonable criteria were used in determining which position is to be declared redundant or who among the employees is to be redundated.

Petitioner's bare allegations that it conducted a review of its organizational structure and came up with the decision that respondent's position became redundant cannot be considered substantial evidence to prove compliance with the above-cited jurisprudential guidelines. Neither can general averments about logic and reason - Program Coordinator does not need the aid of an Assistant Coordinator anymore considering that there were less students - be considered sufficient to justify the dismissal of an employee on the ground of redundancy. Again, evidence that the alleged review was conducted, as well as the specific criteria used in the determination of which position or employee should be affected by the cost-cutting measures, must be presented. Otherwise, the termination of the redundated employee cannot be sustained.

Such evidence is important not only because it is mandated by the jurisprudential guidelines, but specifically because in this case, as correctly observed by the NLRC and the CA, the circumstances surrounding respondent's transfer to the redundated position that caused his dismissal are questionable.

To recall, before respondent's position as Assistant Program Coordinator was declared redundant, respondent's position as University Cashier was also considered redundant for allegedly being already absorbed by the

Accounting Department. This led to respondent's transfer to the Assistant Program Coordinator position, which, notably, was created only for respondent's purpose. Again, aside from petitioner's bare allegation that the tasks of the University Cashier were absorbed by the Accounting Department, no evidence was presented to support such allegation and to prove that the position was justifiably redundant. Curiously also, no explanation was offered as to why respondent was "re-hired" in the same position before the approval of his alleged application for early retirement, only to be considered a redundant position later on. Petitioner failed to explain why every position held by respondent was purportedly subjected to its cost-cutting measures.

In sum, while petitioner may have been able to prove decline in enrolment and financial losses, it severely failed to prove that it utilized fair and reasonable criteria in ascertaining that respondent's position as Assistant Program Coordinator, as well as his former position as University Cashier, were redundant and/or that it was necessarily respondent who should be affected by its cost-cutting measures. Respondent's dismissal on the ground of redundancy, therefore, cannot be sustained.

As to the payment of separation pay, petitioner argues that the NLRC, as affirmed by the CA, erred in its re-computation of respondent's separation pay, entitling respondent to additional amount therefor. Invoking vouchers marked in this Petition as Annexes "N" and "O," petitioner argues that respondent is not entitled to additional separation pay as he allegedly already received P93,140.04 and P223,764.00 retirement pay for his 32 years of service.

The NLRC, however, found that when respondent availed of the early retirement program, his monthly salary was P12,600.00 and at that time, he has already rendered 32 years of service to petitioner. It was also found that respondent received a retirement pay amounting only to P93,140.04, which is indeed less than a quarter of respondent's salary per month for every year of service. Hence, the NLRC re-computed the same in accordance with the law requiring payment of separation pay amounting to one month salary for every year of service, but deducting therefrom the early retirement pay, amounting to P93,140.04, already received by respondent.

We find no reason to depart from the ruling of the NLRC and CA on the matter.

Having established that respondent was illegally dismissed and considering the NLRC's finding that reinstatement is not feasible, respondent is indeed entitled to separation pay equivalent to his month's salary for every year of service less the P93,140.04 that he received as his supposed early retirement pay. Notably, there was no mention in the tribunals and court a quo of the amount of P223,764.00 claimed by petitioner to have also been received by respondent as additional early retirement pay. In fact, in the Release and Quitclaim also invoked by petitioner, only the amount of P93,140.04 was mentioned to have been received by respondent. Hence, inasmuch as the tribunals and court a quo made no mention of the P223,764.00, the Court cannot consider the same.

The date stated in the dispositive portion of the NLRC Decision should, however, be modified as it erroneously states that the computation of respondent's separation pay is to be reckoned from September 17, 1990 when it is clear that the date of his employment was September 17, 1970.

The award of backwages is also sustained pursuant to Article 294 of the Labor Code, which substantially states that illegally dismissed employees are entitled to full backwages, inclusive of allowances and other benefits, computed from the time of their illegal termination up to the finality of the decision.

Likewise, the award of attorney's fees is appropriate since respondent incurred legal expenses in protecting his rights.[31]

In addition, pursuant to prevailing jurisprudence,[32] a legal interest of six percent (6%) per annum shall be imposed on the total judgment award from the finality of this Decision until its full satisfaction.

WHEREFORE, premises considered, this Petition is DENIED. The Decision dated September 29, 2011 and the Resolution dated July 19, 2012 of the Court of Appeals in CA-G.R. SP No. 107499, which affirmed the Decision dated June 30, 2008 of the National Labor Relations Commission in NLRC NCR CA No. 047142-06 (NLRC NCR Case No. 00-08-07502-05) are hereby AFFIRMED WITH MODIFICATION. Accordingly, FEATI University is directed to pay Antolin C. Pangan the following:

1. Separation pay computed at the rate of one (1) month salary for every year of service from September 17, 1970 up to the finality of this decision, less Ninety Three Thousand One Hundred Forty Pesos and Four Centavos (P93,140.04);
2. Backwages and benefits computed from the date Antolin C. Pangan was illegally dismissed on August 6, 2005, up to the finality of this decision;
3. Attorney's fees in the amount of P50,000.00;
4. The 13th month pay in the amount of P7,518.00 awarded by the Labor Arbiter; and
5. The legal interest of six percent (6%) per annum imposed on the total judgment award from the finality of this Decision until its full satisfaction.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Rollo, pp. 3-24.

[2] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias, concurring; id. at 363-375.

[3] Id. at 392-394.

[4] Id. at 315-327.

[5] Id. at 315.

[6] Id. at 316.

[7] Id. at 316 and 322.

[8] Id. at 322-323.

[9] Id. at 316.

[10] Id. at 278-283.

[11] Id. at 283.

[12] Id. at 321.

[13] Id. at 323.

[14] Id.

[15] Id. at 323-324.

[16] Id. at 324.

[17] The NLRC Decision stated September 17, 1990 in the computation and dispositive portion but also stated that respondent had already 38 years of service, which is consistent with the established fact that respondent commenced employment on September 17, 1970, not 1990

[18] Id. at 325-326.

[19] Id. at 326-327.

[20] Id. at 339-340.

[21] Id. at 340.

[22] Id. at 373.

[23] Id. at 393.

[24] *Abbott Laboratories (Philippines), Inc. v. Torralba*, G.R. No. 229746, October 11, 2017, 842 SCRA 539,550-551.

[25] LABOR CODE, 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 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. x x x

[26] *Abbott Laboratories (Philippines), Inc. v. Torralba*, supra at 551-552.

[27] See *Arabit v. Jardine Pacific Finance, Inc., (Formerly MB Finance)*, 733 Phil. 41, 60 (2014).

[28] *Manggagawa ng Komimikasyon sa Pilipinas v. PLDT, Inc.*, 809 Phil 106, 123 (2017); *Arabit, v. Jardine Pacific Finance Inc. (formerly MB Finance)* supra note 27, at 58-59.

[29] *Ocean East Agency, Corporation v. Lopez*, 771 Phil. 179, 195 (2015).

[30] Id.

[31] *Innodata Knowledge Services, Inc. v. Inting*, G.R. No. 211892, December 6, 2017, 848 SCRA 106, 149.

[32] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

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