

MCCONNELL DOWELL PHILS., INC., JOHN HEARST AND COLIN JENNER, PETITIONERS, VS. ARCHIMEDES B. BERNAL, RESPONDENT.

G.R. No. 224685. November 10, 2021

Ponente: GAERLAN, J.

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GAERLAN, J.:

These are consolidated petitions for review on certiorari, praying for the reversal and/or modification of the Decision[1] dated December 14, 2015 and Resolution[2] dated May 18, 2016 of the Court of Appeals (CA) in the case entitled "Archimedes B. Bernal v. National Labor Relations Commission, McConnell Dowell Phils. Inc., John Hearst and Colin Jenner" docketed as CA-G.R. SP No. 136717.

Factual antecedents

Archimedes B. Bernal (Bernal), a resident of New Zealand, was first hired by McConnell Dowell Phils., Inc. (MacDow), a Philippine construction company, as an Estimator on a casual basis on August 13, 2009. Thereafter, he was promoted as a Manager of Business Development.[3]

As Manager of Business Development, Bernal's main task is to solicit for MacDow new construction projects. Notably, prior to his appointment as Manager of Business Development, his task to solicit new construction projects was handled and performed by the Country Manager.[4]

During Bernal's tenure as Manager of Business Development, he was given bonuses and was lauded by Colin Jenner (Jenner), the Country Manager and Bernal's immediate superior, for his role in the company's continued success, as evidenced by the Letter[5] dated September 16, 2010, viz.:

I am very pleased to advise that you have been awarded a total bonus of NZD 5,500 for the financial year ending June 2010.

x x x x

You have played an important role as part of our team in the continued success of the Company. I wish to thank you for all your efforts and hard work and look forward to us continuing to work together to reach our goal of growing profitability for the Company in 2010/2011.

On the other hand, for Bernal's contributions to MacDow and his good performance, he was given a salary increase in 2011, as evidenced by the Notice of Salary Increase[6] dated January 1, 2011 sent by Jenner, viz.:

I am pleased to advise that a review of your base salary has been undertaken. Your annual base salary has been increased from NZD 88,500 to NZD 100,000 effective January 1, 2011, representing an increase of NZD 11,500. This increase is inclusive of your 9% merit adjustment for good performance and 4% increase in cost of living based on average inflation rate for the year.

Thank you for your contribution throughout the year. I look forward to working with you in 2011 as we continue to grow the Company and reach all our targets.

In 2012, Bernal was again given an NZD 5,000 salary increase, as evidenced by the Annual Review–1 January 2012[7] dated January 25, 2012 sent by Jenner.

Notably, while he was the Manager for Business Development, Bernal, being the only licensed engineer in MacDow, was appointed as the Sustaining Technical Employee, and was required to attend the Construction and Safety & Health Course at the Department of Labor and Employment (DOLE), which is indispensable for the renewal of MacDow's license to operate.[8] Likewise, Bernal played a key role in acquiring the Pililia Wind Farm Project, worth around USD 110 million, for MacDow.[9]

Bernal's Grievance Notification

In September 2011, Bernal came to learn from Jenner of the negative perception of certain Directors of MacDow Australia against him, supposedly because of his unsatisfactory performance as Manager of Business Development.[10]

Upset by the comments about his performance, Bernal wrote an email dated September 26, 2011[11] to Jenner, outlining his accomplishments as MacDow's Manager of Business Development. In the same email, Bernal asked Jenner to evaluate his performance; however, Jenner failed to respond to Bernal's email nor did he conduct the evaluation requested by Bernal.[12]

Eventually, in April 2012, or three months after Bernal was awarded a salary increase, Jenner sent an email dated April 25, 2012,[13] where he echoed the thoughts of the MacDow Australia Directors, and warned Bernal of his poor performance, viz.:

Archie,

I am not sure that you are suited to your role as Business Development VP.

x x x x

I feel this email should be taken as your first written warning of my general dissatisfaction with you [sic] performance in the role of Business Development VP.

After several correspondences[14] between Jenner and Bernal, most of which had rude, antagonistic, and insulting language, Bernal decided to file a grievance notification[15] dated June 25, 2012, in accordance with the MacDow Management System Procedure-Staff Complaints and Grievances.

Streamlining of MacDow's Business

Beginning 2011, most of MacDow's big projects, namely the Ambuklao-Binga Project, Magat Project, and Bakun Project, among others, ended. As a consequence, MacDow's revenues significantly dropped by around 74%, as shown by its Financial Statements. Thus, MacDow decided to streamline its operations, realign its business, and reduce its workforce.[16]

In view of MacDow's plans of streamlining its business, which entails the reduction of its workforce and the abolition of certain managerial positions, MacDow offered Bernal to handle one of MacDow's projects – the Pililia Wind Farm Project – as its Project Manager. MacDow likewise offered Bernal to apply for a position in MacDow's Brisbane, Australia Office. However, Bernal declined both offers of MacDow.[17]

Bernal's Termination

On June 29, 2012, or several days after Bernal filed his grievance notification, the Accounting Manager of MacDow texted Bernal and told him to attend a meeting at 10:00 a.m. the next day. The meeting was supposedly

with regard to the grievance notification that Bernal filed against Jenner.[18] However, during the meeting on June 30, 2012, Bernal was handed a Notice of Termination Due to Redundancy,[19] which reads:

SUBJECT: Notice of Termination Due to Redundancy

Dear Archie,

After a thorough review of the current manpower requirements and reorganization of work assignments, we have determined that certain positions have become redundant.

In view of your declining to take another position in the Company, we regret to inform you that your services as Manager-Business Development will be terminated effective 31 July 2012 close of business hours. While you remain as employee, you need not report to work during your one month's notice period.

Pursuant to the terms and conditions of your employment and subject to clearance of all your accountabilities, you shall receive the following:

1)

Separation pay equivalent to at least one month pay for every year of service. For entitled employees who have completed at least one (1) full year service, a fraction of at least six (6) months of service shall be considered as one (1) year for the purpose of computing their benefits entitlement.

2)

Salaries and monetized allowances and entitlements up to July 31, 2012 as provided in your contract.

3)

Unused annual leave, if any.

Thereafter, Bernal was paid his separation pay, including airfare.[20] Notices were likewise sent to the DOLE.[21]

Bernal's termination came as a shock to several officers who have dealt with Bernal during his time as Manager of Business Development, as shown by the various correspondences[22] sent to Jenner.

On July 11, 2012, and after Bernal's employment was terminated, Jenner arranged a meeting with Bernal and John Hearst (Hearst), one of MacDow's Directors. During the meeting, Hearst supposedly verbally assaulted Bernal by telling him to "fuck off" and "scram,"[23] Subsequently, on July 12, 2012, Jenner sent Bernal a Memorandum[24] finally addressing Bernal's grievance notification. The Memorandum reads:

As I have committed, our Answer to your Grievance Notification dated 25 June 2012 which was further amplified in your subsequent email dated July 3, 2012 is as follows:

1. It is the considered opinion that the Company generally appreciated your efforts. I am prepared to acknowledge that in some area's [sic] you have performed well and as such, complements were relayed to you from both John Hearst and myself. You will be provided a testimony which will confirm this. Both John and I will also be happy to be nominated as references.

x x x x

5. I wish to advise that your redundancy was in no way associated with your grievance notice, as suggested by you, as redundancy plans were well in train at the time.

6. Your performance in your position was not a factor in your redundancy, but rather a Company decision to realign their future business.

I trust this memorandum will bring closure to your grievance notice.

Notably, at the time Bernal's services were terminated, MacDow likewise abolished other positions and terminated the services of other employees because of redundancy, including, among others:

1. Bruno Tirrizzi

-

Project Manager

2. Arnel Padilla

-

Senior Procurement Officer

3. Tess Casanova

-

Accounting Manager

4. Maya Manzanias

-

Newly hired replacement of the Accounting Manager[25]

To implement the streamlining of MacDow's business, Bernal's tasks as Manager of Business Development were transferred and consolidated to the Country Manager, since prior to Bernal's appointment, the Country Manager handled and performed his functions. Nevertheless, because of the continued decline of MacDow's business, several other key employees were terminated, including Jenner who was the Country Manager at that time.[26] Thus, after the implementation of MacDow's streamlining and reorganization, only three major departments and managerial positions were left, namely: Land Estimator, Office Manager, and Accounting Manager, as shown in MacDow's Organization Chart of December 2012.[27]

Proceedings before the labor tribunals

On October 2, 2012, Bernal filed an illegal dismissal complaint against MacDow, praying for, among others, the payment of 13[th] month pay, backwages, bonuses, allowances, moral and exemplary damages, and attorney's fees.[28]

On January 24, 2013, the parties simultaneously filed their respective Position Papers before the Labor Arbiter. On March 25, 2013, the Labor Arbiter issued its Decision,[29] ruling in favor of Bernal. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

- Declaring the dismissal of complainant as without just or authorized cause and, therefore, illegal;

- Directing respondent McConnel Dowell Philippines, Inc. to immediately reinstate complainant to his former or substantially equivalent position, without loss of seniority rights and other privileges. Respondents are advised that this Order of reinstatement is immediately executory for which purpose, they are directed to submit a report of compliance to this Office on such reinstatement within ten (10) calendar days from receipt of this Decision;

- To pay complainant the aggregate provisional sum of NZD77,000.00 or its equivalent in Philippine Peso at the time of payment representing:
- Backwages (NZD8,750.00 x 8 months = NZD70,000.00) from the time of complainant's dismissal up to finality of this decision; and
- Attorney's fee in an amount equivalent to ten percent (10%) of the total foregoing amounts.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[30]

In ruling that Bernal's termination was illegal, the Labor Arbiter first stated that the adoption of redundancy as a mode of separating an employee is a management prerogative, which cannot be inquired upon. However, the Labor Arbiter emphasized that an employer must comply with the following parameters for redundancy to be a valid cause of termination of employment: first, written notice served upon both the employee and the DOLE at least one month prior to the intended date of termination of employment; second, payment of separation pay; third, good faith in abolishing the redundant position; and fourth, fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[31]

After reviewing all the evidence on record, the Labor Arbiter found nothing which indicates that MacDow adopted a redundancy program; MacDow failed to submit any work plan detailing the process of the redundancy program, nor any Board Resolution adopting and authorizing a redundancy program. The Labor Arbiter likewise noted that MacDow did not explain why Bernal's position was declared redundant. Moreover, the Labor Arbiter opined that MacDow failed to apply any reasonable criteria to determine who should be retained and who should leave. Finally, the Labor Arbiter ruled that Bernal's termination appears to have been tainted with bad faith since he was dismissed days after Bernal filed a grievance notification against Jenner.[32] In sum, the Labor Arbiter found that MacDow failed to show any valid reason for the termination of Bernal's employment as Manager of Business Development, and as such, his dismissal was declared illegal.[33]

Aggrieved, MacDow timely filed its Memorandum of Appeal[34] dated May 2, 2013 before the National Labor Relations Commission (NLRC), where the following assignment of errors were raised:

- The Labor Arbiter erred and gravely abused his discretion when he ruled that Bernal was illegally dismissed, which is contrary to the evidence on record, and law and jurisprudence vis-à-vis termination of employment due to redundancy;[35]
- The Labor Arbiter erred and gravely abused his discretion when he ruled that Bernal should be reinstated, considering that it was established that his position was already abolished, and that the relationship between Bernal and his superiors is already severely strained;[36]
- The Labor Arbiter erred and gravely abused his discretion when he disregarded the fact that Bernal freely and willingly accepted his separation pay and the benefits due to him after he was terminated due to redundancy;[37] and
- The Labor Arbiter erred and gravely abused his discretion when he ordered the payment of attorney's fees and backwages despite the fact that the reinstatement of Bernal is no longer feasible, and more importantly, that his termination from service was made in good faith and in accordance with the law.[38]

On August 27 2013, the NLRC found MacDow's appeal meritorious and reversed the ruling of the Labor Arbiter. The dispositive portion of the NLRC's ruling reads:

WHEREFORE, premises considered, the Appeal of respondent McConnell Dowell Phils, is hereby GRANTED.

The judgment on Appeal is REVERSED and SET ASIDE and a new one rendered DISMISSING the complaint for lack of merit.

SO ORDERED.[39]

In resolving the case in favor of MacDow, the NLRC ruled that MacDow was able to observe all the requirements for a valid termination due to redundancy. It took particular note of the Establishment Reports submitted by MacDow to the DOLE showing the completion of its projects.[40]

The NLRC likewise emphasized that MacDow did not single out Bernal as it abolished other key positions, such as Construction Manager. Moreover, the NLRC declared that, in view of the steep decline in MacDow's revenues, MacDow simply remedied the situation when it decided to abolish certain positions within the company. Thus, MacDow only exercised its management prerogative in abolishing key managerial positions to streamline its operations and keep its business afloat.[41]

Aggrieved by the NLRC's reversal of the Labor Arbiter's Decision, Bernal filed a Motion for Reconsideration (with Motion to Inhibit the Ponente of the Subject Decision and the Presiding Commissioner Who Took Part) where Bernal argued that the NLRC's ruling not only disregarded the evidence on record, but is likewise contrary to law and jurisprudence[42] However, in a Resolution dated June 9, 2014, the NLRC denied Bernal's motion,[43] thus:

WHEREFORE, complainant's motion for inhibition of Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III is declared MOOT AND ACADEMIC owing to their voluntary inhibition from further participating in this case.

Complainant's motion for reconsideration is hereby DENIED for lack of merit. No further motion of the same tenor shall be entertained.

SO ORDERED.[44]

Petition for certiorari before the CA

Undeterred, Bernal filed a Petition for Certiorari[45] dated August 12, 2014, where he challenged the adverse rulings of the NLRC based on the following grounds:

I.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF ITS JURISDICTION WHEN IT ISSUED ITS DECISION DATED 27 AUGUST 2013 (REVERSING THE DECISION OF THE LABOR ARBITER) AND ITS RESOLUTION DATED 09 JUNE 2014 (DENYING PETITIONER'S MOTION FOR RECONSIDERATION) WITHOUT SUBSTANTIAL EVIDENCE TO SUPPORT THEM:

A.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RULED THAT THE DISMISSAL OF PETITIONER WAS BASED ON THE AUTHORIZED CAUSE OF REDUNDANCY DESPITE UTTER LACK OF EVIDENCE, SUBSTANTIAL OR OTHERWISE, TO SHOW THE EXISTENCE OF ANY REDUNDANCY PROGRAM.

B.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RULED, WITHOUT SUBSTANTIAL EVIDENCE AND CONTRARY TO THE EVIDENCE ON RECORD, THAT THE PRIMARY REASON FOR PETITIONER'S TERMINATION WAS HIS FAILURE TO DELIVER BUSINESS TO THE COMPANY AND THAT THE DECREASE IN VOLUME OF BUSINESS AND HIS FAILURE TO DELIVER PROJECTS ARE SUFFICIENT CRITERIA IN ABOLISHING HIS POSITION. RESPONDENT NLRC FURTHER COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN, WITHOUT SUBSTANTIAL EVIDENCE, IT RULED THAT EVEN THE POSITION OF COUNTRY MANAGER IN RESPONDENT COMPANY WAS REDUNDATED AND ABOLISHED.

C.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE [OF] ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT RULE THAT RESPONDENTS FAILED TO USE FAIR AND REASONABLE CRITERIA IN DETERMINING WHICH POSITIONS TO ABOLISH.

D.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT WHIMSICALLY AND CAPRICIOUSLY DISREGARDED AND BRUSHED ASIDE EVIDENCE OF BAD FAITH ON THE PART OF THE RESPONDENTS.

II.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT FAILED TO AWARD MORAL AND EXEMPLARY DAMAGES DESPITE CLEAR EVIDENCE OF BAD FAITH.[46]

On October 8, 2014, MacDow filed its Comment,[47] which prayed for the dismissal of Bernal's Petition for Certiorari for lack of merit.

On December 14, 2015, the CA issued its decision, which granted Bernal's petition for certiorari, thus:

WHEREFORE, premises considered, the instant Petition for Certiorari is GRANTED.

The assailed Decision and Resolution of the NLRC in NLRC LAC No. 05-001545-13(7)/(8) (TC-8-01-13) NLRC NCR CN 09-13608-12 dated August 27, 2013 and June 9, 2014, respectively, are REVERSED and SET ASIDE, and the Labor Arbiter's Decision dated April 3, 2013 is hereby REINSTATED with the following MODIFICATIONS:

1. The portion ordering private respondents to reinstate Archimedes Bernal is DELETED;
2. Archimedes Bernal is hereby awarded moral damages in the amount of fifty thousand pesos (P50,000.00) and exemplary damages in the amount of ten thousand pesos (P10,000.00);
3. Private respondents McConnell Dowell Phils. Inc. and Colin Jenner are hereby DECLARED jointly and severally liable to pay all the monetary awards granted to Archimedes Bernal.

SO ORDERED.[48]

In arriving at its decision, the CA ruled that Bernal was illegally dismissed, considering that MacDow's evidence to prove that it was in the process of restructuring its business was insufficient to establish that there was a valid

redundancy program:

While the private respondents have been harping that MacDow was on the process of restructuring its management, the only evidence submitted to prove this are the organizational charts showing the hierarchy of positions of the persons occupying them. No additional explanation was offered to discuss the import of such charts, except to show that no other positions were created after Bernal's termination. They also did not submit feasibility studies or proposal, viability of newly created or retained positions, job descriptions or any Board Resolution reflecting the Board of Director's approval of such restructuring which could readily show that MacDow's declaration of redundant positions was indeed done in good faith.[49]

Meanwhile, as regards Bernal's claim for backwages and other benefits, the CA held that as a consequence of being illegally dismissed, he is entitled to the payment of backwages. However, as regards the award for reinstatement, the CA declared that Bernal can no longer be reinstated because of the strained relations between him and MacDow, and added that he can no longer claim separation pay because he was already paid the same when his employment was terminated in 2012.[50]

Finally, with respect to Bernal's claim for moral and exemplary damages, the CA noted that a dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud; while exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[51] In Bernal's case, the CA opined that MacDow, together with Jenner, is guilty of bad faith when Bernal was terminated, and thus, he is entitled to the award of both moral and exemplary damages:

It appears from the records that while Bernal's termination was to take effect one month after receipt of the notice of redundancy in June 2013, he was immediately stripped of his rights as an employee, i.e., he was told not to report to the office anymore even though he still had one month left before the effective date of termination; his company ID and access card were immediately taken away; his email access was terminated even before the redundancy notice was handed to him; his name in the attendance board at the reception area was stricken off immediately; and even before his termination take [sic] effect, his desk was already cleared and his office already occupied by another ex-patriate.

Moreover, Jenner's bad faith was demonstrated by accusing Bernal of inefficiency/poor performance yet refusing to confront such issue when the latter challenged him to evaluate his performance. His bad faith was further exhibited by making a mockery of Bernal's grievance when he resolved the same in his favor when he was the very person being complained of in the said grievance. Finally, Jenner unfairly effected the termination of Bernal's employment when in a meeting called by MacDow, the former congratulated the latter for winning the Pililla Wind Farm Project and at the same time, handing him the notice of termination due to redundancy.

Such actions show private respondents' bad faith and their intent to do a wrongful act of moral obliquity. If they were indeed acting in a good way, private respondents should have first clarified the accusations of inefficiency and poor performance before haphazardly terminating Bernal for redundancy. This, most especially so, since he was afterall able to secure the multi-million dollar Pililla Wind Farm Project for MacDow. x x x.

Now, for the penultimate issue of whether Jenner and Hearst, as Country Manager and Director of Overseas Operations, respectively, should be personally liable together with MacDow, it is settled that in the absence of malice, bad faith, or specific provision of law, a director or officer of a corporation cannot be made personally liable for corporate liabilities.

Considering Our previous discussion, it was sufficiently established that Jenner acted in bad faith or was motivated by ill will in terminating Bernal's services. However, with respect to Hearst, aside from Bernal's bare allegation that the former humiliated him during a meeting and told him to "fuck off" and "scram," no other evidence was submitted indicating Hearst's actual participation in the termination of his employment. Not

having participated at all in the illegal act, Hearst may not be held individually liable for the satisfaction of Bernal's claims.[52]

Both MacDow and Bernal moved for the reconsideration of the CA's decision; however, the CA denied the same in a Resolution[53] dated May 18, 2016, thus:

After a careful perusal of the parties' motions for reconsideration and comments, this Court finds no cogent justification to warrant the reconsideration of Our assailed decision. Their motions have not raised any new or substantial ground or reason that would call for upturning this Court's Decision. The grounds or reasons raised therein have all been squarely passed upon and resolved when this Court rendered the Decision sought to be reconsidered. Discussing once again the ratio decidendi of Our Decision would be to belabor the issues ad infinitum.

WHEREFORE, the petitioner and respondent's respective motions for reconsideration are DENIED for utter lack of merit.

SO ORDERED.[54]

The present petitions

On June 8, 2016, MacDow filed its Petition for Review on Certiorari,[55] which assailed the findings of the CA. In its petition, MacDow principally argued that Bernal's employment was validly terminated due to redundancy. According to MacDow, it has sole discretion to determine its organization and manpower requirements in pursuit of its business, in accordance with its management prerogative. Given that the functions of the Manager of Business Development were already transferred to the Country Manager, Bernal's position became redundant. MacDow likewise alleged that since Bernal's position is managerial, MacDow had wider discretion in determining whether the continuous existence of the position is still advantageous for the company,[56] citing the case of *Almodiel v. NLRC*. [57]

Moreover, MacDow argued that its: (1) financial statements showing losses; (2) documentations showing its reorganization; and (3) allegations of Bernal's poor performance, should have been accepted by the CA as proof of a valid redundancy program.[58]

MacDow likewise contended that there was no bad faith on its part when Bernal's employment was terminated, and thus, MacDow, as well as Jenner, should not be liable for damages. There was no malice or arbitrariness in Bernal's termination. Notably, as regards Bernal's grievance notification, MacDow and Jenner properly followed the procedure in resolving the issue. In fact, the result of the grievance is unrelated to the termination of Bernal's services, considering that his termination was due to redundancy.[59]

Finally, MacDow argued that the factual findings of the NLRC are binding upon the courts and should have been respected by the CA considering that the same were supported by substantial evidence.[60]

Subsequently, Bernal also filed his Petition for Partial Review on Certiorari[61] dated June 14, 2016, where he questioned the CA's ruling which: (1) held that reinstatement is no longer possible because of strained relations; but (2) still failed to award separation pay in lieu thereof. According to Bernal, the separation pay he received from MacDow in 2012 was given because of his dismissal. He was paid a month's salary for every year of service from the start of his employment until his termination in 2012. Such separation pay is different from the separation pay to be awarded in lieu of reinstatement, which should be computed at one month salary for every year of service until the finality of the decision in the illegal dismissal case he filed. Thus, the amount he already received will simply be deducted from the awarded separation pay during the execution proceedings when the decision in the instant case becomes final.[62]

Our Ruling

A simple scrutiny of the submissions filed before the Court reveals that the main issue to be resolved is whether Bernal's separation from MacDow was due to a valid redundancy program. Undeniably, such issue is factual in nature because it urges the Court to review and take a look at the evidence on record.

As a general rule, only questions of law raised via a petition for review on certiorari under Rule 45 of the Rules of Court are reviewable by the Court.[63] However, such rule may be relaxed when, as in the present case, the findings of the CA differ with that of the NLRC.[64] Considering that there are no procedural obstacles for the Court to conduct its review, the Court shall now delve into the merits of the case.

The burden to prove that there is a valid redundancy program rests on the employer.

The Labor Code recognizes redundancy as an authorized cause for the termination of employment. Article 298 (previously Article 283) of the Labor Code provides:

Art. 298. 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. 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. (Emphasis supplied)

In *Mejila v. Wrigley Philippines, Inc.*,^[65] the concept of redundancy was explained in this wise:

Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. In the seminal case of *Wiltshire File Co., Inc. v. NLRC*, the Court, speaking through Justice Feliciano, held that:

[R]edundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work. That no other person was holding the same position that private respondent held prior to the termination of his services, does not show that his position had not become redundant. Indeed, in any well-organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. We believe that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business. (Emphasis supplied; citations omitted)

The determination of whether certain positions are redundant and no longer necessary is an exercise of management prerogative.^[66] Nevertheless, an employer cannot simply declare certain positions as redundant, without any basis. As held in *Arabit v. Jardine Pacific Finance, Inc.*:^[67]

The employer's exercise of its management prerogative, however, is not an unbridled right that cannot be

subjected to this Court's scrutiny. The exercise of management prerogative is subject to the caveat that it should not be performed in violation of any law and that it is not tainted by any arbitrary or malicious motive on the part of the employer.[68] (Emphasis supplied)

Invariably, the employer must comply with certain guidelines to dismiss employees due to redundancy, which aim to ensure that the dismissal is not implemented arbitrarily nor tainted with bad faith. In the leading case of *Asian Alcohol Corporation v. National Labor Relations Commission*,[69] the Court laid down certain requisites for a valid implementation of a redundancy program:

For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) 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 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.[70] (Emphasis supplied; citations omitted)

Thus, to establish a valid redundancy program, the following evidence may be proffered: "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." [71]

In this case, it is undisputed that the first two requisites as quoted above have been complied with. MacDow sent notices to Bernal and DOLE, and paid Bernal's separation pay. However, as regards the third and fourth requisites, the NLRC and the CA had conflicting views.

After review of the evidence on record, the Court is more inclined to subscribe to the CA's view that MacDow failed to prove with substantial evidence that a valid redundancy program was implemented. To recall, the documentary evidence presented by MacDow to show its good faith in abolishing Bernal's position as Manager of Business Development are as follows:

- Financial statements showing the steep decline in MacDow's revenues; and
- Organizational Charts showing that there remains only three key managerial positions after Bernal's termination.

It is the Court's view that these pieces of documentary evidence are inadequate to prove a valid redundancy program. Notably, while financial losses may be a reason to terminate employees, that alone cannot justify termination due to redundancy, nor show that fair and reasonable criteria were used to determine which positions or who among the employees should be redundated. As held in *Feati University v. Pangan*: [72]

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. (Emphasis supplied)

Neither do the Organizational Charts presented by MacDow prove that there was a valid redundancy program. Such organizational charts merely show which positions remained within MacDow after Bernal was terminated, without any explanation with regard to why the other positions were abolished.

Apart from these documents, MacDow tried to explain before the labor tribunals that Bernal's termination was because: first, Bernal's performance was unsatisfactory; and second, his functions as Manager of Business

Development have been transferred to the Country Manager. While these may be valid reasons to terminate Bernal due to redundancy, these allegations are unsubstantiated.

With respect to Bernal's supposed poor performance, such allegation cannot stand scrutiny considering that the memorandum sent by Jenner to answer Bernal's grievance notification categorically states that Bernal's termination is not due to his poor performance. Further, the allegation that Bernal's performance is supposedly unsatisfactory is contradicted by the numerous correspondences sent by Jenner commending Bernal for his performance, and the fact that Bernal played a key role in acquiring the multi-million dollar Pililia Wind Farm Project for MacDow.

As to the other supposed reason for Bernal's termination, MacDow cannot rely on its bare assertion that Bernal's functions have been transferred to the Country Manager. As borne by the records, the Notice of Termination Due to Redundancy is bereft of any explanation detailing how Bernal's position is no longer necessary and that his functions will be transferred to the Country Manager. At most, the Notice of Termination Due to Redundancy only states that MacDow supposedly conducted a thorough review of the current manpower requirements and reorganization of work assignments, and determined that certain positions have become redundant. Clearly, when Bernal was terminated, MacDow failed to explain to him the reasons for the abolition of his position. As succinctly declared in *Feati University v. Pangan*,^[73] such bare assertion cannot be considered as substantial evidence to prove a valid redundancy program:

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.^[74] (Emphasis supplied)

Thus, as correctly pointed out by the CA, MacDow glaringly failed to establish by substantial evidence that there was a valid redundancy program. MacDow did not submit any of the evidence enumerated by case law to justify a valid redundancy program. There were no feasibility studies on the viability of the newly-created positions, job descriptions, nor any approval by MacDow's management with regard to its plans of restructuring. While other pieces of evidence may prove a valid redundancy program, such as affidavits or communications where the employer explains the company's decision to reorganize and its effect on the employee,^[75] the evidence on record in this case is simply wanting of any proof that will demonstrate that a valid redundancy program was implemented by MacDow when it terminated the services of Bernal.

All things considered, the Court is convinced that Bernal was illegally dismissed because MacDow failed to prove, by substantial evidence, that it implemented a valid redundancy program.

The payment of separation pay in lieu of reinstatement is required in instances when reinstatement is no longer possible; it is distinct from the payment of separation pay due to redundancy.

As discussed above, termination due to redundancy requires the payment of separation pay equivalent to at least

one month pay or to at least one month pay for every year of service, whichever is higher. As borne by the evidence on record, Bernal was properly paid his separation pay in 2012 when his services were terminated.

Still, as an illegally dismissed employee, Bernal is likewise entitled to other monetary awards, as explained in *Abbott Laboratories (Philippines), Inc. v. Torralba*:^[76]

The right of employees to security of tenure, as enshrined under Art. XIII, Sec. 3 of the Constitution, is further guarded by Art. 294 (formerly Art. 279) of the Labor Code, which states:

Art. 294. 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.

As can be gleaned, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.^[77] (Emphasis supplied; citation omitted)

Clearly, Bernal is entitled to the payment of full backwages from the time he was illegally dismissed. However, as correctly noted by the CA, Bernal can no longer be reinstated to his previous position. Not only do Bernal and MacDow have strained relations, Bernal's previous position no longer exists, which renders his reinstatement impossible.

In such instance, the payment of separation pay in lieu of reinstatement is proper, as expounded in *Bani Rural Bank, Inc. v. De Guzman*:^[78]

Section 4 (b), Rule I of the Rules Implementing Book VI of the Labor Code provides the following instances when the award of separation pay, in lieu of reinstatement to an illegally dismissed employee, is proper: (a) when reinstatement is no longer possible, in cases where the dismissed employee's position is no longer available; (b) the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and (c) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved. In these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages. The payment of separation pay and reinstatement are exclusive remedies. The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.^[79] (Underscoring supplied; citations omitted)

To recall, in this case, the CA ruled in favor of Bernal, but modified and deleted the Labor Arbiter's award of reinstatement because there exists strained relations between MacDow and Bernal. Notwithstanding such ruling, the CA held that Bernal is no longer entitled to separation pay in lieu of reinstatement because he was already paid separation pay when he was terminated from MacDow in 2012.

On this point, the Court cannot sustain the CA's ruling.

It bears emphasis that the computation for separation pay due to redundancy and the computation for separation pay in lieu of reinstatement are different. For redundancy, Article 298 (previously Article 283) of the Labor Code requires the payment of separation pay equivalent to at least his one month pay or to at least one month pay for every year of service, which ends on the date of termination. Meanwhile, for separation pay in lieu of reinstatement, the payment of separation pay is equivalent to one month salary for every year of service until the finality of the decision in the illegal dismissal case:

Anent the computation of separation pay, the same shall be equivalent to one month salary for every year of service and should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible. In the present case, in allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[80]

From the foregoing disquisition, it is evident that the amount of separation pay Bernal already received in 2012, when he was terminated from MacDow, is less than the separation pay in lieu of reinstatement that he is entitled to. In this regard, it is worthy to note that in *F.F. Marine Corporation v. National Labor Relations Commission*,[81] the Court already had the occasion to categorically declare that separation pay in lieu of reinstatement is different from the separation pay awarded under Article 298 (previously Article 283) of the Labor Code:

As to the amount of separation pay, this Court has ruled that separation pay may be computed at one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher. It is noteworthy that the separation pay being awarded in the instant case is due to illegal dismissal; hence, it is different from the amount of separation pay provided for in Article 283 in case of retrenchment to prevent losses or in case of closure or cessation of the employer's business, in either of which the separation pay is equivalent to at least one (1) month or one-half (1/2) month pay for every year of service, whichever is higher.

Evidently, Magno is entitled to (a) full backwages from 16 December 1998 until the finality of this decision; (b) separation pay equivalent to his one (1) month pay for every year of service, computed from his first day of employment on 7 February 1990 up to finality of this decision less the advanced separation pay of P38,250.00; and (c) attorney's fees equivalent to ten percent (10%) of his total monetary award.[82] (Emphasis supplied; citations omitted)

Applying the foregoing to this case, Bernal is entitled to separation pay in lieu of reinstatement, equivalent to one month salary for every year of service until the finality of this Decision, less the separation pay he already received in 2012.

Moral and exemplary damages may only be awarded if it is proven that the termination was made in bad faith.

While the Court agrees with the CA's finding that Bernal was illegally dismissed because MacDow's evidence was insufficient to establish a valid redundancy program, the Court finds that the award for moral and exemplary damages is improper.

In *Lambert Pawnbrokers and Jewelry Corp. v. Binamira*,[83] the Court declared that moral and exemplary damages are not automatically awarded when an employee is illegally dismissed:

A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process.

Considering that there is no clear and convincing evidence showing that the termination of Helen's services had been carried out in an arbitrary, capricious and malicious manner, the award of moral and exemplary damages is not warranted.[84] (Emphasis supplied; citation omitted)

In the instant case, the Court finds that Bernal's termination, though contrary to law, was not carried out in an arbitrary, capricious, or malicious manner.

First, Bernal was not discriminated or singled out in the implementation of the redundancy program. As shown by

MacDow, several other key officials of MacDow were likewise terminated when it was restructuring and streamlining its business.

Second, that Bernal was no longer required to go to work during the one-month notice period is not indicative of bad faith on the part of MacDow. The Notice of Termination Due to Redundancy expressly states that he does not need to report to work during the one-month, notice period. Hence, Bernal was properly informed of the same, and he was not arbitrarily removed from his office during that time. More compellingly, it bears emphasis that the practice of directing an employee not to attend work during the notice period cannot be a sign of bad faith, precisely because it is not prohibited in the Philippines. As elucidated in *Mejila v. Wrigley Philippines, Inc.*:^[85]

The practice of the employer directing an employee not to attend work during the period of notice of resignation or termination of the employment is colloquially known as "garden leave" or "gardening leave." The employee might be given no work or limited duties, or be required to be available during the notice period to, for example, assist with the completion of work or ensure the smooth transition of work to their successor. Otherwise, the employee is given no work and is directed to have no contact with clients or continuing employees. During the period of garden leave, employees continue to be paid their salary and any other contractual benefits as if they were rendering their services to the employer.

In the United Kingdom (UK), where the practice originated, the garden leave clause has been used as an alternative to post-employment non-competition covenants. The employee remains employed for the period of the leave but is expected to do no work; he could, then, "stay home and tend the garden." The provision is typically in place to prevent departing employees from having access to confidential and commercially sensitive information, business contacts, and intellectual property, which can be used by a new employer. Since the employee remains an "employee," he remains bound by a duty of loyalty and, thus, cannot go to work for a competitor or do anything else to harm the employer. This arrangement provides employers with the protection they need, is fair to employees, and has been generally accepted and enforced by the UK courts. The practice has been adopted by employers in the United States, and their courts have generally upheld garden leave clauses.

In the Philippines, garden leave has been more commonly used in relation to the 30-day notice period for authorized causes of termination. There is no prohibition under our labor laws against a garden leave clause in an employment contract. (Emphasis supplied; citations omitted)

Third, as regards the grievance notification of Bernal, it must be highlighted that Jenner and MacDow simply followed their procedure under the MacDow Management System Procedure—Staff Complaints and Grievances. Indeed, Bernal's grievance was directed towards Jenner, but as Jenner is the Country Manager and Bernal's immediate superior, it was Jenner's task to evaluate and resolve such grievance. In fact, it must be noted that the grievance notification is completely unrelated to Bernal's termination, and thus, cannot be used to show that Jenner was in bad faith.

All in all, there is no basis for the award of moral and exemplary damages because Bernal's termination was not attended with bad faith nor done in a capricious and whimsical manner.

WHEREFORE, premises considered, the Decision dated December 14, 2015 of the Court of Appeals, affirming the Labor Arbiter's Decision dated March 25, 2013 which declared that ARCHIMEDES B. BERNAL was illegally dismissed is AFFIRMED with the following MODIFICATIONS:

- Instead of the award for reinstatement, McCONNELL DOWELL PHILS., INC. is ORDERED to PAY separation pay in lieu of reinstatement, equivalent to one month salary for every year of service until the finality of this Decision, LESS the amount of separation pay that Bernal already received in 2012; and
- The award for moral and exemplary damages in favor of Bernal is DELETED.

SO ORDERED.

Perlas-Bernabe, (Chairperson), Hernando, Inting, and Dimaampao, JJ., concur.

[1] Rollo (G.R. No. 224685), pp. 36-56. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Andres B. Reyes, Jr. (a retired Member of this Court) and Romeo F. Barza concurring.

[2] Id. at 33-34.

[3] Id. at 7.

[4] Id.

[5] Id. (G.R. No. 224692), p. 90.

[6] Id. at 91.

[7] Id. at 95.

[8] Id. at 80.

[9] Id. (G.R. No. 224685), p. 50.

[10] Id. at 38.

[11] Id. (G.R. No. 224692), pp. 92-94.

[12] Id. at 79.

[13] Id. at 96.

[14] Id. at 97-103.

[15] Id. at 105-107.

[16] Id. (G.R. No. 224685), p. 8.

[17] Id. at 9.

[18] Id. at 38.

[19] Id. (G.R. No. 224692), p. 108.

[20] Id. (G.R. No. 224685), p. 92.

[21] Id. (G.R. No. 224692), p. 124.

[22] Id. at 110-117.

[23] Id. at 298.

[24] Id. at 242.

[25] Id. (G.R. No. 224685), p. 240.

[26] Id.

[27] Id. at 43.

- [28] Id. (G.R. No. 224692), p. 11.
- [29] Id. at 56-73; penned by Labor Arbiter Raymund M. Celino.
- [30] Id. at 72-73.
- [31] Id. at 64-65.
- [32] Id. at 66-68.
- [33] Id. at 72.
- [34] Id. at 253-270.
- [35] Id. at 256.
- [36] Id. at 256-257.
- [37] Id. at 257.
- [38] Id.
- [39] Id. (G.R. No. 224685), p. 43.
- [40] Id. at 42.
- [41] Id. at 42-43.
- [42] Id. at 43.
- [43] Id.
- [44] Id. at 43-44.
- [45] Id. (G.R. No. 224692), pp. 272-302.
- [46] Id. at 282-284.
- [47] Id. at 304-309.
- [48] Id. (G.R. No. 224685), p. 55.
- [49] Id. at 51.
- [50] Id. at 53.
- [51] Id.
- [52] Id. at 53-55.
- [53] Id. at 33-34.
- [54] Id. at 34.
- [55] Id. at 3-31.
- [56] Id. at 12.
- [57] 295 Phil. 389 (1993).
- [58] Rollo (G.R. No. 224685), p. 18.

[59] Id. at 22-25.

[60] Id. at 26.

[61] Id. (G.R. No. 224692), pp. 9-26.

[62] Id. at 21-22.

[63] Philippine Transmarine Carriers, Inc. v. Cristino, 775 Phil. 108, 121 (2015), citing Heirs of Pacencia Racaza v. Spouses Abay-Abay, 687 Phil. 584, 591 (2012).

[64] Aldaba v. Career Philippines Shipmanagement, Inc., 811 Phil. 486, 495 (2017).

[65] G.R. No. 199469, September 11, 2019.

[66] Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Company, Incorporated, 809 Phil. 106, 126 (2017); Coca-Cola Femsa Philippines v. Macapagal, (G.R. No. 232669, July 29, 2019).

[67] 733 Phil. 41 (2014).

[68] Id. at 58.

[69] 364 Phil. 912 (1999).

[70] Id. at 930.

[71] San Miguel Corporation v. Del Rosario, 513 Phil. 740, 754 (2005); Ocean East Agency v. Lopez, 771 Phil. 179, 195 (2015).

[72] G.R. No. 202851, September 9, 2019.

[73] Id.

[74] Id.

[75] 3M Philippines, Inc. v. Yuseco, G.R. No. 248941, November 9, 2020.

[76] 820 Phil. 196 (2017).

[77] Id. at 216-217.

[78] 721 Phil. 84 (2013).

[79] Id. at 100.

[80] Monsanto Philippines, Inc. v. National Labor Relations Commission, G.R. Nos. 230609-10, August 27, 2020.

[81] 495 Phil. 140 (2005).

[82] Id. at 159-160.

[83] 639 Phil. 1 (2010).

[84] Id. at 15-16.

[85] Supra note 65.

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