

SAN MIGUEL CORPORATION, PETITIONER, VS. CAROLINE C. DEL ROSARIO, RESPONDENT.*G.R. NOS. 168194 & 168603. December 13, 2005*

Ponente: YNARES-SANTIAGO, J.

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The instant consolidated petitions for review seek to set aside the (1) January 7, 2005 Decision of the Third Division of the Court of Appeals in CA-G.R. SP No. 83725,[1] affirming the December 30, 2003 Resolution[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 036413-03, and holding that respondent Caroline C. Del Rosario, was a regular employee of petitioner San Miguel Corporation whose dismissal was valid but ineffectual for non-compliance with the requirement of one month notice in termination due to redundancy; and the (2) February 23, 2005 Decision of the First Division of the Court of Appeals in CA-G.R. SP No. 84081,[3] which reinstated the Labor Arbiter's June 16, 2003 Judgment[4] finding that respondent is an illegally dismissed regular employee of petitioner. Likewise questioned are the June 16, 2005[5] and May 13, 2005[6] Resolutions of the Court of Appeals which denied petitioner's motions for reconsideration.

The facts show that on April 17, 2000, respondent was employed by petitioner as key account specialist. On March 9, 2001, petitioner informed respondent that her probationary employment will be severed at the close of the business hours of March 12, 2001.[7] On March 13, 2001, respondent was refused entry to petitioner's premises.

On June 24, 2002, respondent filed a complaint against petitioner for illegal dismissal and underpayment/non-payment of monetary benefits. Respondent alleged that petitioner feigned an excess in manpower because after her dismissal, it hired new recruits, namely, Jerome Sanchez and Marilou Marfil and re-employed two of her batch mates, Rosendo To and Ruel Rocha.[8]

On the other hand, petitioner claimed that respondent was a probationary employee whose services were terminated as a result of the excess manpower that could no longer be accommodated by the company. Respondent was allegedly employed on April 17, 2000[9] as a temporary reliever of Patrick Senen, an account specialist, who met an accident. Anticipating an increase in sales volume, petitioner hired respondent as an account specialist on a probationary status effective September 4, 2000 and was assigned at petitioner's Greater Manila Area-Key Accounts Group (GMA-KAG) Beer Sales Group. However, petitioner's expected business growth did not materialize, hence, it reorganized the GMA-KAG, and created the Centralized Key Accounts Group. This restructuring led to an initial excess of 49 regular employees, who were redeployed to other positions, including the one occupied by respondent. Her employment was thus terminated effective March 12, 2001.[10]

On June 16, 2003, the Labor Arbiter rendered a decision declaring respondent a regular employee because her employment exceeded six months and holding that she was illegally dismissed as there was no authorized cause to terminate her employment. The Arbiter further ruled that petitioner's failure to rebut respondent's claim that it hired additional employees after she was dismissed belie the company's alleged redundancy. The dispositive

portion thereof, reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant as illegal and ordering her reinstatement with full backwages, moral and exemplary damages of P50,000.00 plus 10% attorney's fees, computed thus:

Backwages:

2003-6-16

2001-3-17 . =

2-2-29 P9,000.00 x 27 mos =

P243,000.00

Holiday Pay:

P9,000.00/26 days =P346.15 x 20 days P346.15/day P6,923.00

Service Incentive Leave

P346.15 x 10 days

3,461.50

13[th] Month Pay

P9,000.00 x 27 mos./12 = P20,250.00

P273,634.00

SO ORDERED.[11]

On appeal by petitioner to the NLRC, the latter modified the decision of the Labor Arbiter holding that respondent is a regular employee whose termination from employment was valid but ineffectual for petitioner's failure to comply with the 30-day notice to the employee and the Department of Labor and Employment (DOLE), thus –

WHEREFORE, premises considered, Respondents' appeal is partly GRANTED. The portion of the Labor Arbiter's assailed Decision in the above-entitled case, finding Complainant's dismissal illegal and ordering her reinstatement, is SET ASIDE. It is hereby declared that Complainant's dismissal from employment is valid but ineffectual.

Respondent San Miguel Corporation is hereby ordered to pay Complainant separation pay equivalent to her one-month pay per year of service reckoned from her first day of employment therewith on April 17, 2000 up to the date of this Resolution. Complainant's award for full backwages shall be accordingly adjusted to cover the period from the time she was ineffectually dismissed on March 13, 2001 up to the date of this Resolution. As of October 17, 2003 Complainant's award for separation pay and full backwages already amount to P36,000.00 and P311,192.31, respectively.

Complainant's award for unpaid service incentive leave pay and 13[th] month pay shall be reduced to P1,514.42 and P7,875.00, respectively. Her award for attorney's fees shall likewise be accordingly adjusted to ten percent (10%) of her total monetary award.

Complainant's award for holiday pay and moral and exemplary damages is (sic) hereby deleted.

SO ORDERED.[12]

In a resolution dated February 20, 2004,[13] the NLRC denied the motions for reconsideration filed by both parties. Thereafter, petitioner and respondent filed separate petitions with the Court of Appeals.

In CA-G.R. SP No. 84081, the First Division of the Court of Appeals granted the respondent's petition and

reinstated with modification the Labor Arbiter's decision finding her to be an illegally dismissed regular employee, but deleted the award for holiday pay for lack of basis. The appellate court noted that petitioner gave no satisfactory explanation for the hiring of employees after respondent's termination and the absence of company criteria in determining who among the employees will be dismissed. The decretal portion thereof, provides:

WHEREFORE, the petition is GRANTED. Accordingly, the assailed NLRC resolutions, dated December 30, 2003 and February 20, 2004, are hereby REVERSED and SET ASIDE. The June 16, 2003 Decision of the Labor Arbiter is hereby REINSTATED with some MODIFICATION and should read as follows:

WHEREFORE, judgment is hereby rendered declaring the dismissal as illegal and ordering her reinstatement with full backwages, moral and exemplary damages of P50,000.00 plus 10% attorney's fees, computed thus:

Backwages:

2003-6-16

2001-3-17

2-2-29 9,000.00 x 27 months 243,000.00

Service Incentive Leave

346.15 x 10 days 3,461.50

13th month Pay

9,000.00 x 27 mos./12 20,250.00

266,711.00

SO ORDERED.[14]

In CA-G.R. SP No. 83725, the Third Division of the Court of Appeals dismissed the company's petition and affirmed the decision of the NLRC, as follows:

WHEREFORE, in consideration of the foregoing, the instant petition is perforce dismissed. Accordingly, the public respondent NLRC's assailed resolutions dated 30 December 2003 and 20 February 2004 are hereby affirmed.

SO ORDERED.[15]

Hence, petitioner instituted these two separate petitions for review praying that the questioned decisions and resolutions of the Court of Appeals in CA-G.R. SP No. 84081 and CA-G.R. SP No. 83725 be set aside and that respondent's complaint be dismissed. In a resolution dated August 8, 2005,[16] the Court consolidated the petitions.

The issues for resolution are: (1) whether or not respondent is a regular employee of petitioner; and (2) whether or not respondent was illegally dismissed; and (3) if so, whether or not respondent is entitled to any monetary benefit.

The settled rule is that factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter are accorded respect and even finality.[17] This applies with more vigor to the factual issue of respondent's employment status, because the Labor Arbiter, the NLRC and the two Divisions of the Court of Appeals consistently held that respondent is a regular employee of petitioner company. Indeed, the records show that their findings are supported by substantial evidence.

In termination cases, like the present controversy, the burden of proving the circumstances that would justify the employee's dismissal rests with the employer.[18] The best proof that petitioner should have presented to prove the probationary status of respondent is her employment contract. None, having been presented, the continuous

employment of respondent as an account specialist for almost 11 months, from April 17, 2000 to March 12, 2001, means that she was a regular employee and not a temporary reliever or a probationary employee. The 2 Payroll Authorities[19] offered by petitioner showing that respondent was hired as a replacement, and later, as a probationary employee do not constitute substantial evidence. As correctly found by the NLRC, none of these documents bear the conformity of respondent, and are therefore, self-serving.

And while it is true that by way of exception, the period of probationary employment may exceed six months when the parties so agree, such as when the same is established by company policy, or when it is required by the nature of the work,[20] none of these exceptional circumstance were proven in the present case. Hence, respondent whose employment exceeded six months is undoubtedly a regular employee of petitioner.

Moreover, even assuming that the employment of respondent from April 7, 2000 to September 3, 2000, is only temporary, and that the reckoning period of her probationary employment is September 4, 2000,[21] she should still be declared a regular employee because by the time she was dismissed on March 12, 2001, her alleged probationary employment already exceeded six months, i.e., six months and eight days to be precise. Thus, in *Cebu Royal Plant v. Deputy Minister of Labor*,[22] a worker was found to be a regular employee notwithstanding the presentation by the employer of a Payroll Authority indicating that said employee was hired on probation, since it was shown that he was terminated four days after the 6th month of his purported probationary employment.

Neither will petitioner's belated claim before the Court of Appeals that respondent became a probationary employee starting October 1, 2000,[23] work against respondent. As earlier stated, the payroll authorities indicating that respondent's probationary status became effective as of such date are of scant evidentiary value since it does not show the conformity of respondent. At any rate, in the interpretation of employment contracts, whether oral or written, all doubts must be resolved in favor of labor.[24] Hence, the contract of employment in the instant case, which appears to be an oral agreement since no written form was presented by petitioner, should be construed as one vesting respondent with a regular status and security of tenure.

Having ruled that respondent is a regular employee, her termination from employment must be for a just or authorized cause, otherwise, her dismissal would be illegal. Petitioner tried to justify the dismissal of respondent under the authorized cause of redundancy. It thus argued in the alternative that even assuming that respondent qualified for regular employment, her services still had to be terminated because there are no more regular positions in the company. Undoubtedly, petitioner is invoking a redundancy which allegedly resulted in the termination not only of the trainees, probationers but also of some of its regular employees.

Redundancy, for purposes of the 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.[25]

In *Asufrin, Jr. v. San Miguel Corporation*,[26] it was held that the determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.

In *Panlilio v. NLRC*,[27] it was held that the following evidence may be proffered to substantiate redundancy, to

wit:

... 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 the case at bar, petitioner presented an affidavit of its Sales Manager and a memorandum of the company both to the effect that there is a need to redeploy its regular employees and terminate the employment of temporary employees, in view of an excess in manpower. These documents, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion.[28] For one, the other signatories to the memorandum were not even identified. For another, the said memorandum and affidavit are self-serving. These documents could have gained greater weight had petitioner presented its old and new staffing pattern, the newly created and abolished positions and the documents showing the target business, as well as the proof showing the failure to attain the same.

Moreover, the lingering doubt as to the existence of redundancy or of petitioner's so called "restructuring, realignment or reorganization" which resulted in the dismissal of not only probationary employees but also of regular employees,[29] is highlighted by the non-presentation by petitioner of the required notice to the DOLE and to the separated employees.[30] If there was indeed a valid redundancy effected by petitioner, these notices and the proof of payment of separation pay to the dismissed regular employees should have been offered to establish that there was excess manpower in petitioner's GMA-KAG caused by a decline in the sales volume.

In balancing the interest between labor and capital, the prudent recourse in termination cases is to safeguard the prized security of tenure of employees and to require employers to present the best evidence obtainable, especially so because in most cases, the documents or proof needed to resolve the validity of the termination, are in the possession of employers. A contrary ruling would encourage employers to prevent the regularization of an employee by simply invoking a feigned or unsubstantiated redundancy program.

Granting that petitioner was able to substantiate the validity of its reorganization or restructuring, it nevertheless, failed to effect a fair and reasonable criterion in dismissing respondent. The criteria in implementing a redundancy are: (a) less preferred status, e.g. temporary employee; (b) efficiency; and (c) seniority.[31]

In dismissing respondent, petitioner averred that in choosing the employee to be retained and to be placed in the limited available positions, it had to give priority to the regular employees, over petitioner who is only a probationary employee. This is clear from the termination letter to respondent, viz:

There were recent developments and initiatives from Management which have direct implications to the organization of GMA Sales, to wit:

- The expected business growth for the year 2000 did not materialize despite the augmentation of our Sales manpower, reconfiguration, and promotional initiatives undertaken during the year;
- There is a need to re-align other SMBD Sales units in order to further enhance synergy in the sales and distribution of SMC products;
- The realignment of these units will result to excess manpower specifically in GMA Sales. Considering that these employees are regular, Management will be constrained to redeploy them to other areas within GMA Sales;
- The existing temporary employees will have to be separated in order to give way to the aforesaid redeployment.

In view of this Management direction, we regret to inform you that your probationary employment with the

Company will be severed at the close of business hours of March 12, 2001.

....[32]

It is evident from the foregoing that the criterion allegedly used by petitioner in reorganizing its sales unit was the employment status of the employee. However, in the implementation thereof, petitioner erroneously classified respondent as a probationary employee, resulting in the dismissal of the latter. The instant case is no different from *Asufrin, Jr. v. San Miguel Corporation*, where the Court refused to give credence to the redundancy invoked by the employer inasmuch as the company adopted no criterion in dismissing the employee. Verily, the absence of criteria and the erroneous implementation of the criterion selected, both render invalid the redundancy because both have the ultimate effect of illegally dismissing an employee.

What further militated against the alleged redundancy advanced by petitioner is their failure to refute respondent's assertion that after her dismissal, it hired new recruits and re-employed two of her batch mates. Other than the lame excuse that it is respondent who has the burden of proving the same, it presented no proof to fortify its denial. Again, petitioner has in its possession the documents that would disprove the fact of hiring new employees, but instead of presenting evidence to belie respondent's contentions, it refrained from doing so and conveniently passed the burden to respondent.

In sum, the Court finds that petitioner was not able to discharge the burden of proving that the dismissal of respondent was valid.

Article 279 of the Labor Code, provides:

ARTICLE 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. (Emphasis, supplied)

Considering that respondent was illegally dismissed, she is entitled not only to reinstatement but also to payment of full backwages, computed from the time her compensation was actually withheld from her on March 13, 2001, up to her actual reinstatement. As a regular employee of petitioner from the date of her employment on April 17, 2000, she is likewise entitled to other benefits, i.e., service incentive leave pay and 13[th] month pay computed from such date also up to her actual reinstatement.

Respondent is not, however, entitled to holiday pay because the records reveal that she is a monthly paid regular employee. Under Section 2, Rule IV, Book III of the Omnibus Rules Implementing the Labor Code, employees who are uniformly paid by the month, irrespective of the number of working days therein, shall be presumed to be paid for all the days in the month whether worked or not. Hence, the Court of Appeals correctly deleted said award.[33]

Anent attorney's fees, we held in *San Miguel Corporation v. Aballa, et al.*, [34] that in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code, [35] Section 8, Rule VIII, Book III of its Implementing Rules, [36] and paragraph 7, Article 2208 of the Civil Code. [37] The award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in the instant controversy.

Finally, the Court cannot sustain the award of moral and exemplary damages in favor of respondent. Moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause or due process. The termination must be attended with bad faith, or fraud, or was oppressive to labor or done in a manner contrary to morals, good customs or public policy and, of course, that social humiliation, wounded feelings, or grave anxiety resulted therefrom. Similarly, exemplary damages are recoverable only when the dismissal was effected in a wanton, oppressive or malevolent manner. To merit the award of these damages, additional facts must be pleaded and proved.[38] In the present case, respondent did not proffer substantial evidence that would overcome the legal presumption of good faith on the part of petitioner. The award of moral and exemplary damages should therefore be deleted.

WHEREFORE, the petitions are DENIED. The January 7, 2005 Decision and the June 16, 2005 Resolution of the Court of Appeals in CA-G.R. No. SP No. 83725 which affirmed the December 30, 2003 Resolution of the NLRC in NLRC NCR CA No. 036413-03 declaring that the dismissal of respondent Caroline C. Del Rosario, a regular employee of petitioner, was valid but ineffectual; and the February 23, 2005 Decision and the May 13, 2005 Resolution and of the Court of Appeals in CA-G.R. No. SP No. 84081 which reinstated with modification the June 16, 2003 Decision of the Labor Arbiter in NLRC-NCR-00-04495-2002, holding that respondent is an illegally dismissed regular employee of petitioner, are AFFIRMED with MODIFICATIONS.

As MODIFIED, the employment status of respondent is declared regular, and her dismissal from employment, illegal. Petitioner is ordered to IMMEDIATELY REINSTATE respondent as a regular employee to her previous position, unless such position no longer exists, in which case she shall be given a substantially equivalent position, without loss of seniority rights. Petitioner is further ORDERED TO PAY respondent backwages, computed from the time her compensation was actually withheld on March 13, 2001, up to her actual reinstatement, plus service incentive leave, 13[th] month pay and attorney's fees equivalent to 10% of the total monetary award. For this purpose, the case is ordered REMANDED to the Labor Arbiter for the computation of the amounts due respondent.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo of G.R. No. 168603, pp. 36-51. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente.

[2] Id. at 82-95. Penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioners Angelita A. Gacutan and Raul T. Aquino.

[3] Rollo of G.R. No. 168194, pp. 50-59. Penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Romeo A. Brawner and Edgardo P. Cruz.

[4] Rollo of G.R. No. 168603, pp. 184-190. Penned by Labor Arbiter Antonio R. Macam.

[5] In CA-G.R. SP No. 83725, Rollo of G.R. No. 168603, pp. 53-54.

[6] In CA-G.R. SP No. 84081, Rollo of G.R. No. 168194, p. 61.

[7] Rollo of G.R. No. 168603, p. 158.

[8] Id. at 152.

[9] Id. at 128.

[10] Id. at 102-104.

[11] Id. at 189-190.

[12] Id. at 94-95.

[13] Id. at 96.

[14] Rollo of G.R. No. 168194, pp. 57-58.

[15] Rollo of G.R. No. 168603, p. 50

[16] Id. at 541.

[17] *Tres Reyes v. Maxim's Tea House*, 446 Phil. 388, 401 (2003).

[18] *Agoy v. NLRC*, 322 Phil. 636, 648 (1996).

[19] Rollo of G.R. No. 168603, pp. 137-138.

[20] *Buiser, et al., v. Hon. Leogardo, etc., et al.*, 216 Phil. 144, 150 (1984).

[21] As declared in the Affidavit of Nicollo Caluag, petitioner's Area Sales Manager for its GMA-KAG (Rollo of G.R. No. 168603, p. 123) and as adopted by petitioner in its Position Paper before the Labor Arbiter (Rollo of G.R. No. 168603, p. 102), in its Memorandum of Appeal with the NLRC (Rollo of G.R. No. 168603, pp. 194-195) and in its Petition for Certiorari with the Court of Appeals (Rollo of G.R. No. 168194, pp. 285-286.).

[22] G.R. No. L-58639, August 12, 1987, 153 SCRA 38.

[23] See Petitioner's Reply in CA-G.R. SP No. 83725, Rollo of G.R. No. 168603, p. 346. While the Payroll Authority was appended to petitioner's Reply before the Labor Arbiter, it was never explicitly alleged in the said Reply and in subsequent pleadings that the effectivity of respondent's probationary employment was October 1, 2000.

[24] Article 1702, of the Civil Code, provides:

Article 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

[25] *Asufrin, Jr. v. San Miguel Corporation*, G.R. No. 156658, March 10, 2004, 425 SCRA 270, 274.

[26] Id.

[27] 346 Phil. 30, 34 (1997).

[28] *Mendoza v. NLRC*, 369 Phil. 1113, 1130 (1999).

[29] See the Affidavit of Nicollo Caluag, Rollo of G.R. No. 168603, p. 123.

[30] Art. 283 of the Labor Code provides:

ART. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment (now Department of Labor and Employment) at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the

worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. ...

[31] Asufrin, Jr. v. San Miguel Corporation, *supra* at 275.

[32] Rollo of G.R. No. 168603, p. 126. (Emphasis added)

[33] CA-G.R. SP No. 84081, Rollo of G.R. No. 168195, p. 57.

[34] G.R. No. 149011, June 28, 2005.

[35] 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 the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[36] SEC. 8. Attorney's fees. – Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

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

....

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

[38] Manila Water Company, Inc. v. Pena, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 64.

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