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THIRD DIVISION

[G.R. No. 163657, April 18, 2012]

INTERNATIONAL MANAGEMENT SERVICES/MARILYN C. PASCUAL, PETITIONER, VS. ROEL P. LOGARTA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* assailing the Decision[1] dated January 8, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 58739, and the Resolution[2] dated May 12, 2004 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

Sometime in 1997, the petitioner recruitment agency, International Management Services (IMS), a single proprietorship owned and operated by Marilyn C. Pascual, deployed respondent Roel P. Logarta to work for Petrocon Arabia Limited (Petrocon) in Alkhobar, Kingdom of Saudi Arabia, in connection with general engineering services of Petrocon for the Saudi Arabian Oil Company (Saudi Aramco). Respondent was employed for a period of two (2) years, commencing on October 2, 1997, with a monthly salary of eight hundred US Dollars (US$800.00). In October 1997, respondent started to work for Petrocon as Piping Designer for works on the projects of Saudi Aramco.

Thereafter, in a letter[3] dated December 21, 1997, Saudi Aramco informed Petrocon that for the year 1998, the former is allotting to the latter a total work load level of 170,850 man-hours, of which 100,000 man-hours will be allotted for cross-country pipeline projects.

However, in a letter[4] dated April 29, 1998, Saudi Aramco notified Petrocon that due to changes in the general engineering services work forecast for 1998, the man-hours that were formerly allotted to Petrocon is going to be reduced by 40%.

Consequently, due to the considerable decrease in the work requirements of Saudi Aramco, Petrocon was constrained to reduce its personnel that were employed as piping designers, instrument engineers, inside plant engineers, etc., which totaled to some 73 personnel, one of whom was respondent.

Thus, on June 1, 1998, Petrocon gave respondent a written notice[5] informing the latter that due to the lack of project works related to his expertise, he is given a 30-day notice of termination, and that his last day of work with Petrocon will be on July 1,

1998. Petrocon also informed respondent that all due benefits in accordance with the terms and conditions of his employment contract will be paid to respondent, including his ticket back to the Philippines.

On June 23, 1998, respondent, together with his co-employees, requested Petrocon to issue them a letter of Intent stating that the latter will issue them a No Objection Certificate once they find another employer before they leave Saudi Arabia.[6] On June 27, 1998, Petrocon granted the request and issued a letter of intent to respondent.[7]

Before his departure from Saudi Arabia, respondent received his final paycheck[8] from Petrocon amounting SR7,488.57.

Upon his return, respondent filed a complaint with the Regional Arbitration Branch VII, National Labor Relations Commission (NLRC), Cebu City, against petitioner as the recruitment agency which employed him for employment abroad. In filing the complaint, respondent sought to recover his unearned salaries covering the unexpired portion of his employment contract with Petrocon on the ground that he was illegally dismissed.

After the parties filed their respective position papers, the Labor Arbiter rendered a Decision[9] in favor of the respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Marilyn C. Pascual, doing business under the name and style International Management Services, to pay the complainant Roel Logarta the peso equivalent of US $5,600.00 based on the rate at the time of actual payment, as payment of his wages for the unexpired portion of his contract of employment.
>
> The other claims are dismissed for lack of merit.
>
> So Ordered.[10]

Aggrieved, petitioner filed an Appeal[11] before the NLRC. On October 29, 1999, the NLRC, Fourth Division, Cebu City rendered a Decision[12] affirming the decision of the Labor Arbiter, but reduced the amount to be paid by the petitioner, to wit:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION reducing the award to only US $4,800.00 or its peso equivalent at the time of payment.
>
> SO ORDERED.[13]

Petitioner filed a motion for reconsideration, but it was denied in the Resolution[14]

dated April 17, 2000.

Not satisfied, petitioner sought recourse before the CA,[15] arguing that the NLRC gravely abused its discretion:

> (a) in holding that *while* Petrocon's retrenchment was justified, Petrocon failed to observe the legal procedure for a valid retrenchment when, in fact, Petrocon did observe the legal procedural requirements for a valid implementation of its retrenchment scheme; and
> (b) in making an award under Section 10 of R.A. No. 8042 which is premised on a termination of employment without just, valid or authorized cause as defined by law or contract, notwithstanding that NLRC itself found Petrocon's retrenchment to be justified.[16]

On January 8, 2004, the CA rendered the assailed Decision dismissing the petition, the decretal portion of which reads:

> WHEREFORE, premises considered, the petition is DISMISSED and the impugned Decision dated October 29, 1999 and Resolution dated April 17, 2000 are AFFIRMED. Costs against the petitioner.
>
> SO ORDERED.[17]

In ruling in favor of the respondent, the CA agreed with the findings of the NLRC that retrenchment could be a valid cause to terminate respondent's employment with Petrocon. Considering that there was a considerable reduction in Petrocon's work allocation from Saudi Aramco, the reduction of its work personnel was a valid exercise of management prerogative to reduce the number of its personnel, particularly in those fields affected by the reduced work allocation from Saudi Aramco. However, although there was a valid ground for retrenchment, the same was implemented without complying with the requisites of a valid retrenchment. Also, the CA concluded that although the respondent was given a 30-day notice of his termination, there was no showing that the Department of Labor and Employment (DOLE) was also sent a copy of the said notice as required by law. Moreover, the CA found that a perusal of the check payroll details would readily show that respondent was not paid his separation pay.

Petitioner filed a motion for reconsideration, but it was denied in the Resolution[18] dated May 12, 2004.

Hence, the petition assigning the following errors:

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT

THE 30-DAY NOTICE TO DOLE PRIOR TO RETRENCHMENT IS NOT APPLICABLE IN THIS CASE.

II.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT RESPONDENT EMPLOYEE DID NOT CONSENT TO HIS SEPARATION FROM THE PRINCIPAL COMPANY.

III.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT JARIOL VS. IMS IS NOT APPLICABLE TO THE INSTANT CASE.

IV.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT RESPONDENT DID NOT RECEIVE THE SEPARATION PAY REQUIRED BY LAW. [19]

Petitioner argues that the 30-day notice of termination, as required in *Serrano v. NLRC*, [20] is not applicable in the case at bar, considering that respondent was in fact given the 30-day notice. More importantly, Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipino Act of 1995 nor its Implementing Rules do not require the sending of notice to the DOLE, 30 days before the effectivity of a retrenchment of an Overseas Filipino Worker (OFW) based on grounds under Article 283 of the Labor Code.

Petitioner maintains that respondent has consented to his termination, since he raised no objection to his retrenchment and actually sought another employer during his 30-day notice of termination. Respondent even requested from Petrocon a No Objection Certificate, which the latter granted to facilitate respondent's application to other Saudi Arabian employers.

Petitioner also posits that the CA should have applied the case of *Jariol v. IMS*[21] even if the said case was only decided by the NLRC, a quasi-judicial agency. The said case involved similar facts, wherein the NLRC categorically ruled that employers of OFWs are not required to furnish the DOLE in the Philippines a notice if they intend to terminate a Filipino employee.

Lastly, petitioner insists that respondent received his separation pay. Moreover, petitioner contends that Section 10 of R.A. No. 8042 does not apply in the present case, since the termination of respondent was due to a just, valid or authorized cause. At best, respondent is only entitled to separation pay in accordance with Article 283 of the Labor Code, *i.e.*, one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.

On his part, respondent maintains that the CA committed no reversible error in rendering the assailed decision.

The petition is partly meritorious.

Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages.[22] It is one of the economic grounds to dismiss employees and is resorted by an employer primarily to avoid or minimize business losses.[23]

Retrenchment programs are purely business decisions within the purview of a valid and reasonable exercise of management prerogative. It is one way of downsizing an employer's workforce and is often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation. It is a valid management prerogative, provided it is done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.[24]

In the case at bar, despite the fact that respondent was employed by Petrocon as an OFW in Saudi Arabia, still both he and his employer are subject to the provisions of the Labor Code when applicable. The basic policy in this jurisdiction is that all Filipino workers, whether employed locally or overseas, enjoy the protective mantle of Philippine labor and social legislations.[25] In the case of *Royal Crown Internationale v. NLRC*,[26] this Court has made the policy pronouncement, thus:

> x x x. Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. x x x[27]

Philippine Law recognizes retrenchment as a valid cause for the dismissal of a migrant or overseas Filipino worker under Article 283 of the Labor Code, which provides:

> *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 operations 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 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 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 closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to at least 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 as one (1) whole year.

Thus, retrenchment is a valid exercise of management prerogative subject to the strict requirements set by jurisprudence, to wit:

> (1) That the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis,* but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
>
> (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;
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> (3) That the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher;
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> (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and
>
> (5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, x x x efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[28]

Applying the above-stated requisites for a valid retrenchment in the case at bar, it is apparent that the first, fourth and fifth requirements were complied with by respondent's employer. However, the second and third requisites were absent when Petrocon terminated the services of respondent.

As aptly found by the NLRC and justly sustained by the CA, Petrocon exercised its prerogative to retrench its employees in good faith and the considerable reduction of work allotments of Petrocon by Saudi Aramco was sufficient basis for Petrocon to

reduce the number of its personnel, thus:

> Moreover, from the standard form of employment contract relied upon by the Labor Arbiter, it is clear that unilateral cancellation (sic) may be effected for "legal, just and valid cause or causes." Clearly, contrary to the Labor Arbiter's perception, the enumerated causes for employment termination by the employer in the standard form of employment contract is not exclusive in the same manner that the listed grounds for termination by the employer is not exclusive. As pointed out above, under Sec. 10 of RA 8042, it is clear that termination of employment may be for just, valid or authorized cause as defined by law or contract. Retrenchment being indubitably a legal and authorized cause may be availed of by the respondent.
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> From the records, it is clearly shown that there was a drastic reduction in Petrocon's 1998 work allocation from 250,000 man-hours to only 80,000 man-hours. Under these circumstances over which respondent's principal, Petrocon had no control, it was clearly a valid exercise of management prerogative to reduce personnel particularly those without projects to work on. To force Petrocon to continue maintaining all its workers even those without projects is tantamount to oppression. "The determination to cease operation is a prerogative of management which the state does not usually interfere with as no business or undertaking must be required to continue at a loss simply because it has to maintain its employees in employment. Such an act would be tantamount to a taking of property without due process of law. (Industrial Timber Corp. vs. NLRC, 273 SCRA 200)[29]

As to complying with the fifth requirement, the CA was correct when it ruled that:

> As to the fifth requirement, the NLRC considered the following criteria fair and reasonable in ascertaining who would be dismissed and who would be retained among the employees; (i) less preferred status; (ii) efficiency rating; (iii) seniority; and (iv) proof of claimed financial losses.
>
> The primary reason for respondent's termination is lack of work project specifically related to his expertise as piping designer. Due to the highly specialized nature of Logarta's job, we find that the availability of work and number of allocated man-hours for pipeline projects are sufficient and reasonable criteria in determining who would be dismissed and who would be retained among the employees. Consequently, we find the criterion of less preferred status and efficiency rating not applicable.
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> The list of terminated employees submitted by Petrocon, shows that other employees, with the same designation as Logarta's (Piping Designer II), were also dismissed. Terminated, too, were employees designated as Piping Designer I and Piping Designer. Hence, employees whose job designation involves pipeline works were without bias terminated.

> As to seniority, at the time the notice of termination was given to him, Logarta's employment was eight (8) months, clearly, he has not accumulated sufficient years to claim seniority.
>
> As to proof of claimed financial losses, the NLRC itself has recognized the drastic reduction of Petrocon's work allocation, thereby necessitating the retrenchment of some of its employees.[30]

As for the notice requirement, however, contrary to petitioner's contention, proper notice to the DOLE within 30 days prior to the intended date of retrenchment is necessary and must be complied with despite the fact that respondent is an overseas Filipino worker. In the present case, although respondent was duly notified of his termination by Petrocon 30 days before its effectivity, no allegation or proof was advanced by petitioner to establish that Petrocon ever sent a notice to the DOLE 30 days before the respondent was terminated. Thus, this requirement of the law was not complied with.

Also, petitioner's contention that respondent freely consented to his dismissal is unsupported by substantial evidence. Respondent's recourse of finding a new employer during the 30-day period prior to the effectivity of his dismissal and eventual return to the Philippines is but logical and reasonable under the circumstances. Faced with the eventuality of his termination from employment, it is understandable for respondent to seize the opportunity to seek for other employment and continue working in Saudi Arabia.

Moreover, petitioner's insistence that the case of *Jariol v. IMS* should be applied in the present case is untenable. Being a mere decision of the NLRC, it could not be considered as a precedent warranting its application in the case at bar. Suffice it to state that although Article 8 of the Civil Code[31] recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country, such level of recognition is not afforded to administrative decisions.[32]

Anent the proper amount of separation pay to be paid to respondent, petitioner maintains that respondent was paid the appropriate amount as separation pay. However, a perusal of his Payroll Check Details,[33] clearly reveals that what he received was his compensation for the month prior to his departure, and hence, was justly due to him as his salary. Furthermore, the amounts which he received as his "End of Contract Benefit" and "Other Earning/Allowances: for July 1998"[34] form part of his wages/salary, as such, cannot be considered as constituting his separation pay.

Verily, respondent is entitled to the payment of his separation pay. However, this Court disagrees with the conclusion of the Labor Arbiter, the NLRC and the CA, that respondent should be paid his separation pay in accordance with the provision of Section 10 of R.A. No. 8042. A plain reading of the said provision clearly reveals that it applies only to an illegally dismissed overseas contract worker or a worker dismissed from overseas employment without just, valid or authorized cause, the pertinent

portion of which provides:

> Sec. 10. *Money Claims*. – x x x In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, x x x

In the case at bar, notwithstanding the fact that respondent's termination from his employment was procedurally infirm, having not complied with the notice requirement, nevertheless the same remains to be for a just, valid and authorized cause, i.e., retrenchment as a valid exercise of management prerogative. To stress, despite the employer's failure to comply with the one-month notice to the DOLE prior to respondent's termination, it is only a procedural infirmity which does not render the retrenchment illegal. In *Agabon v. NLRC*,[35] this Court ruled that when the dismissal is for a just cause, the absence of proper notice should not nullify the dismissal or render it illegal or ineffectual. Instead, the employer should indemnify the employee for violation of his statutory rights.[36]

Consequently, it is Article 283 of the Labor Code and not Section 10 of R.A. No. 8042 that is controlling. Thus, respondent is entitled to payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher. Considering that respondent was employed by Petrocon for a period of eight (8) months, he is entitled to receive one (1) month pay as separation pay. In addition, pursuant to current jurisprudence,[37] for failure to fully comply with the statutory due process of sufficient notice, respondent is entitled to nominal damages in the amount P50,000.00.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated January 8, 2004 and the Resolution dated May 12, 2004 of the Court of Appeals are **AFFIRMED** with **MODIFICATIONS**. Petitioner is **ORDERED** to pay Roel P. Logarta one (1) month salary as separation pay and P50,000.00 as nominal damages.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

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[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Buenaventura J. Guerrero and Juan Q. Enriquez, Jr., concurring; rollo, pp. 30-38.

[2] *Id.* at 40-43.

[3] *Rollo*, p. 51.

[4] *Id*. at 53.

[5] *Id.* at 54.

[6] *Id.* at 55.

[7] *Id.* at 57.

[8] *Id.* at 58.

[9] *Id.* at 60-64.

[10] *Id.* at 63-64.

[11] *Id*. at 65-76.

[12] *Id.* at 78-83.

[13] *Id*. at 82-83.

[14] *Id.* at 85-86.

[15] Petition, *id.*, at 87-101.

[16] *Rollo,* p. 93.

[17] *Id.* at 38.

[18] *Id.* at 40-43.

[19] *Id.* at 174-175.

[20] G.R. No. 117040, January 27, 2000, 323 SCRA 445.

[21] *Rollo*, pp. 112-117.

[22] *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN),* G.R. No. 165756, June 5, 2009, 588 SCRA 497, 509.

[23] *F.F. Marine Corporation v. National Labor Relations Commission,* Second Division, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 166.

[24] *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN), supra* note 22.

[25] *Philippine National Bank v. Cabansag*, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 518.

[26] G.R. No. 78085, October 16, 1989, 178 SCRA 569.

[27] *Id.* at 580.

[28] *Shimizu Phils. Contractors, Inc. v. Callanta,* G.R. No. 165923, September 29, 2010, 631 SCRA 529, 540.

[29] *Rollo*, p. 80.

[30] *Id.* at 37.

[31] Sec. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

[32] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241, 254.

[33] *Rollo,* p. 59.

[34] *Id*.

[35] 485 Phil. 248 (2004).

[36] *Plastimer Industrial Corporation v. Gopo*, G.R. No. 183390, February 16, 2011, 643 SCRA 502, 510.

[37] *Shimizu Phils. Contractors, Inc. v. Callanta, supra* note 28, at 543; *Jaka Food Processing Corporation v. Pacot,* 494 Phil. 114, 122 (2005).
