Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOLI D. APARICIO and RENAN CLARITO, Petitioners,	**G.R. No. 220647**
	Present:
	PERALTA, *Chairperson*
	CAGUIOA,
	REYES, J.C., JR.,
-versus-	LAZARO-JAVIER, and
	LOPEZ, *JJ*
	Promulgated:
MANILA BROADCASTING COMPANY, Respondent.	DEC 10 2019

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D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on Certiorari assails the following issuances of the Court of Appeals in CA-G.R. SP No. 04514 entitled "*Noli D. Aparicio, Renan N. Clarito, Noel Solutan, Delmer Dilig and Abelardo Brillantes v. National Labor Relations Commission (NLRC), Fourth Division, Cebu City and Manila Broadcasting Company*:"

1) Decision[1] dated August 20, 2013, finding petitioners to have been validly dismissed on ground of redundancy; and

[1] Penned by Executive Justice Pampio A. Abarintos with the concurrence of Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, all members of the Eighteenth Division, *rollo*, pp. 34-48.

2) Resolution[2] dated August 25, 2015, denying petitioners' partial motion for reconsideration.

Proceedings before the Labor Arbiter

Petitioners Noli Aparicio and Renan Clarito together with Delmer Dilig, Abelardo Brillantes, and Noel Solutan (petitioners et al.) filed separate complaints for illegal dismissal, reinstatement, backwages, moral damages, exemplary damages, and attorney's fees against respondent Manila Broadcasting Company (MBC).

Petitioners et al.'s Position Paper

In their Consolidated Position Paper[3] dated July 4, 2003, petitioners et al. essentially alleged:

They worked as radio technicians with MBC, a corporation engaged in radio broadcasting.

Noli Aparicio and Renan Clarito were both assigned at the transmitter site of DYEZ (local AM radio) and DZRH (a relaying station and a nationwide AM radio) in Barangay Taloc, Bago City; Noel Solutan, at the studio transmitter of YES FM at Rizal-Locsin Streets, Bacolod City; and Delmer Dilig and Abelardo Brillantes, at the studio of DYEZ and the transmitter site, Barangay Taloc.[4]

On February 28, 2002, they were surprised to receive a Notice dated February 22, 2002 from MBC President Roberto Nicdao, Jr., terminating their employment with separation pay effective thirty (30) days from notice or on March 31, 2002. Noel Aparicio, Delmer Dilig and Abelardo Brillantes signed a quitclaim, believing their dismissal was valid. The rest sued for illegal dismissal.[5]

After preliminary conference before the labor arbiter, their money claims were settled except their claims for moral damages, exemplary damages, and attorney's fees. The validity of their dismissal was also not amicably settled.[6]

They were dismissed without just or authorized cause. The notice requirement was likewise not observed. The alleged authorized ground for retrenchment or redundancy was not proven. Their dismissal was tainted with bad faith because the so-called retrenchment was merely a ploy to replace the employees.[7]

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[2] *Id.* at 62-65.
[3] *Id.* at 85-97.
[4] *Id.* at 85-86.
[5] *Id.* at 86-87.
[6] *Id.* at 87.
[7] *Id.* at 89-93.

MBC's Position Paper

In its Consolidated Position Paper[8] dated July 16, 2002, MBC countered, in the main:

Sometime in the last quarter of 2001, the management was directed to review the operations of all MBC stations. The review revealed several losing stations were subsidized by the more profitable Manila stations. As remedial measure, Chairman Fred Elizalde, through Memorandum dated January 10, 2002, implemented the policy dubbed as "*Hating Kapatid.*" Under it, each station was considered independent of the Head Office and will no longer be subsidized. As a result, each station had to review its own manpower complement.[9]

Being one (1) of the losing MBC stations, FFES Bacolod, a relay station of DZRH, was shut down. The employees assigned there, including Noli Aparicio and Renan Clarito were retrenched. It was ascertained that FFES Bacolod need not continue to operate as a relay station of DZRH since anyway DZRH can be heard in Bacolod City through FFES Iloilo.[10]

On the other hand, although DYEZ-AM was not similarly shut down, its manpower was downsized. Delmer Dilig and Abelardo Brillantes who were assigned there got retrenched because the station needed only the service of two (2) not four (4) radio technicians. As for YES-FM Bacolod, it was not shut down but only retained one (1) technician.[11] Radio technician Noel Solutan had to go.[12]

Except for Noel Solutan, who received the notice of retrenchment on March 1, 2002, petitioners et al. received theirs on February 28, 2002. On the same day, the company submitted its Revised RRS Form and the Establishment Termination Report to the Department of Labor and Employment (DOLE). It informed the DOLE that the retrenchment program was brought about by redundancy and company reorganization and downsizing.[13]

The retrenched employees, thereafter, received their separation pay equivalent to one (1) month salary for every year of service effective thirty (30) days from notice.[14]

The Ruling of the Labor Arbiter

By Decision dated July 27, 2007, Labor Arbiter Elias Salinas held that

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[8] *Id.* at 77-82.
[9] *Id.* at 78.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* at 79.
[14] *Id.*

petitioners et al. were illegally dismissed. There was no evidence that MBC suffered from serious business losses and financial reverses. There was no showing either that it used fair and reasonable criteria in choosing the positions to be retrenched. The mechanics of the "*Hating Kapatid*" program was not even explained to the employees. Instead of reinstatement, petitioners et al. should be awarded separation pay by reason of their strained relations with MBC. Labor Arbiter Salinas decreed:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring complainants to have been illegally dismissed from the service. As such, respondent Manila Broadcasting Company is hereby ordered to pay complainants their [backwages] and separation pay, to wit:
>
> | | NAME | BACKWAGES | SEPARATION PAY |
> |---|---|---|---|
> | 1. | Noli [Aparicio] | P427,209.32 | P1,776.56 |
> | 2. | Renan Clarito | P357,068.36 | P15,333.79 |
> | 3. | Noel Solutan | P427,026.44 | P(10,423.09) |
> | 4. | Delmer Dilig | P427,238.27 | P49,194.36 |
> | 5. | Abelardo Brillantes | P357,068.36 | P(25,239.84) |
>
> Respondent is further ordered to pay the sum equivalent to ten percent of the judgment award as attorney's fees.
>
> All other claims are ordered dismissed for lack of merit and/or by reason of settlement.
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> SO ORDERED.[15]

Proceedings before the NLRC

By Memorandum of Appeal[16] dated October 31, 2007, petitioners et al. sought a partial appeal on the award of backwages, separation pay, and attorney's fees. They argued that the award of separation pay instead of reinstatement was not in accord with law. It was not shown that their continued employment with MBC would be inconsistent with peace and tranquility in the workplace. Strained relations should be raised as a factual issue.[17]

The labor arbiter also omitted to rule on their claim for 13th month pay, vacation leave pay and damages; and to include in the computation of their backwages their 13th month pay and vacation leave pay.[18]

In its Memorandum of Appeal[19] dated February 15, 2008, MBC asserted that petitioners et al. voluntarily received their separation pay as a consequence of their retrenchment. Further, they filed their position paper

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[15] *Id.* at 125-126.
[16] *Id.* at 129-135.
[17] *Id.* at 130-131.
[18] *Id.* at 132-133.
[19] *Id.* at 138-147.

only eight (8) months after it fell due. At any rate, it only became aware of the labor arbiter's decision when it received petitioners et al.'s memorandum of appeal. It therefore filed a manifestation for the labor arbiter to furnish it with copy of the decision but petitioners et al. opposed it. Petitioners et al. argued that the decision had become final and executory as against the company. The NLRC, nonetheless, furnished them, by mail, with copy of the labor arbiter's decision on January 25, 2008. It received the decision on February 7, 2007.[20] The retrenchment program was a valid exercise of its management prerogative to pave the way for adoption of new methods.[21]

By Decision[22] dated November 25, 2008, the NLRC reversed. It found that MBC's appeal was timely filed. On the merits, it ruled that reorganization is a jurisprudentially acknowledged cost-saving measure. An employer is not precluded from adopting a new policy conducive to a more economical and effective management. The law does not require that financial losses be actually suffered by the company before it can terminate the services of an employee on ground of redundancy.

Petitioners et al. moved for reconsideration[23] which the NLRC denied through Resolution[24] dated April 24, 2009.

The Proceedings before the Court of Appeals

Aggrieved, petitioners et al. went on certiorari to the Court of Appeals charging the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction for resolving the appeal in MBC's favor. They argued it was highly implausible for MBC to have received copy of the labor arbiter's decision only on February 7, 2008. In fact, the labor arbiter's Notice of Decision dated August 23, 2007 indicated that all counsels were furnished copies of the labor arbiter's decision at their respective addresses on record. Copy of the labor arbiter's decision was even furnished not only to MBC's counsel but to its president, as well.[25]

The office address of MBC's counsel, Atty. Rodinil Bugay, as indicated on record, is FJE Bldg., Esteban Street, Legaspi Village, Makati City. Atty. Bugay moved his office to the 2nd Floor, MBC Building, V. Sotto, CCP Complex, Roxas Boulevard, Pasay City, without notice to the labor arbiter. On November 5, 2007, the notice of the decision was served on Atty. Bugay's address on record (FJE Bldg) but was returned unserved because he "[m]oved [o]ut." Five (5) days thereafter, on November 10, 2007, the service of notice of the decision on MBC was deemed complete. From November 10, 2007, MBC only had ten (10) days or until November 20, 2007 to appeal to the

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[20] *Id.* at 138-141.
[21] *Id.* at 144.
[22] *Id.* at 156-164.
[23] *Id.* at 165-169.
[24] *Id.* at 18.
[25] *Id.* at 39.

NLRC. The appeal, nonetheless, was belatedly filed on February 18, 2008.[26]

MBC responded that when the labor arbiter sent copy of one (1) of its Orders to Atty. Bugay's new address on June 7, 2004, the same was already a formal recognition on record of said address. The NLRC is not bound to adopt the labor arbiter's findings. It is in fact authorized to make its own evaluation of the evidence and based thereon make its own factual findings.[27]

Ruling of the Court of Appeals

By its assailed Decision dated August 20, 2013, the Court of Appeals held that MBC's appeal was timely filed. There was no valid service of the labor arbiter's decision on counsel's new address on record. On this score, there was no evidence showing that counsel failed to give notice of his new office address to the labor arbiter.

It further ruled that the termination of Delmer Dilig, Abelardo Brillantes, and Noel Solutan was only deemed illegal because MBC failed to consider the factors of preferred status, efficiency, and seniority, in determining the employees to be retrenched. But the termination of the aforesaid employees was untainted with bad faith.

As for Noli Aparicio and Renan Clarito, the Court of Appeals found that their services were no longer needed because FFES Bacolod, where they were assigned, was already abolished.

The Court of Appeals pronounced:

> **WHEREFORE**, premises considered, the instant petition is **PARTLY GRANTED** in that the assailed Decision and Resolution of the National Labor Relations Commission are **REVERSED** and **SET ASIDE** with respect to petitioners Dilig, Brillantes, and Solutan, but the said Decision is **UPHELD** with respect to petitioners Aparicio and Clarito.
>
> SO ORDERED.[28]

Both MBC and petitioners et al. moved for partial reconsideration, which the Court of Appeals denied under Resolution[29] dated August 25, 2015.

The Present Petition

Only petitioners Noli Aparicio and Renan Clarito are now seeking this Court's discretionary appellate jurisdiction to grant them affirmative relief

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[26] *Id.* at 40.
[27] *Id.* at 41-42.
[28] *Id.* at 48.
[29] *Id.* at 71-74.

from the Court of Appeals' assailed dispositions.

Petitioners plead anew the circumstances supposedly showing the date when MBC was presumed to have received the decision of the labor arbiter and when it was deemed to have lapsed into finality; and why MBC's "*Hating Kapatid*" redundancy program should be struck down for lack of factual bases.[30]

In its Comment[31] dated April 25, 2016, MBC reiterates its own factual narration pertaining to the actual date when it received the labor arbiter's decision, the timeliness of its appeal before the NLRC, and the economic considerations which compelled it to downsize its operation and adopt its "*Hating Kapatid*" redundancy program.

Petitioners' subsequent reply echoes the arguments in their petition.[32]

Issue

Did the Court of Appeals commit reversible error when it ruled that:
1) MBC's appeal to the NLRC was timely filed?
2) Petitioners were validly dismissed on ground of redundancy?

Ruling

MBC's appeal was timely filed

To resolve the issue whether MBC's appeal to the NLRC was timely filed, we reckon with the date when MBC received notice of the labor arbiter's Decision dated July 27, 2007 *vis-à-vis* the rule on service of registered mail. ***Bernarte v. PBA***[33] teaches:

> The rule on service by registered mail contemplates two situations: (1) actual service the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster.
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> **Insofar as constructive service is concerned, there must be conclusive proof that a first notice was duly sent by the postmaster to the addressee. Not only is it required that notice of the registered mail be issued but that it should also be delivered to and received by the addressee. Notably, the presumption that official duty has been regularly performed is not applicable in this situation. It is incumbent upon a party who relies on constructive service to prove that the notice**

[30] *Id.* at 15-26.
[31] *Id.* at 187-199.
[32] *Id.* at 210-212.
[33] 673 Phil. 384, 392 (2011).

was sent to, and received by, the addressee.

The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made. The mailman may also testify that the notice was actually delivered. (Emphasis supplied)

As proof that MBC, through counsel, was supposedly served with notice of the labor arbiter's decision at counsel's former address, petitioners presented in evidence the mail carrier's notation "'Moved out' 11/05/07."

Bernarte, nonetheless, ruled that "*the best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made.*" As it was, petitioners here did not present a certification from the postmaster or the testimony of the mailman pertaining to how, when, and to whom the delivery and receipt was made. All they had was the purported mail carrier's notation "'Moved out' 11/05/07," which does not suffice for purposes of proving that MBC moved to a new address without notice to the labor arbiter. More, as aptly found by the Court of Appeals, petitioner could have submitted in evidence the so-called joint declaration indicating counsel's old address and not his new address, but petitioners failed to do so. We quote the relevant disquisition of the Court of Appeals, *viz.*:

To prove that private respondent's counsel really moved to a new address without notifying the Labor Arbiter's Office of said transfer, petitioners could have submitted in evidence a certification from the Labor Arbiter's Office that would show such circumstance or that the address on record of private respondent's counsel is still the old one.

Further, in their Memorandum (on certiorari), petitioners mentioned that in a Joint Declaration allegedly made by private respondent's counsel under oath (dated February 8, 2008), which was a requirement for appeal, he (counsel) indicated his address as FJE Bldg. Esteban Street, Legaspi Village, Makati City," his old address. If indeed private respondent's counsel indicated the said old address in the said Joint Declaration, petitioners could also have submitted in evidence a certified true copy of the same document showing the said circumstance. Petitioners could have secured a certified true copy of the same document as the said is part of the case records.

Said documents (certification from the Labor Arbiter's Office mentioned earlier and certified true copy of the Joint Declaration) could have supported petitioners' allegation that the address on record of private respondent's counsel is still the old address given and that if ever said counsel had, in fact, transferred to the new address in Pasay City, counsel did so without informing the office of the Labor Arbiter. Petitioners did not present these documents in evidence. It should be noted that these matters relate to the issues of whether private respondent's appeal was timely filed, and whether the decision of the Labor Arbiter had become final and executory. Further, they relate to the question of whether the NLRC unduly entertained the appeal of private respondent. As it is, we agree with the NLRC that the petitioners failed to prove that the appeal of the private respondent

was filed out of time.[34]

Verily, the NLRC, as affirmed by the Court of Appeals correctly concluded that MBC's receipt of the labor arbiter's decision should be reckoned on February 7, 2008, the date when MBC received a copy of the labor arbiter's decision not from the labor arbiter himself but from the NLRC after MBC manifested that it had not yet received said decision of the labor arbiter. Hence, when MBC eventually filed it memorandum of appeal with the NLRC ten (10) days later on February 18, 2008 (February 17, 2008, being a Sunday),[35] the same was well within the reglementary period.

Petitioners were validly dismissed

Petitioners' employment was validly terminated on ground of redundancy, one of the authorized causes for termination of employment under Article 298 of the Labor Code, as amended, *viz.*:

> Article 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.

Redundancy exists when an employee's services are in excess of what is reasonably demanded by the actual requirements of the enterprise. While a declaration of redundancy is ultimately a management decision, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations, management must not violate the law nor declare redundancy without sufficient basis.[36]

A valid redundancy program requires the following: (1) written notice served on both the employees and the Department of Labor and Employment (DOLE) at least one [1] month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one [1] month pay for every year of service; (3) good faith in abolishing the redundant

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[34] *Rollo*, pp. 42-43.
[35] *Id.* at 39.
[36] *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT*, 809 Phil. 106, 123 (2017).

positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority, among others.[37]

Here, petitioners were duly served notices of retrenchment which took effect thirty (30) days later. MBC also submitted its Establishment Termination Report to the DOLE containing the reasons for its adoption and implementation of the redundancy program. Petitioners were likewise promptly given their separation pay.[38]

MBC's redundancy program dubbed as "*Hating Kapatid*" bore the following policy guidelines:

> POLICY GUIDELINES FOR THE "HATING KAPATID" FOR REGULAR STATIONS
>
> [x x x]
>
> STATUS OF EMPLOYMENT/SEPARATION PAY
>
> All employees will be retired/separated. Those retained by the Senior Manager/OIC shall sign a waiver and will receive their retirement/separation pay (computed as of cut-off date) only upon final retirement/separation from from the station. Those retained or rehired in any way shall be the employees of the Station Manager/OIC who will be responsible for their retirement/separation benefit and other employee benefits starting from the cut-off date.
>
> In the even that the Station Manager/OIC is separated from service, MBC shall choose and decide as to who will operate under the new system.
>
> REPAIRS/ENGINEERING SERVICES
>
> All repairs shall be for the account of the Station Manager/OIC. MBC shall also provide Station Manager/OIC with a list of readily available spare parts and its prices.
>
> Engineering services shall be on a per-call basis and costs for such services shall be for the account of the Station Manager/OIC.
>
> PROGRAMMING/EX-DEALS/BLOCKTIME
>
> The Station Manager/OIC shall enjoy the benefits of nationwide sales and network promotions. The Station Manager/OIC shall continue implementing the programming policies/directives of MBC. Block time is allowed provided it does not violate any existing programming policy.
>
> Local sales may be subject of ex-deals and no approval is needed from MBC to implement the same. However, all ex-deals shall be treated and counted as cash for purposes of remittance of MBC's share.
>
> LOCAL/NATIONAL SALES REMITTANCE
>
> The Station Manager/OIC shall remit MBC's share in local sales within the first ten (10) days of the following month. MBC shall remit the Station Manager/OIC share in national sales within the first ten (10) days of the collection month.

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[37] *PNB v. Dalmacio*, 813 Phil. 127, 134 (2017).
[38] *Rollo*, p. 119.

> All sales to be divided between the MBC and the Station Manager/OIC shall be net of commission.
>
> SCOREKEEPERS
>
> MBC shall maintain scorekeepers to ensure compliance by Station Manager/OIC of programming policies and to monitor the local sales.[39]

Based thereon, FFES Bacolod was shut down as relay station of DZRH. Its continued operation was deemed unnecessary because DZRH anyway could be heard in Bacolod through FFES Iloilo. Consequently, petitioners who were both assigned at FFES Bacolod had to go, as well. Courts will not interfere unless management is shown to have acted arbitrarily or maliciously. For it is the management which is clothed with exclusive prerogative to determine the qualification and fitness of an employee for hiring or firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for its business operation.[40]

In labor cases, as in other administrative proceedings, only substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required.[41] Here, the Court of Appeals relied on substantial evidence in finding that the MBC's memorandum of appeal was timely filed and its redundancy program including the consequent retrenchment of petitioners was valid. The Court will not disturb these factual findings in the absence of any special or compelling reasons.[42]

ACCORDINGLY, the petition is **DISMISSED.** The Decision dated August 20, 2013 and Resolution dated August 25, 2015 of the Court of Appeals in CA-G.R. SP No. 04514 are **AFFIRMED**.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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[39] *Id.* at 113.
[40] *Lowe, Inc., et al., v. Court of Appeals, et al.*, 612 Phil. 1044, 1058 (2009).
[41] *Career Philippines Shipmanagement, Inc. v. Silvestre*, G.R. No. 213465, January 08, 2018, 850 SCRA 46, 61.
[42] *Pascual v. Burgos, et al.*, 776 Phil. 167, 182 (2016).

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice
Chairperson, First Division