SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GERTRUDES D. MEJILA,
Petitioner,

-versus-

WRIGLEY PHILIPPINES, INC, JESSELYN P. PANIS, *ET AL.*,
Respondents.

G.R. No. 199469

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WRIGLEY PHILIPPINES, INC.,
Petitioner,

-versus-

GERTRUDES D. MEJILA,
Respondent.

G.R. No. 199505

Present:

BERSAMIN, *CJ.*,
PERLAS-BERNABE,
JARDELEZA,
GESMUNDO,
CARANDANG, *JJ.*

Promulgated:

SEP 11 2019

x -x

DECISION

JARDELEZA, *J.*:

These consolidated petitions challenge the Decision[1] dated July 12, 2011 and Resolution[2] dated November 21, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 116203. The CA found that Wrigley Philippines, Inc. (WPI) validly dismissed Gertrudes D. Mejila (Mejila) on the ground of redundancy but failed to observe procedural due process, which warranted the award of nominal damages and attorney's fees in favor of Mejila. In G.R. No. 199469, Mejila assails the CA's finding that there was authorized cause for her dismissal. In G.R. No.

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[1] *Rollo* (G.R. No. 199469), pp. 90-106, penned by Associate Justice Isaias Dicdican, with the concurrence of Associate Justices Stephen C. Cruz and Edwin D. Sorongon.

[2] *Id.* at 108-111.

199505, WPI questions the finding that it failed to comply with due process requirements.

WPI is a corporation engaged in the manufacturing and marketing of chewing gum. It engaged the services of Mejila, a registered nurse, as an occupational health practitioner for its Antipolo manufacturing facility sometime in April 2002. Her employment status was initially on a contractual basis until she was regularized effective January 1, 2007.[3]

On October 26, 2007, WPI sent a memorandum to Mejila informing her that her position has been abolished as a result of the company's manpower rationalization program and that her employment will be terminated effective November 26, 2007. The memorandum stated that Mejila is no longer required to work beginning the same day, October 26, although her salary will be paid until November 26. It also required Mejila to turn over all company properties no later than October 26. WPI granted her separation pay at the rate of 1.5 months every year of service, cash conversion of unused leaves, one-year extension of medical insurance, and *pro rata* 13th month pay, New Year pay, and mid-year pay, which shall be released upon return of all properties and completion of the exit clearance process.[4] On the same date, WPI notified the Department of Labor and Employment's (DOLE) Rizal Field Office of its decision to terminate Mejila and two others due to redundancy.[5]

In the meantime, WPI engaged the services of Activeone Health, Inc. to take over the services previously handled by the occupational health practitioners starting November 1, 2007.[6] The abolition of WPI's in-house clinic services and decision to hire an independent contractor for clinic operations was part of the management's Headcount Optimization Program designed to improve cost efficiency, considering that clinic management is not an integral part of WPI's business.[7] Like Mejila, Dr. Marilou L. Fonollera and nurse Soccoro Laarni B. Edurise were also terminated due to redundancy.[8]

Mejila filed a complaint for illegal dismissal against WPI and its officers, Jesselyn Panis, and Michael Panlaqui, who are WPI's Factory Director and People Learning and Development Manager, respectively. The Labor Arbiter[9] ruled that Mejila was illegally dismissed and held that WPI failed to comply with the procedural due process requirements, particularly when it sent the notice to DOLE's Rizal Field

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3 *Rollo* (G.R. No. 199505), p. 489.
4 *Id.* at 152.
5 *Id.* at 154.
6 *Id.* at 156.
7 *Id.* at 146.
8 *Rollo* (G.R. No. 199469), pp. 93, 133.
9 *Id.* at 154; Labor Arbiter Edgar B. Bisana.

Office, instead of the Regional Office. In addition, the Labor Arbiter found that the outsourcing of clinic operations is more expensive for WPI, which belies its intention to economize. Accordingly, WPI was ordered to reinstate Mejila and to pay her full backwages, moral damages, exemplary damages, and attorney's fees.[10]

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. It held that as early as February 2007, WPI management had already deliberated on the feasibility of a Headcount Optimization Program for the purpose of streamlining the organization and increasing productivity. Contrary to the Labor Arbiter's pronouncement, the NLRC found that the outsourcing of clinic operations actually resulted in an overall cost savings of ₱500,000.00 for WPI. The NLRC noted that while the monthly basic income of the outsourced nurses are higher, the gross annual income of the displaced in-house nurses such as Mejila was actually higher because of additional monetary benefits granted by WPI on top of the monthly salary. With respect to the due process issue, the NLRC held that notice to the Rizal Provincial Office is sufficient compliance since it is a satellite office of the Regional Office.[11]

Mejila elevated the case to the CA on *certiorari*. The CA affirmed the NLRC's finding that Mejila was not illegally dismissed. It ruled that "WPI presented evidence as to the increased productivity and cost efficiency brought about by the Headcount Optimization Program" and that "the outsourcing of the clinic operations to Activeone Health Inc. enabled WPI to focus more on its core business of gum manufacturing."[12] However, the CA held that WPI failed to properly serve the notice of termination to the DOLE Regional Office as required by the Implementing Rules and Regulations of the Labor Code. This is supported by the certification of the Regional Director himself that his office did not receive any notice from WPI. Thus, the CA awarded nominal damages to Mejila, as well as attorney's fees pursuant to Article 111 of the Labor Code.[13]

After the CA denied their partial motions for reconsideration,[14] both parties filed their respective petitions for review challenging the CA ruling insofar as it was unfavorable to them.

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[10] *Id.* at 127-154.
[11] *Id.* at 113-124.
[12] *Id.* at 101-102.
[13] *Id.* at 104-105.
[14] *Id.* at 108-111; penned by Associate Justice Isaias Dicdican, with the concurrence of Associate Justices Stephen C. Cruz and Edwin D. Sorongon.

The Labor Code recognizes redundancy as an authorized cause for the termination of employment. Article 298 (formerly Article 283)[15] 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.

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*,[16] 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

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[15] Department Advisory No. 1 s. 2015, "Renumbering of the Labor Code of the Philippines, as Amended."

[16] G.R. No. 82249, February 7, 1991, 193 SCRA 665.

> 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.[17]

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 tribunals and the courts, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act.[18]

Of course, a company cannot simply declare redundancy without basis. It is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof that such is the actual situation to justify the dismissal of the affected employees for redundancy. We have considered evidence such as 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, among others, as adequate to substantiate a claim for redundancy.[19]

In the present case, We agree with the CA and the NLRC that WPI substantially proved that its Headcount Optimization Program was a fair exercise of business judgment. The decision to outsource clinic operations can hardly be considered as whimsical or arbitrary. As both the CA and the NLRC found, WPI had deliberated on the feasibility of the Headcount Optimization Program as early as February 2007 for the purpose of streamlining the organization and increasing productivity. WPI's rationale for outsourcing its clinic operations is reasonable—it wanted to focus on the core business of gum manufacturing, and clinic operations is not an integral part of it. WPI's business projections showed a correlation between an increase in volume and a decrease in headcount,[20] and its computation of cost savings amounting to ₱522,713.79 as a result of the engagement of Activeone has not been adequately rebutted. Mejila's proposed computation takes into account only the basic monthly salary of the clinic personnel.[21] But, as the CA and the NLRC noted,[22] the average monthly salary of Mejila and her co-nurses is higher than the service fees paid to Activeone when the

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[17] *Id.* at 672.

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

[19] *Panlilio v. National Labor Relations Commission*, G.R. No. 117459, October 17, 1997, 281 SCRA 53, 56.

[20] *Rollo* (G.R. No. 199505), p. 155.

[21] *Rollo* (G.R. No. 199469), pp. 40-42.

[22] *Id.* at 101, 120.

added benefits of 13th to 15th month pay, holiday pay, cash gift, factory incentives, leave conversions, and allowances are taken into account.[23]

On the other hand, Mejila failed to prove her accusation that WPI acted with ill motive in implementing the redundancy program. The pieces of evidence presented by Mejila to support her allegation were mainly hearsay and speculative at best.[24] On the contrary, WPI's prior actions showed that it was implementing its Headcount Optimization Program without singling out Mejila. Prior to her termination, WPI had released at least 10 other employees as part of the program.[25] It must be emphasized that while the company bears the burden of proving that the dismissal of employees on the ground of redundancy is justified, the onus of establishing that the company acted in bad faith lies with the employee making such allegation. This follows the basic precept that bad faith can never be presumed; it must be proved by clear and convincing evidence.[26]

Management cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. It has the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. Contracting out of services is an exercise of business judgment or management prerogative.[27] Mejila's failure to discharge her burden of proving that WPI's management acted in a malicious or arbitrary manner constrains Us to apply the policy of non-interference with the employer's exercise of business judgment.

II

In implementing a redundancy program, Article 298 requires employers to serve a written notice to both the affected employees and the DOLE at least one month prior to the intended date of termination. Under Book V, Rule XXIII, Section 2 of the Implementing Rules and Regulations of the Labor Code,[28] this procedural requirement is "deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination."

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[23] *Id.* at 187-188.

[24] *Id.* at 28-29; see petitioner's allegations.

[25] *Rollo* (G.R. No. 199505), pp. 379-385.

[26] *Padillo v. Rural Bank of Nabunturan, Inc.*, G.R. No. 199338, January 21, 2013, 689 SCRA 53, 67.

[27] *Manila Electric Company v. Quisumbing*, G.R. No. 127598, February 22, 2000, 326 SCRA 172, 185.

[28] DOLE Order No. 40-03, February 17, 2003.

A

The CA initially held that the termination notice served upon Mejila was not valid because it effectively "caused the immediate severance from work of [Mejila] as it required that the latter need not report for work unless notified that her services are needed until November 26, 2007."[29] In resolving WPI's partial motion for reconsideration, however, the CA upheld WPI's assertion that the notice did not immediately cause Mejila's severance from work, although it denied reconsideration for want of valid notice to DOLE.[30] We find that the CA acted correctly.

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.[31]

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."[32] 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.[33] The practice has been adopted by employers in the United States, and their courts have generally upheld garden leave clauses.[34]

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[29] *Rollo* (G.R. No. 199469), p. 102.

[30] *Id.* at 109.

[31] Amanda Coulthard, *Recent Cases: Garden Leave, The Right to Work and Restraints on Trade*, (2009) AJLL LEXIS 19.

[32] Charles A. Sullivan, *Tending the Garden: Restricting Competition via "Garden Leave,"* 37 Berkeley J. Emp. & Lab. L. 293 (2016).

[33] Greg T. Lembrich, *Garden Leave: A Possible Solution to the Uncertain Enforceability of Restrictive Employment Covenants*, 102 Colum. L. Rev. 2291

[34] *Maltby v. Harlow Meyer Savage Inc.*, 633 N.Y.S. 2d 926 (1995); *Lumex, Inc. v. Highsmith and Life Fitness*, 919 F. Supp. 624 (1996); *Natsource LLC v. Paribello*, 151 F. Supp. 2d 465 (2001); *Estee Lauder Co., Inc. v. Batra*, 430 F. Supp. 2d 158 (2006).

In the Philippines, garden leave has been more commonly used in relation to the 30-day notice period for authorized causes of termination.[35] There is no prohibition under our labor laws against a garden leave clause in an employment contract.

B

WPI concedes that the Implementing Rules and Regulations of the Labor Code textually require that the notice of termination should be submitted to the appropriate DOLE Regional Office. However, it argues that many functions of the regional offices have been devolved to the provincial, field and/or satellite offices. Thus, it posits that it "substantially complied with the requirement that the DOLE should be notified thirty (30) days prior to the effective date of the employee's separation" when it gave notice to the DOLE Rizal Field Office.[36]

Where termination is based on authorized causes under Article 298, substantial compliance is not enough. Since the dismissal is initiated by the employer's exercise of its management prerogative, strict observance of the proper procedure is required in order to give life to the constitutional protection afforded to labor.[37] The language of the Implementing Rules and Regulations of the Labor Code is clear and does not require any interpretation. It provides that written notice must be served upon "the appropriate Regional Office of the Department at least thirty days before the effectivity of the termination."[38] In this regard, the Regional Director of DOLE Regional Office IV-A, Atty. Ricardo S. Martinez, Sr., certified that the office did not receive a copy of WPI's termination notice.[39]

WPI has not pointed to any issuance by the DOLE authorizing the service of the termination notice to the field offices. It appears that WPI merely assumed that this is allowed because certain functions have been devolved to these satellite offices. However, this assumption is unwarranted in the absence of any clear devolution of the authority to receive the notice of termination. The only thing WPI can palpably point to is the Establishment Termination Report (RKS Form 5)[40] which has a blank section at the header allowing employers to fill in the appropriate regional office, district office or provincial extension unit. The argument, apart from being tenuous, is contradicted by the form

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[35] *Rollo* (G.R. No. 199469), p. 121.

[36] *Rollo* (G.R. No. 199505), pp. 14-20.

[37] *Andrada v. National Labor Relations Commission*, G.R. No. 173231, December 28, 2007, 541 SCRA 538, 557; See also *Wah Yuen Restaurant v. Jayona*, G.R. No. 159448, December 16, 2005, 478 SCRA 315; *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302.

[38] Implementing Rules of the Labor Code, Book V, Rule XXIII, Sec. 2.

[39] *Rollo* (G.R. No. 199505), p. 538.

[40] *Id.* at 781.

itself because it states that it must be accomplished "upon filing of notice of termination."[41] The form, therefore, is not the equivalent or substitute for the notice required by law. Thus, regardless of whether DOLE allows the form to be filed with its field offices, it does not change the rule that the notice must be filed with the regional office.

C

An employer's failure to comply with the procedural requirements under the Labor Code entitles the dismissed employee to nominal damages. If the dismissal is based on an authorized cause under Article 298 but the employer failed to comply with the notice requirement, the sanction is stiffer compared to termination based on Article 297 because the dismissal was initiated by the employer's exercise of its management prerogative.[42] After finding that both notices to Mejila and the DOLE were defective, We accordingly hold that WPI is liable to pay nominal damages in the sum of ₱50,000.00[43]

III

WPI finally insists that there is no basis to grant attorney's fees in the absence of proof of bad faith on its part. On this score, We agree with WPI.

There are two commonly accepted concepts of attorney's fees: the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.[44] The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Even when a claimant is compelled to litigate with third

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[41] *Id.*

[42] *Jaka Food Processing Corporation v. Pacot*, G.R. No. 151378, March 28, 2005, 454 SCRA 119, 125-126.

[43] *Nippon Housing Phil., Inc. v. Leynes*, G.R. No. 177816, August 3, 2011, 655 SCRA 77, 90.

[44] *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, G.R. No. 174179, November 16, 2011, 660 SCRA 263, 273-274.

persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith.[45]

Article 111 of the Labor Code is another example of the extraordinary concept of attorney's fees. The provision allows the recovery of attorney's fees in cases of unlawful withholding of wages equivalent to the amount of wages to be recovered. Unlike in Article 2208 of the Civil Code, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. But there must still be an express finding of facts and law to prove the merit of the award.[46]

The CA found that there was no sufficient proof of bad faith on the part of WPI, which rules out an award under Article 2208 of the Civil Code. However, the CA erred in awarding the attorney's fees based on Article 111 of the Labor Code. The provision only applies when there is unlawful withholding of wages. This scenario is non-existent in the present case because WPI did not withhold Mejila's wages. On the contrary, WPI has, from the onset, offered to pay Mejila's salaries, separation pay and other payments.[47] It was Mejila who refused to accept the payment out of the mistaken view that it is conditioned upon the execution of a quitclaim. However, there is nothing in the records which support Mejila's position—the termination notice itself states that the execution of a quitclaim would be *after* Mejila receives the amounts owed by WPI.[48] Accordingly, the award of attorney's fees is improper and should be deleted.

WHEREFORE, the petitions are **DENIED**. The Decision dated July 12, 2011 and Resolution dated November 21, 2011 of the Court of Appeals in CA-G.R. SP No. 116203 are hereby **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees is **DELETED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

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[45] *Philippine National Construction Corporation v. APAC Marketing Corporation*, G.R. No. 190957, June 5, 2013, 697 SCRA 441, 449.

[46] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 527, 601.

[47] *Rollo* (G.R. No. 199505), p. 152.

[48] *Id.*

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice
Working Chairperson

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice