



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **August 26, 2020**, which reads as follows:*

“**G.R. No. 252259 (Logwin Air+Ocean Philippines, Inc. and Franz Erwin Haghofer v. Norudin Calib Taki)**. –This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the Decision² dated April 10, 2019 and the Resolution³ dated February 27, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 152576 finding respondent Norudin C. Taki (Taki) illegally dismissed from employment and awarding payment of backwages, separation pay in lieu of reinstatement, moral, exemplary and nominal damages and attorney’s fees.

Facts of the Case

Petitioner Logwin Air+Ocean Philippines, Inc. (LOGWIN) is a logistics services company.⁴ Taki was hired to work as a Customer Representative or Processor, who was tasked in dealing transactions with the Bureau of Customs. Taki has been in the employ of the company for 16 years.⁵

On April 15, 2016, Taki received a letter from LOGWIN terminating his services effective on May 16, 2016 because his position was deemed redundant. In the letter, Taki was informed to no longer report for work beginning April 18, 2016 but he was still to receive his salary until May 16, 2016.⁶ For this reason, Taki filed a labor complaint for illegal dismissal, reinstatement with backwages and other money claims with the National Labor Relations Commission (NLRC).⁷

LOGWIN, on the other hand, argues that Taki was validly dismissed for an authorized cause. The company suffered from a reduced volume in its

¹ *Rollo*, pp. 3-16.

² Penned by Associate Justice Eduardo B. Peralta, with the concurrence of Associate Justices Ramon R. Garcia, and Gabriel T. Robeniol; *id.* at 27-39.

³ *Id.* at 54-55.

⁴ *Id.* at 5.

⁵ *Id.* at 28.

⁶ *Id.*

⁷ *Id.* at 29.

business. To save on costs, LOGWIN decided to engage third-party providers for brokerage services, which resulted in the redundancy of Taki's position. As his services became unnecessary, the company had to dismiss Taki from employment.⁸

LOGWIN also asserted that it settled payment of Taki's separation pay and 13th month pay benefits. With a salary of ₱19,300.00 per month and a service of 16 years with the company, Taki's separation pay totaled to ₱308,800.00, which is one month pay for every year of service. However, Taki obtained a loan from LOGWIN embodied in a Memorandum of Agreement executed on December 27, 2011 for ₱350,000.00. He also made subsequent cash advances. By offsetting Taki's unpaid loan and cash advances from his salary in his separation pay, there is still an unpaid balance of ₱26,145.36. Given that there is still an outstanding obligation on the part of Taki, there is no separation pay to settle with the employee.⁹

In a Decision¹⁰ dated October 25, 2016, the Labor Arbiter (LA) found that Taki was validly dismissed from employment. The LA also ordered LOGWIN to pay Taki ₱205,454.64, which represents the employee's separation pay and retirement pay after deducting his unpaid loan and unliquidated cash advances. LOGWIN was also ordered to pay nominal damages amounting to ₱10,000.00.¹¹

The parties filed their respective appeals. LOGWIN argued that Taki is not entitled to the money award of the LA, and TAKI asserted that he was illegally dismissed. In a Decision¹² dated March 19, 2017, the NLRC affirmed the finding of the LA that Taki was validly dismissed and modified the money award by deleting payment of separation pay and retirement benefits. The NLRC increased the award of nominal damages from ₱10,000.00 to ₱50,000.00 for failure of the company to comply with the procedural requirements for termination of employment due to reduction of personnel provided under Article 298 (previously Article 283) of the Labor Code of the Philippines.¹³

Taki filed a Petition for *Certiorari* with the CA under Rule 65 of the Rules of Court assailing the Decision of the NLRC. On April 10, 2019, the CA granted Taki's petition finding that he was illegally dismissed from employment. The CA found no evidence that Taki's position became unnecessary. Mere declaration by the company of redundancy will not suffice. There must be proof that a fair and reasonable criterion was used to determine the redundancy of the job position and which of the employees to dismiss. The CA was unconvinced of the allegations on the company's business slow-down or over hiring of personnel. Reports, such as staffing pattern, feasibility

⁸ Id.

⁹ Id. at 30.

¹⁰ Id.

¹¹ Id.

¹² Id. at 31.

¹³ Id.

studies or proposals, viability of newly created positions, or approval of the management of the restructuring were not even presented. The foregoing evidence would suffice to prove the *bona fides* exercise of the business prerogative in abolishing redundant positions and terminating the employment of Taki. As there was no evidence, the dismissal of Taki from employment was without basis.¹⁴

The CA also found that the procedural requirements provided under the Labor Code of the Philippines on termination of employment due to redundancy were not observed by LOGWIN. Article 298 (previously Article 283) provides that a written notice on the redundancy/retrenchment shall be served to the Department of Labor and Employment (DOLE) one month prior the intended date of retrenchment. Here, the DOLE received the Notice of Termination and List of Affected Workers by displacement, 15 days after May 16, 2016, or the date of effectivity of Taki's dismissal. The CA emphasized that the notice to the employee and to the DOLE is important because it not only gives the employee time to prepare for the eventual loss of their job, but also gives the DOLE the opportunity to ascertain the veracity of the alleged cause of termination. LOGWIN's failure to timely notify the DOLE, negates the purpose of the notice.¹⁵

With respect to LOGWIN's assertion of payment of separation pay, the CA held that the cash voucher, the Memorandum of Agreement for ₱350,000.00, and the summary of unliquidated advances cannot constitute as evidence of payment of separation pay. LOGWIN, as employer has the burden of proving payment to Taki because pertinent personnel files, payrolls, records, remittances and other pertinent personnel files are in the custody and control of the employer.¹⁶

Finding Taki to be illegally dismissed from employment, the CA awarded backwages reckoned from his dismissal on May 16, 2016, and separation pay in lieu of reinstatement. Taki was also awarded moral and exemplary damages amounting to ₱50,000.00 each because the employee was arbitrarily terminated by the employer. LOGWIN was also ordered to pay nominal damages at ₱50,000.00 for failure to comply with procedural requirements mandated by the labor laws, attorney's fees at 10% of the monetary award and legal interest at six percent of the monetary award from finality of the Decision of the CA until full satisfaction thereof.

Unsatisfied with the Decision, LOGWIN filed the instant Petition for Review on *Certiorari*¹⁷ under Rule 45 of the Rules of Court. The company argues compliance with the procedural requirements for termination of employment due to redundancy.¹⁸ In fact, Taki was informed through a written

¹⁴ Id. at 36.

¹⁵ Id. at 34-35.

¹⁶ Id. at 35.

¹⁷ Supra note 1.

¹⁸ *Rollo*, pp. 10-11.

notice of his retrenchment due to over hiring and reduced volume of business of the company. It is undisputed that he was made to stop working on a date prior effectivity of his termination on May 16, 2016, but LOGWIN still undertook to pay his salary from the actual cessation of work until May 16, 2016. While notice to the DOLE was received 15 days later from the date of retrenchment, LOGWIN argues substantial compliance with procedural due process, which did not invalidate Taki's dismissal.

Notably, termination of employment due to redundancy is an authorized cause under the labor laws. The retrenchment program, in this case, was due to cost-cutting measures taken by the company as there was reduced volume of business and over hiring of personnel. Abolishing the Customer Representative position, which was Taki's position, was part of the cost-cutting measures taken by the company. His position was redundant as the company contracted third party service providers. Clearly, the dismissal of Taki was done in good faith.¹⁹

LOGWIN reiterates payment of Taki's separation pay. The parties executed a Memorandum of Agreement on December 27, 2011 for ₱350,000.00. Taki, in signing the Memorandum of Agreement, authorized the company to deduct the amount of ₱350,000.00 from his retirement pay. After offsetting said loan and other cash advances, from his salary in his separation pay, Taki still has an outstanding balance. The employee does not even dispute his loan and advances with the company. As there is still an unsettled obligation on the part of the employee even after offsetting from the separation pay, LOGWIN should not be made to pay more than what is due.²⁰ Finally, LOGWIN argues for the deletion of payment of damages and attorney's fees. As argued, Taki was dismissed for an authorized cause. There could not have been bad faith on the part of the company, as it was exercising its management prerogative. Hence, its denial of payment of backwages is a non-issue as Taki's dismissal is valid. Further, its denial of payment of separation pay was due to the fact that Taki was no longer entitled to any pay as he still had an outstanding obligation despite offsetting his unpaid loan and cash advances from his salary. LOGWIN claims to have acted within its right and without bad faith. There must be sufficient evidence showing bad faith on the part of the company to justify the award of moral, exemplary damages and attorney's fees.²¹

Ruling of the Court

Article 294 (previously Article 289) of the Labor Code provides that an employer may terminate the services of an employee for just or authorized causes. Losses in the operation of the enterprise or considerable reduction on the volume of business resulting in reducing work force are among the authorized causes under Article 298 (previously Article 283) of the same law.

¹⁹ Id.

²⁰ Id. at 12-13.

²¹ Id. at 13-15.

To claim that the dismissal of an employee is valid due to said authorized cause, the employer must show that: (1) the losses incurred are substantial and not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.²² In addition to the foregoing, the procedural requisites, namely written notice on the retrenchment, must be given to both the employee and to the DOLE one month before the intended date of termination of employment.²³

Here, We find no evidence justifying the retrenchment as LOGWIN merely alleged that it is suffering from a low-volume in business. Following the requisites discussed above, sufficient and convincing evidence must be shown by the employer to prove that retrenchment is reasonably necessary. We agree with the CA that it is insufficient to merely claim that the company took cost-cutting measures by engaging third party service providers, who will perform the same functions of Taki as Customer Representative. As held by the CA, the company's claim could have been supported by "staffing patterns, feasibility studies or proposal, viability of newly created positions or even the approval of the management of the restructuring."²⁴ Without which, there is no way to determine if the retrenchment is *bona fide* or arbitrary. Notably, the selection of employees to dismiss in view of the retrenchment was also not explained by LOGWIN. We emphasize that a fair and reasonable criterion must be sufficiently shown in determining who shall be dismissed from employment due to retrenchment by taking into consideration such factors as: "(a) preferred status; (b) efficiency; and (c) seniority, among other matters."²⁵ These factors are relevant especially considering that LOGWIN claims over hiring personnel. However, no criterion or explanation was presented in selecting Taki for dismissal and why he did not enjoy priority or seniority considering he had been in the service of the company for 16 years. The burden to prove that the termination of employment is for a valid or authorized cause rests upon the employer. For failure of LOGWIN discharge said burden of proof We uphold the CA's finding of illegal dismissal and payment of backwages reckoned from May 16, 2016, separation pay in lieu of reinstatement, moral and exemplary damages, and attorney's fees at 10% of the monetary award. We also uphold payment of nominal damages in the amount of ₱50,000.00²⁶ for failure of LOGWIN to timely furnish a written notice to DOLE of the retrenchment.

We agree with the CA that the Memorandum of Agreement dated December 27, 2011, cash vouchers and summary of unliquidated advances do not constitute proof of payment of separation pay. However, the foregoing are

²² *Shimizu Phils. Contractors Inc. v. Callanta*, 646 Phil. 147 (2010).

²³ LABOR CODE OF THE PHILIPPINES, Art. 293.

²⁴ *Rollo*, p. 33.

²⁵ *Morales v. NLRC*, 699 Phil. 129, 141 (2012); *Abad, Jr. and Abad, Vide*, pp. 346-347, *citing Lambert Pawnbrokers and Jewelry Corp. v. Binamira*, 639 Phil. 1 (2010).

²⁶ *Id.*

pieces of evidence to show that Taki obtained loans and obligations during his employment with the company. Taki did not even dispute the unsettled obligations. Thus, We agree with the labor arbiter in so far as offsetting Taki's unpaid loan and cash advances from his salary pursuant to Article 1278²⁷ and 1279²⁸ of Civil Code of the Philippines, in relation to Article 113(c)²⁹ of the Labor Code and Article 1706 of the Civil Code.³⁰ Offsetting of Taki's unsettled obligations from his salary shall take place because the parties are creditors and debtors of each other in their own right.³¹

WHEREFORE, the instant petition is **DENIED**. The Decision dated April 10, 2019 of the Court of Appeals in CA-G.R. SP No. 152576 is **AFFIRMED with MODIFICATION** in that after deducting the unpaid loan and unliquidated cash advances of respondent Norudin C. Taki, petitioner Logwin Air+Ocean Phils. Inc. shall pay the former:

- (1) Backwages computed from May 16, 2016 when respondent's employment was illegally terminated, until finality of this Resolution;
- (2) separation pay in lieu of reinstatement computed at the rate of one-month salary for every year of service, with a fraction of a year of at least six (6) months as one whole year from May 16, 2016 up to finality of this Resolution;
- (3) moral and exemplary damages, each in the amount of ₱50,000.00;
- (4) the amount of ₱50,000.00 as nominal damages;
- (5) the amount equivalent to 10% of his total monetary awards, as and for attorney's fees.

The case is hereby **REMANDED** to the Labor Arbiter for a detailed computation of the monetary awards.

Legal interest shall be computed at the rate of six percent (6%) *per annum*³² of the total monetary award computed from finality of this Resolution until full satisfaction.

²⁷ Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

²⁸ Art. 1279. In order that compensation may be proper, it is necessary:
 (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
 (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
 (3) That the two debts be due;
 (4) That they be liquidated and demandable;
 (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

²⁹ Art. 113. Wage Deduction. No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

x x x x

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor of Employment.

³⁰ Art. 1706. Withholding of the wages, except for a debt due, shall not be made by the employer.

³¹ *Deoferio v. Intel Technology Philippines, Inc.*, 736 Phil. 625 (2010)

³² *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SO ORDERED.”

By authority of the Court:

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