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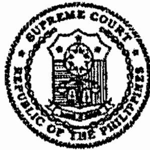

Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

ENRIQUE MARCO G. YULO,
Petitioner,

- versus -

CONCENTRIX DAKSH SERVICES PHILIPPINES, INC.,*
Respondent.

G.R. No. 235873

Present:

CARPIO, *J.*, Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
HERNANDO,** *JJ.*

Promulgated:

21 JAN 2019

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 17, 2017 and the Resolution[3] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146840, which reversed and set aside the Decision[4] dated March 30, 2016 and the Resolution[5] dated May 30, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000614-16 declaring petitioner Enrique Marco G. Yulo (petitioner) to have been illegally dismissed, and thereby, ordering respondent Concentrix Daksh Services Philippines, Inc. (respondent) to reinstate petitioner to his former position without loss of seniority rights and to pay him backwages in the amount of ₱133,862.11, 13th month pay in the

* Formerly "IBM Daksh Business Process Services Philippines, Inc."
** Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.
1 Dated January 22, 2018. *Rollo*, pp. 12-34.
2 Id. at 36-44. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Apolinario D. Bruselas, Jr. and Henri Jean Paul B. Inting, concurring.
3 Id. at 46-47. Penned by Associate Justice Leoncia Real-Dimagiba with Acting Chairman and Associate Justice Rodil V. Zalameda and Asssociate Justice Henri Jean Paul B. Inting, concurring.
4 Id. at 103-113. Penned by Presiding Commissioner Grace M. Venus with Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio, concurring.
5 Id. at 129-131.

amount of ₱2,742.75, as well as moral and exemplary damages in the amount of ₱40,000.00 and ten percent (10%) attorney's fees in the sum of ₱17,660.48.

The Facts

Petitioner alleged that he was engaged[6] by respondent on March 26, 2014 as a Customer Care Specialist-Operations, with a basic monthly salary[7] of ₱12,190.00 and guaranteed allowance of ₱3,125.00. Thereafter, he was assigned to the account of Amazon.com, Inc.[8] (Amazon).[9]

On February 17, 2015, petitioner received a letter[10] from respondent informing him that Amazon intended to "right size the headcount of the account due to business exigencies/requirements" and thus, he would be temporarily placed in the company's redeployment pool effective February 20, 2015. This notwithstanding, respondent promised petitioner that it would endeavor to deploy him in other accounts based on his skill set, with a caveat, however, that should he fail to get into a new account by March 22, 2015, he would be served with a notice of redundancy.[11]

As it turned out, petitioner was not re-assigned to other accounts as of the said date, and consequently, was terminated on the ground of redundancy. This prompted him to file a complaint[12] for constructive illegal dismissal, non-payment of salary/wages and 13th month pay, moral and exemplary damages, and attorney's fees with prayer for backwages and other benefits, before the NLRC, docketed as NLRC Case No. 06-07585-15.[13]

For its part, respondent contended that petitioner was legally terminated on the ground of redundancy, claiming compliance with the termination requirements provided in Article 283[14] of the Labor Code. It

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6 See Appointment Letter dated March 26, 2014; id. at 54-61.
7 See Compensation Sheet; id. at 60.
8 Referred to as "Amazon" in the *rollo*.
9 See id. at 37.
10 Id. at 64.
11 See id.
12 Dated June 26, 2015. Id. at 66-67.
13 See id. at 37-38.
14 Now Article 298, as renumbered pursuant to Section 5 of Republic Act No. (RA) 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department Advisory No. 01, Series of 2015 of the Department of Labor and Employment entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED." The provision reads:

> Article 298 [283]. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of

claimed to have notified petitioner of the implementation of the redundancy program on February 17, 2015 and subsequently submitted an establishment termination report on February 20, 2015 with the Department of Labor and Employment (DOLE), attaching thereto a list of affected employees.[15] Further, it asserted that petitioner was among those selected to be redundated on March 22, 2015 due to his low performance and high negative response rate.[16]

The Labor Arbiter's (LA) Ruling

In a Decision[17] dated November 24, 2015, the LA found that respondent failed to comply with all the requisites for a valid redundancy program,[18] which therefore rendered petitioner's dismissal illegal. Accordingly, the LA ordered respondent to reinstate petitioner to his former position without loss of seniority rights, and to pay him the amount of ₱133,862.11 representing his backwages and ₱2,742.75 as his proportionate 13th month pay, as well as moral and exemplary damages in the amount of ₱40,000.00 and ten percent (10%) attorney's fees in the amount of ₱17,660.48.[19]

Aggrieved, respondent appealed[20] to the NLRC.

The NLRC Ruling

In a Decision[21] dated March 30, 2016, the NLRC affirmed the LA's conclusion that respondent was illegally dismissed.[22] While the NLRC found

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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.

15 See *rollo*, pp. 37-38.

16 See id. at 74.

17 Id. at 70-80. Penned by Labor Arbiter Pablo A. Gajardo, Jr.

18 For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the [DOLE] at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished. (See *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT Company Incorporated*, G.R. No. 190389-90, April 19, 2017, citing *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912, 930 [1999].)

19 *Rollo*, p. 79.

20 See Notice of Appeal and Memorandum on Appeal dated January 12, 2016; id. at 81-92.

21 Id. at 103-113.

22 Citing *General Milling Corp. v. Viajar*, 702 Phil. 532, 545 (2013), the NLRC held that "while [respondent] had been harping that it was on a 'reduction mode' of its employees, it has not presented any evidence (such as new staffing pattern, feasibility studies or proposal, viability of newly created positions, job description and the approval of the management of the restructuring, audited financial documents like balance sheets, annual income tax returns and others) which could readily show that

that respondent did comply with the notice requirements of: (1) informing petitioner of his termination based on redundancy; and (2) sending a notice-report to the DOLE of the employees to be redundated within thirty (30) days prior to the effectivity of redundancy,[23] petitioner nonetheless failed to: (*a*) pay petitioner's separation pay; (*b*) exhibit good faith in terminating petitioner's employment; and (*c*) competently prove its criteria in ascertaining the redundant positions.[24]

Dissatisfied, respondent moved for reconsideration[25] but the same was denied in a Resolution[26] dated May 30, 2016. Hence, respondent elevated the matter to the CA via a petition for *certiorari*.[27]

The CA Ruling

In a Decision[28] dated August 17, 2017, the CA granted respondent's petition and set aside the ruling of the NLRC.[29] It ruled that petitioner's dismissal was legal since respondent strictly complied with the procedural requirements in the implementation of a valid redundancy program, and that the same was implemented in good faith since respondent endeavored to fit petitioner to other positions but unfortunately failed to qualify for any other position in any other account. In addition, the CA noted that based on the company's records, petitioner's performance was below par, his attendance record was low, and he even had a high negative response rate;[30] thus, his dismissal was justified.

Petitioner moved for reconsideration[31] but the same was denied in a Resolution[32] dated November 29, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that petitioner was legally dismissed on the ground of redundancy.

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the company's declaration of redundant positions was justified. Such proofs, if presented, would suffice to show the good faith on the part of the employer or that this business prerogative was not whimsically exercised in terminating [petitioner]'s employment on the ground of redundancy." (*Rollo*, p. 109).

23 See id. at 109-111.
24 See id. at 110-111.
25 See motion for reconsideration dated April 28, 2016; id. at 114-125.
26 Id. at 129-131
27 Dated July 28, 2016. ld. at 132-147.
28 Id. at 36-44.
29 Id. at 44.
30 See id. at 42-43.
31 See undated motion for reconsideration; id. at 160-171.
32 Id. at 46-47.

The Court's Ruling

The petition is meritorious.

Under Article 298 (formerly 283) of the Labor Code, redundancy is recognized as an *authorized cause* for dismissal, *viz.*:

> Article 298 [283]. *Closure of Establishment and Reduction of Personnel.* – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, **redundancy**, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment 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. (Emphasis supplied)

Essentially, redundancy exists when an employee's position is superfluous, or an employee's services are in excess of what would reasonably be demanded by the actual requirements of the enterprise. Redundancy could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business, or the dropping of a particular line or service previously manufactured or undertaken by the enterprise.[33] In this relation, jurisprudence explains that the characterization of an employee's services as redundant, and therefore, properly terminable, is an exercise of management prerogative,[34] considering that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[35]

Nevertheless, case law qualifies that the exercise of such prerogative "must not be in violation of the law, and must not be arbitrary or malicious."[36] Thus, following Article 298 of the Labor Code as above cited, the law requires the employer to prove, *inter alia*, its ***good faith in abolishing the redundant positions***, and further, ***the existence of fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.***

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[33] See *PNB v. Dalmacio*, G.R. No. 202308, July 5, 2017.

[34] See *General Milling Corporation v. Viajar*, supra note 21, at 543; citation omitted.

[35] See *Morales v. Metropolitan Bank and Trust Company*, 699 Phil. 129, 140 (2012); citations omitted.

[36] *General Milling Corporation v. Viajar*, supra note 21.

"To exhibit its good faith and that there was a fair and reasonable criteria in ascertaining redundant positions, a company claiming to be over manned must produce adequate proof of the same."[37]

Thus, the Court has ruled that it is not enough for a company to merely declare that it has become overmanned. Rather, it must produce adequate proof of such redundancy to justify the dismissal of the affected employees, such as but not limited to 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.[38]

Meanwhile, in *Golden Thread Knitting Industries, Inc. v. NLRC*,[39] the Court explained that fair and reasonable criteria may include but are not limited to the following: "(*a*) less preferred status (*e.g.*, temporary employee); (*b*) efficiency; and (*c*) seniority. The presence of these criteria used by the employer shows good faith on its part and is evidence that the implementation of redundancy was painstakingly done by the employer in order to properly justify the termination from the service of its employees."[40]

In this case, the Court upholds the findings of the labor tribunals that respondent was not able to present adequate proof to show that it exhibited good faith, as well as employed fair and reasonable criteria in terminating petitioner's employment based on redundancy.

Particularly, respondent attempted to justify its purported redundancy program by claiming that on December 18, 2014, it received an e-mail from Amazon informing it of the latter's plans to "right size the headcount of the account due to business exigencies/requirements."[41] However, such e-mail – much less, any sufficient corroborative evidence tending to substantiate its contents – was never presented in the proceedings *a quo*. At most, respondent submitted, in its motion for reconsideration before the NLRC, an internal document,[42] which supposedly explained Amazon's redundancy

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[37] Id.

[38] See id. at 543-544.

[39] 364 Phil. 215 (1999).

[40] *Arabit v. Jardine Pacific Finance, Inc. (Formerly MB Finance)*, 733 Phil. 41, 58-59 (2014).

[41] See *rollo*, p. 64. See also Affidavit of respondent's Redeployment Lead, Sharon D. Mozo; id. at 177-178.

[42] Id. at 127. The text of the document is fully reproduced as follows:

Tower	CRM
Domain/ Account	Amazon
Requestor/ BU Head	Vivek Tiku
Target Effective Date	5-Jan-15
Business Case	

plans. However, the Court finds that this one (1)-page document hardly demonstrates respondent's good faith not only because it lacks adequate data to justify a declaration of redundancy, but more so, because it is clearly self-serving since it was prepared by one Vivek Tiku, the requestor/business unit head of respondent, and not by any employee/representative coming from Amazon itself. Notably, parallel to the entry "Narrative of the current situation of the business unit, what triggered the downsizing[,] and what is the preferred outcome," the requestor merely stated that "[w]e have just finished our seasonal ramp and would need to decrease our headcount due to low call volume based on the long term forecast by the client (Dec-Feb EOM LTF)." However, outside of this general conclusion, no evidence was presented to substantiate the alleged low call volume and the forecast from which it is based on so as to truly exhibit the business exigency of downsizing the business unit assigned to Amazon.

Aside from the lack of evidence to show respondent's good faith, respondent likewise failed to prove that it employed fair and reasonable criteria in its redundancy program. Respondent merely presented a screenshot of a table with names of the employees it sought to redundate based on their alleged poor performance ratings.[43] Indeed, while "efficiency" may be a proper standard to determine who should be terminated pursuant to a program of redundancy, said document does not convincingly show that fair and reasonable criteria was indeed employed by respondent. To reiterate, all that the screenshot contains is a list of employees with their concomitant performance ratings. As the LA pointed out, "[t]hough [respondent] incorporated in their Reply a screenshot of what appears to be a table containing the names of purported employees including their respective performance ratings, this Office cannot admit this at its face value in the absence of proof that would substantiate the same."[44] As earlier stated, the presence of these criteria is **<u>evidence that the implementation of redundancy was painstakingly done by the employer in order to properly justify the termination from the service of its employees</u>**. The aforesaid screenshot barely shows respondent's actual compliance with this standard.

Narrative of the current situation of the business unit, what triggered the downsizing and what is the preferred outcome. Include artifact (e.g. email trails indicating reduced headcount from the client, approvals of proposed org chart changes, etc[.)]	We have just finished our seasonal ramp and would need to decrease our headcount due to low call volume based on the long term forecast provided by the client (Dec – Feb EOM LTF)
Business Case (Qualitative)	
Indicate the current headcount and target headcount[ ]which should correlate to the demands/volume of work	Current HC - 148 Required HC - 112 Required HC is based the number of agents needed to handle 110% of the LTF
Criteria for Ranking/ Selection	
Indicate measurable criteria like Service Years, SLA, Attendance, QA Result, PBC result, etc.	NRR Performance (CSAT metric)

[43] See id. at 78 and 111.

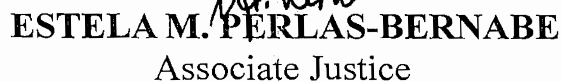
[44] Id. at 78.

Finally, it may not be amiss to point out that while respondent had duly notified petitioner that it was terminating him on the ground of redundancy, records are bereft of any showing that he was paid his separation pay, which is also a requisite to properly terminate an employee based on this ground. As Article 298 states, "[i]n case of termination due to x x x 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 sum, the CA erred in ascribing grave abuse of discretion on the part of the NLRC. As the latter correctly ruled, respondent failed to validly terminate petitioner's employment in accordance with the requirements of Article 298 on redundancy; as such, he was illegally dismissed.

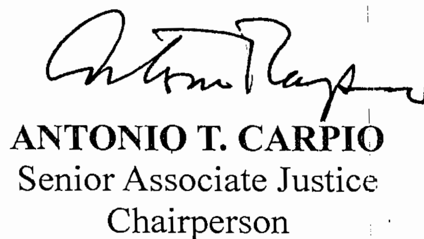
WHEREFORE, the petition is **GRANTED**. The Decision dated August 17, 2017 and the Resolution dated November 29, 2017 of the Court of Appeals in CA-G.R. SP No. 146840 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 30, 2016 and the Resolution dated May 30, 2016 of the National Labor Relations Commission in NLRC LAC No. 02-000614-16 are **REINSTATED**.

SO ORDERED.



ESTELA M. PERLAS-BERNABE
Associate Justice

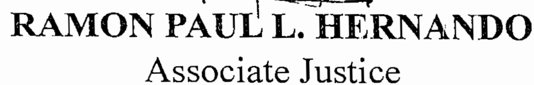
WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

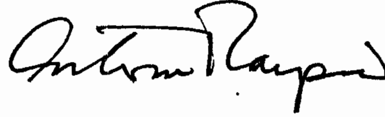
JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

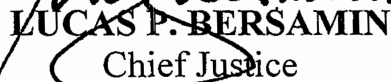
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.



LUCAS P. BERSAMIN
Chief Justice