

SECOND DIVISION

[G.R. NO. 147002, April 15, 2005]

**PHILIPPINE TELEGRAPH & TELEPHONE CORPORATION AND
DELIA OFICIAL, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSION, AGNES BAYAO AND MILDRED
CASTILLO, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure from the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 57551, affirming the decision of the National Labor Relations Commission (NLRC), and the Resolution dated February 2, 2001 denying the motion for reconsideration thereof.

The antecedents are as follows:

Agnes Bayao and Mildred Castillo were hired by the Philippine Telegraph & Telephone Corporation (PT&T) in November 1991 and August 1995, respectively, both as account executives stationed in Baguio City.

Both Bayao and Castillo received a Memorandum^[2] dated May 21, 1998 coming from Ma. Elenita V. Del Rosario, Vice-President of the Commercial Operations Group (COG) of PT&T, inviting them to consider a two to three-month assignment to the provinces of Rizal and Laguna in view of PT&T's expansion in the aforesaid area. Bayao and Castillo refused the offer, on the ground that the transfer would entail additional expense on their part and there were no clear guidelines and procedures for its implementation.

Meanwhile, the expansion project of PT&T failed to materialize due to lack of capital. PT&T realized that it needed to undertake measures against losses to prevent the company from going bankrupt, particularly by reducing its workforce from 2,500 to 900 employees. Pursuant thereto, it implemented a Voluntary Staff Reduction Program (VSRP) which was availed of by 478 employees. Failing to attain its target, PT&T implemented an extended VSRP, but still not enough employees availed of the program.

PT&T decided to implement a temporary retrenchment of some employees dubbed as Temporary Staff Reduction Program (TSRP) lasting for not more than five and a half (5½) months, to commence from September 1, 1998 to February 15, 1999. Pursuant to the program, affected employees would receive financial assistance equivalent to 15 days salary and a loan equivalent to two months salary chargeable to the account of the employee concerned.

Bayao and Castillo received a Letter^[3] from Del Rosario, dated August 21, 1998, informing them that the cumulative net losses of PT&T for the last four years had reached P293.4 million and that they were among the employees affected by the TSRP.

When Bayao and Castillo reported for work on September 2, 1998, they were informed that the position of account executive no longer existed; in its stead, the positions of Service Account Representatives (SAR) and Service Account Specialists (SAS) were created per COG Bulletin Order No. 98-014 effective August 21, 1998, and had already been filled up. The said COG Bulletin Order No. 98-014 reads:

As part of the Organization Streamlining of the **OM Efficiency Moves Program: For a more Responsive and Responsible Organization Structure**. COG announces the **new Service Account Representatives (SAR), and Service Account Specialists (SAS)**. This will collapse and replace the Account Executive positions outside of NCR, effective immediately. Account Executive functions and positions in NCR will be retained.

In view of new responsibilities entrusted to the COG, such as full-blown account management functions which includes collections for agencies, Dials Plus and Data subscribers, as well as PT&T COG's new role as PWI's distributor of pager products and services, the need to re-define positions and responsibilities is imperative.

Please see attached for the list of SARs and SASs and their areas of coverage.

Responsibilities

The SAR and SAS positions, are created based on the responsibilities and criteria below, and will replace and enhance former AE positions in the provinces:

1. SAR – Responsible for account management and collection from agencies, DIALS Plus and data subscribers; assists SAS from time to time with PWI documentation and other activities

* Maintains monthly minimum of P80,000 (net of agency commission) and 10 equivalent accounts, where a Metro agency or Dials Plus subscriber = 1 account, while a MTPCO account (due to distance) = 2 accounts.

* The SAR reports directly to the District or Zone head in his/her area.

*Note: In Cebu which has several data subscribers, collector/s under Credit and Collection will be maintained.

2. SAS – Responsible for contracting agencies, payphone site location, Dials Plus subscribers and management of Direct Sales agents (DSA) which will comprise the sales force of PWI pagers and other services.^[4]

That same day, September 2, 1998, Bayao and Castillo promptly filed a complaint for illegal dismissal with the NLRC, Regional Arbitration Branch, Cordillera Administrative Region, against PT&T and Delia Oficial in her capacity as manager for Baguio City.

In the interim, Del Rosario sent a Letter dated October 26, 1998 to both Bayao and Castillo in this language:

In our previous written communications, you have been informed that you are a part of the Temporary Staff Reduction Program (TSRP) being implemented by management for a period of five and a half (5½) months in order to help ease the severe financial problems of the company.

You are well aware that the certified bargaining representative of the rank-and-file employees, PT&T Progressive Workers Union-NAFLU-KMU (the Union) in the Notice of Strike filed before the National Conciliation and Mediation Board (NCMB), raised as one of the grounds thereof the TSRP implemented by management.

The notice of strike culminated in the signing of an agreement between the management and the Union wherein it was agreed among others that the eighty (80) employees who would not be recalled will be paid the following:

...

"2. The grant of financial assistance equivalent to one and one half month inclusive of the one half month pay previously offered by management to the 80 employees who will be separated;

"3. The payment of separation pay for every year of service to the 80 employees to be identified by the union, and shall be paid under the same terms and conditions as provided under the extended VSRP."

While you are not part of the bargaining unit, management is extending to you the same separation package under S.O. No. 98-15 and NCMB Agreement between management and the union dated 30 September 1998, provided we receive a formal letter from you applying for the Staff Reduction Program package. Please submit said letter on or before 15 November 1998. Payments shall be released only upon receipt of said letter.

Your separation from the company is effective on 31 August 1998. (Please see attached guidelines for details.)

It really pains us to separate you from the company but it is a necessary measure we have to take to ensure the survival of the company.^[5]

On March 31, 1999, Labor Arbiter Monroe C. Tabingan rendered a Decision in favor of Bayao and Castillo, the dispositive portion of which reads:

WHEREFORE, premises all duly considered, it is hereby found that the Complainants were constructively dismissed. In view thereof, the Respondent is hereby ordered to:

1. Reinstate the said complainants to their former position without loss of seniority rights and benefits;
2. Pay their full backwages from the time of their dismissal to their actual reinstatement, or on payroll, with legal rate of interest thereon until the same shall have been fully paid, computed as of even date at SIXTY THOUSAND NINE HUNDRED PESOS (P60,900.00) each;
3. Pay to each of the complainant the amount of TWENTY THOUSAND PESOS (P20,000.00) as and by way of exemplary damages;
4. Pay to each of the complainant the amount of SIX THOUSAND PESOS (P6,000.00) as and by way of indemnity for failure of the respondent to observe due process; and,
5. Pay an attorney's fee equivalent to 10% of the total monetary award.

SO ORDERED.^[6]

PT&T and Oficial interposed their appeal to the NLRC. On October 12, 1999, the NLRC issued its Resolution^[7] dismissing the appeal and affirmed the decision of the Labor Arbiter, deleting, however, the award of legal interest, exemplary damages, indemnity and attorney's fees for lack of merit. PT&T and Oficial filed a motion for partial reconsideration, but the same was denied.^[8] The matter was elevated to the CA by way of a petition for certiorari.

On July 31, 2000, the CA issued its Decision^[9] dismissing the petition and affirmed the findings of the NLRC. The CA declared that there was no valid ground for retrenchment, considering that when Bayao and Castillo returned, their positions were already filled up; at the same time, PT&T did not inform its employees and the Department of Labor and Employment (DOLE) of the scheduled retrenchment at least one month before its implementation. A motion for reconsideration was filed, but the same was denied by the CA.^[10]

Hence this petition.

PT&T and Delia Oficial, now as petitioners, raise the following as errors:

- A. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT REVIEWING THE CORRUPTED FINDINGS OF THE NLRC AND THE LABOR ARBITER DECLARING HEREIN PRIVATE RESPONDENTS TO HAVE BEEN ACTUALLY, EFFECTIVELY AND CONSTRUCTIVELY DISMISSED.
- B. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT REVIEWING THE DEBASED FINDINGS OF THE NLRC AND THE

LABOR ARBITER DECLARING THE RETRENCHMENT PROGRAM ILLEGAL.

C. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT THE THIRTY (30) DAYS NOTICE TO THE DEPARTMENT OF LABOR AND EMPLOYMENT AND TO THE EMPLOYEES AFFECTED IS ALSO REQUIRED EVEN IN A CASE OF TEMPORARY RETRENCHMENT.

D. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT DELETING THE AWARD FOR BACKWAGES DESPITE ITS CLEAR PRONOUNCEMENT THAT RESPONDENTS WERE NOT ABLE TO PROVE BAD FAITH ON THE PART OF PETITIONERS IN DISMISSING THEM FROM THE SERVICE.^[11]

The threshold issue to be resolved in the present recourse is whether or not the retrenchment program implemented by petitioner PT&T is valid.

Retrenchment has been defined as the termination of employment initiated by the employer through no fault of the employees and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation.^[12] It is a management prerogative resorted to by an employer to avoid or minimize business losses which is consistently recognized by the Court.^[13]

Article 283 of the Labor Code lays down the conditions for its exercise, to wit:

Art. 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 Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least his 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 to 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.

From the foregoing, in order that retrenchment due to serious business losses may be validly exercised, the following requisites must concur: (a) necessity of the retrenchment to prevent losses, and proof of such losses; (b) written notice to the employees and to the DOLE at least one (1) month prior to the intended date of