

SECOND DIVISION

[G.R. No. 248941, November 09, 2020]

**3M PHILIPPINES, INC., PETITIONER, VS. LAURO D. YUSECO,
RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari*^[1] seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 149264:

1. Decision^[2] dated January 18, 2019 which reversed the decision of the National Labor Relations Commission (NLRC) and declared respondent Lauro D. Yuseco to have been illegally dismissed; and
2. Resolution^[3] dated August 14, 2019 which denied petitioner 3M Philippines, Inc.'s motion for reconsideration.

Antecedents

Respondent filed a complaint against petitioner for illegal dismissal, non-payment of salary and service incentive leave, separation pay, and damages.

Respondent's Position^[4]

Respondent started working with petitioner in 1997. He was the company's Country Business Leader when he got terminated in 2015. He was paid a monthly salary of P271,000.00. He had a flexible work schedule but often rendered more than eight (8) hours of work a day.

On November 25, 2015, around 12 o'clock noon, petitioner's Managing Director, Anthony J. Bolzan (Bolzan) called him to a meeting for an undisclosed agenda. When he went to Bolzan's office, Human Resource Manager Maria Theresa Chiongbian (Chiongbian) was also there. He got surprised when he was asked to conform to an agreement in which the company was supposedly accepting his so called request to avail of a separation package, effective January 1, 2016. He was also asked to sign a waiver and quitclaim. He refused, hence, Bolzan instructed him not to report for work anymore.

The next day, he was shocked to learn that Bolzan had announced through electronic mail to all the employees of the company that he would already be pursuing other opportunities outside of petitioner. This untruthful and malicious announcement got him embarrassed and humiliated before his co-workers, friends,

clients, and relatives. With the help of his counsel, he demanded an explanation of Bolzan's announcement.

On December 1, 2015, he received a letter from the Human Resource Department informing him that his position as Country Business Leader would be considered redundant as of January 1, 2016. He was also asked to indicate his *conforme* to the letter.

Meantime, during a conference with petitioner, the latter offered him a separation package of P5,254,402.12. His counter offer was a separation package equivalent to his salary for twenty-five (25) years or the length of time he would have served had he not been illegally terminated.

On January 1, 2016, he was no longer allowed to enter petitioner's premises. Worse, on January 21, 2016, he received a letter from petitioner demanding the return of company properties in his possession.

Petitioner's Position^[5]

Petitioner is a subsidiary of 3M Company (3M), an American multinational conglomerate corporation engaged in the manufacture and distribution of products such as adhesives, abrasives, laminates, passive fire protection, dental and medical products, electronic materials, car care products, and optical films. 3M operates in more than sixty-five (65) countries, including the Philippines.

Initially, its marketing and sales arm was divided into several Business Groups, each headed by Country Business Leader. Each Group was further divided into divisions, each headed by a division head. In 2015, it decided to align its business model with some of the other 3M subsidiaries in South East Asian regions in order to enhance its marketing and sales capabilities. Accordingly, from being a "Business Group" organization, it shifted to being a "Market Focused" organization. It, thereafter, implemented a series of changes in its marketing and sales arm.

One of the changes was the merger of the Industrial Business Group headed by respondent and the Safety & Graphics Business Group headed by Country Business Leader Tommee Lopez (Lopez) into the new Industrial & Safety Market Center to be headed by only one (1) Country Business Leader. For this position, it was a toss between respondent and Lopez.

After a thorough evaluation of their qualifications, work experience, and performance ratings over the past three (3) years, it eventually chose Lopez over respondent. It took into account Lopez's broad work experience traversing both Industrial Division and Safety & Graphics Division. In contrast, respondent's work experience was only confined to the Industrial Division. Also, Lopez had higher performance ratings over the past three (3) years compared to respondent.

But it did not at once terminate respondent's employment on ground of redundancy. It tried to look for other available position for respondent within the company but its effort failed. Thus, in the end, it was constrained to terminate respondent's employment on ground of redundancy effective January 1, 2016.

On November 25, 2015, Chiongbian and Bolzan met with respondent to inform him

of this decision. Chiongbian explained to respondent that because he was being let go on ground of redundancy, the company would pay him appropriate separation pay. Also, considering his position and tenure, the company came up with a special separation package giving him more than what the law requires, thus:

- (1) P5,173,825.21 as separation pay;
- (2) P80,576.91 as retirement plan;
- (3) P1,880,000.00 as additional pay out in consideration of his long service in the company;
- (4) Two (2) years extension of his health coverage which included executive check-up, hospitalization, and outpatient reimbursements; and
- (5) Two (2) years worth of life insurance coverage.

Chiongbian and Bolzan also reminded respondent that per company practice, the separation of high-ranking officers should be announced through electronic mail to the entire organization. Respondent acknowledged this company practice but requested that he be allowed first to personally inform his team, to which Chiongbian and Bolzan acceded. Meantime, to give respondent time to find a new employment before his actual separation on January 1, 2016, Bolzan gave him an option not to report for work anymore until the day of his actual separation.

After the meeting, respondent approached Chiongbian to clarify some details about his separation pay, particularly its tax implications and whether he still ought to file vacation leave should he chose not to report to office anymore. On that day, too, respondent and Chiongbian exchanged text messages on what respondent should do before his actual separation and what to tell his team.

After informing his team of his separation, respondent gave the go signal to Chiongbian to make the online announcement which the company did on November 26, 2015.

On December 1, 2015, Chiongbian served respondent a formal Notice of Separation due to redundancy. Respondent's additional pay-out was also increased from the gross value of P1,880,000.00 to P2,350,000.00 to cover his tax liability.

By then, however, respondent had a change of heart. He refused to acknowledge receipt of the notice and to undergo the clearance process to facilitate the release of his separation package.

Meanwhile, it sent a notice to the Department of Labor and Employment (DOLE) of the separation of respondent and another employee due to redundancy. It thus came as a surprise when it learned that respondent had sued for illegal dismissal.

The Labor Arbiter's Ruling

By Decision dated April 22, 2016,^[6] Labor Arbiter Pablo A. Gajardo, Jr. (Labor Arbiter Gajardo, Jr.), ruled in favor of respondent, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered declaring respondents guilty of illegal dismissal. Accordingly, respondents are ordered to pay jointly and severally complainant as follows:

1. Separation P5,173,825.21

- | | |
|--|---------------|
| pay
(till
promulgation
only) | |
| 2. Full
backwages
(benefits not
included and
till
promulgation
only) | P1,100,345.55 |
| 3. Moral
damages | P1,000,000.00 |
| 4. Exemplary
damages | P500,000.00 |
| 5. 10%
[a]ttorney's
[f]ees | P777,417.07 |

All other claims are dismissed for Jack of merit.

SO ORDERED.^[7]

Labor Arbiter Gajardo, Jr. held that petitioner's redundancy program was arbitrary, and its implementation, tainted with bad faith. It was a mere afterthought to justify respondent's termination. Petitioner's November 25, 2015 and December 1, 2015 letters were contradictory. The first said that petitioner was accepting respondent's request for a separation package; while the second stated that respondent was being terminated due to redundancy. This inconsistency indicated petitioner's bad faith in effecting its so-called redundancy program.

Labor Arbiter Gajardo, Jr. also held that petitioner had no fair and reasonable criteria in ascertaining which positions were to be declared redundant. It was clear that the criterion used for determining who to retain between respondent and Lopez was pre-determined to favor Lopez. Bolzan was the one who promoted Lopez as Country Business Leader and gave the performance ratings to respondent and Lopez. Clearly, Bolzan favored Lopez over respondent. Also, petitioner failed to present proof that there was indeed a merger between the Industrial Business Group and Safety & Graphics Business Group. It was obvious though that only respondent's position was declared redundant.

The NLRC's Ruling

On petitioner's appeal, the NLRC reversed through its Decision^[8] dated October 21, 2016, to wit:

WHEREFORE, premises considered, this instant appeal is hereby **GRANTED**.

The Decision of the Labor Arbiter dated April 22, 2016 is **REVERSED** and **SET ASIDE** and a new one is entered **DISMISSING** the complaint for lack of merit.

SO ORDERED.^[9]

The NLRC held that respondent's separation was due to redundancy which was carried out only after a serious study. It was foolhardy for petitioner to think of redundancy on the spur of the moment and make drastic changes to its organization without regard to its viability and profitability just so it could get rid of respondent. Petitioner decided to reorganize in order to enhance its marketing and sales capability. The changes were inspired by business performances and organizational structures of other 3M subsidiaries in other parts of the South East Asia.

In choosing Lopez over respondent as head of the new group, petitioner considered the work experience and performance ratings of Lopez and respondent. Records showed that Lopez not only had work experience in safety and graphics operations, but also in petitioner's industrial operations having been part of its Industrial Group from 1997 to 2005. Lopez even worked in the company's Electronics and Energy Business Group. Respondent's employment records, on the other hand, showed that he only had work experience in the industrial operations of the company. Respondent's stint in marketing and sales was also relatively shorter than Lopez's. Their respective performance ratings over the past three (3) years yielded a higher rating for Lopez.

In the implementation of its redundancy program, petitioner complied with the notice requirement, giving respondent and the DOLE separate notices one (1) month before its intended implementation. Petitioner also offered a special separation package to respondent.

Contrary to Labor Arbiter Gajardo, Jr.'s findings, the November 25, 2015 and December 1, 2015 letters were not contradictory when read together and in light of what was discussed during the meeting on November 25, 2015. In any case, both letters specifically stated that respondent's separation was due to redundancy.

Lastly, it cannot be said that respondent was not informed of his separation and the reasons therefor prior to the company-wide announcement. The exchange of text messages between respondent and Chiongbian clearly established the fact that the former was already informed of his separation due to redundancy. He even sought advice from Chiongbian on the next steps he should take and a clarification regarding his separation benefits. Respondent never refuted this communication between him and Chiongbian.

Respondent's motion for reconsideration was denied per Resolution^[10] dated December 20, 2016.

Proceedings Before the Court of Appeals

Respondent's Position

Respondent charged the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction when it relied heavily on the text messages between him and