

## SECOND DIVISION

[ G.R. No. 202851, September 09, 2019 ]

**FEATI UNIVERSITY, PETITIONER, VS. ANTOLIN PANGAN,  
RESPONDENT.**

### DECISION

**REYES, J. JR., J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45, assailing the Decision<sup>[2]</sup> dated September 29, 2011 and Resolution<sup>[3]</sup> dated July 19, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 107499, which affirmed the Decision<sup>[4]</sup> dated June 30, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 047142-06 (NLRC NCR Case No. 00-08- 07502-05).

#### The Factual Antecedents

On September 17, 1970, FEATI University (petitioner) hired Antolin Pangan (respondent) as a canteen bookkeeper. Respondent was later on promoted as Assistant Cashier and then as University Cashier in 1995.<sup>[5]</sup>

Alleging decline in enrolment for the past 25 years, petitioner offered a voluntary early retirement program to all its employees on August 27, 2002. This, according to petitioner, was to ensure viability and to realign its budgetary deficiency.<sup>[6]</sup>

On even date, respondent availed of the early retirement program. On August 30, 2002, respondent's early retirement application was approved. On September 1, 2002, respondent received his retirement pay amounting to P93,140.04 and executed a Release and Quitclaim in favor of petitioner.<sup>[7]</sup>

Meanwhile, prior to the approval of respondent's application to avail of the early retirement program, respondent was re-hired as University Cashier on August 28, 2002. Alleging, however, that the functions of the University Cashier was subsequently transferred to the Accounting Department as part of the cost-cutting measures that petitioner undertook, petitioner re-assigned respondent as Assistant Program Coordinator of the Graduate Studies on April 15, 2004.<sup>[8]</sup>

On August 6, 2005, respondent was terminated from employment on the ground of redundancy. According to petitioner, respondent's position became redundant due to the progressive decline of enrolment in the Graduate Program and as such, the Graduate Program Coordinator can adequately handle the tasks without a need for an assistant.<sup>[9]</sup>

Aggrieved, respondent filed a complaint for illegal dismissal and other monetary

claims against petitioner before the Labor Arbiter.

### **The Labor Arbiter's Ruling**

The Labor Arbiter subscribed to petitioner's contention that the decline in its enrolment resulted to financial losses and to redundancy of some positions in the university. The Labor Arbiter found that due to the decline of enrollees, the Program Coordinator can adequately meet the needs of the students without a need for an assistant. Respondent's dismissal on the ground of redundancy was, thus, justified according to the Labor Arbiter.

The dispositive portion of the Labor Arbiter's Decision<sup>[10]</sup> dated November 30, 2005, reads as follows:

**WHEREFORE**, premises considered, the above case for illegal dismissal is hereby **DISMISSED** for being devoid of legal merit.

[Petitioner] FEATI University, however, is directed to pay [respondent], as follows:

1.) Appropriate termination pay for [respondent's] separation from employment due to redundancy in the sum of [P]37,800.00.

2.) Proportionate 13<sup>th</sup> month pay (January to August 6, 2005) in the sum of [P]7,518.00.

**SO ORDERED.** <sup>[11]</sup>

### **The NLRC Decision**

On appeal, the NLRC reversed and set aside the Labor Arbiter's Decision. While the NLRC found the allegations of decline in enrolment, financial losses, and the redundancy of respondent's position as Assistant Program Coordinator of petitioner's Graduate Studies substantiated, the NLRC found respondent's transfer to the said position to be "dubious to the extent of being anomalous."<sup>[12]</sup> The NLRC found it incredible for the petitioner to offer respondent an early retirement program and re-hire him for the same position two days before the approval of his early retirement. The NLRC opined that if respondent's services as University Cashier were indispensable as he was re-hired for the same position, petitioner should have simply not included respondent to those who availed of the early retirement program as a cost-cutting measure.<sup>[13]</sup>

The NLRC also found it baffling that respondent opted to avail of petitioner's early retirement program when what was offered was equivalent only to less than his quarter month's pay for every year of his 32 years of service at that time.<sup>[14]</sup>

Further, the NLRC found no explanation as to why during the period when petitioner's financial losses from school operations were increasing, it would create the position of an Assistant Program Coordinator in the Graduate School, for the sole purpose of transferring respondent from being the University Cashier.<sup>[15]</sup>

The NLRC concluded, thus, that respondent was illegally dismissed as petitioner did not fairly and equitably deal with respondent's severance from employment.<sup>[16]</sup>

Finding that reinstatement was no longer feasible as the position was already occupied by another, the NLRC ordered for the award of separation pay, computing the same at the rate of one month's salary for every year of service reckoned from September 17, 1970,<sup>[17]</sup> up to the finality of the decision, less the early retirement pay that respondent already received (P93,140.04). The NLRC also awarded backwages and benefits computed from the date of respondent's illegal dismissal on August 6, 2005, up to the finality of the decision. Attorney's fees were also awarded as respondent was compelled to litigate to protect his rights.<sup>[18]</sup>

The NLRC disposed, thus:

**WHEREFORE**, the appeal is **GRANTED** and the Decision of the Labor Arbiter dated 30 November 2005 is hereby **REVERSED and SET ASIDE**. In lieu thereof, a new order is issued declaring [respondent] to have been illegally dismissed by [petitioner] university. Accordingly, it is directed to pay [respondent] the following:

1. Additional separation pay computed at the rate of one (1) month salary for every year of service from 17 September 1990 (sic) up to the finality of this decision, which as of 30 April 2008 already amounted to [P]385,659.96;
2. Backwages and benefits computed from the date [respondent] was illegally dismissed on 06 August 2005 up to the finality of this decision, which as of 30 April 2008 already amounted to P (sic) [P]425,810.00; and
3. Attorney's fees in the amount of [P]50,000.00.

The 13<sup>th</sup> month pay in the amount of [P]7,518.00 awarded by the Labor Arbiter in the assailed Decision is **AFFIRMED**, there being no question as to its propriety.

**SO ORDERED.**<sup>[19]</sup>

Petitioner's motion for reconsideration was denied by the NLRC in its October 31, 2008 Resolution: <sup>[20]</sup>

**WHEREFORE**, the motion for reconsideration is hereby **DENIED** for lack of merit. No further motion of the same nature shall be entertained.

**SO ORDERED.** <sup>[21]</sup>

### **The CA Decision**

Ascribing grave abuse of discretion on the part of the NLRC, petitioner sought refuge

from the CA to question the NLRC Decision. The CA, however, affirmed the NLRC's ruling in its entirety, disposing of petitioner's Petition for *Certiorari* as follows:

**WHEREFORE**, finding the instant petition not impressed with merit, the same is **DENIED DUE COURSE** and is hereby **DISMISSED**.

**SO ORDERED.**<sup>[22]</sup>

Petitioner's motion for reconsideration was likewise denied in the CA's July 19, 2012 assailed Resolution:

**WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED**.

**SO ORDERED.**<sup>[23]</sup>

Undaunted, petitioner filed the instant Petition, maintaining that respondent was validly dismissed from employment on the ground of redundancy. Petitioner argues that it was able to prove that it suffered serious financial reverses, which resulted to reducing the number of its personnel. Petitioner also argues that the NLRC and the CA erred in doubting its intentions when it re-assigned respondent from being the University Cashier to an Assistant Coordinator Position as there was no evidence that respondent was coerced to give his consent for the transfer. Petitioner alleges that it actually demonstrated good faith when it exerted effort to find another position for respondent when his functions as University Cashier were transferred to the Accounting Department. At that point, according to petitioner, respondent could have already been dismissed for redundancy.

### **The Issue**

The pivotal issue in this case is whether or not respondent was validly dismissed from employment on the ground of redundancy.

### **The Court's Ruling**

The petition lacks merit.

Well-settled is the rule that the burden of proving that the dismissal of an employee was for a valid or authorized cause rests on the employer. Substantial evidence must be presented to prove that the termination of employment was validly made. Failure to discharge this duty would lead to the conclusion that the dismissal is illegal.<sup>[24]</sup>

In this case, petitioner justifies respondent's dismissal on the ground of redundancy. Indeed, in our jurisdiction, redundancy is a recognized authorized cause to validly terminate employment.<sup>[25]</sup> The determination of whether the employee's services are no longer necessary or sustainable, and thus, terminable has been recognized to be a management prerogative. The employer's exercise of such prerogative is, however, not an unbridled right that cannot be subjected to the court's scrutiny.

Thus, the Court has laid down certain guidelines for the valid dismissal of employees on the ground of redundancy, to wit: (1) written notice served on both the employee and the Department of Labor and Employment (DOLE) at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at