

## SECOND DIVISION

[ G.R. No. 177705, September 18, 2009 ]

**KIMBERLY-CLARK PHILIPPINES, INC. PETITIONER, VS. NORA DIMAYUGA, ROSEMARIE C. GLORIA, AND MARICAR C. DE GUIA, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Respondents were employees of Kimberly-Clark Philippines, Inc. (petitioner). Nora Dimayuga (Nora) was Cost Accounting Supervisor, Rosemarie Gloria (Rosemarie) was Business Analyst, and Maricar de Guia (Maricar) was General Accounting Manager.

On September 19, 2002, Nora tendered her resignation effective October 21, 2002.<sup>[1]</sup>

On October 7, 2002, Rosemarie tendered her resignation, also effective October 21, 2002.<sup>[2]</sup>

As petitioner had been experiencing a downward trend in its sales, it created a tax-free *early retirement package* for its employees as a cost-cutting and streamlining measure. Twenty-four of its employees availed of the offer that was made available from November 10-30, 2002.<sup>[3]</sup>

Despite their resignation before the early retirement package was offered, Nora and Rosemarie pleaded with petitioner that they be retroactively extended the benefits thereunder, to which petitioner acceded.<sup>[4]</sup> Hence, Nora received a total of P1,025,113.73 while Rosemarie received a total of P1,006,493.94, in consideration of which they executed release and quitclaim deeds dated January 17, 2003<sup>[5]</sup> and January 16, 2003,<sup>[6]</sup> respectively.

On November 4, 2002, Maricar tendered her resignation effective December 1, 2002,<sup>[7]</sup> citing career advancement as the reason therefor. As at the time of her resignation the early retirement package was still effective, she received a total of P523,540.13 for which she signed a release and quitclaim.<sup>[8]</sup>

On November 28, 2002, petitioner announced that in lieu of the merit increase which it did not give that year, it would provide *economic assistance*, to be released the following day, to all monthly-paid employees on regular status as of November 16, 2002.

Still later or on January 16, 2003, petitioner announced that it would the grant a *lump sum retirement pay* in the amount of P200,000, in addition to the early

retirement package benefit, to those who signed up for early retirement and who would sign up until January 22, 2003.<sup>[9]</sup>

On May 23, 2003, respondents filed a Complaint,<sup>[10]</sup> docketed as NLRC Case No. RAB-IV 5-17522-03-L, before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. IV against petitioner and its Finance Manager Fernando B. Gomez (Gomez) whom respondents alleged to be "responsible for the withholding of [their] additional retirement benefits,"<sup>[11]</sup> claiming entitlement to the P200,000 lump sum retirement pay. Respondents Nora and Rosemarie additionally claimed entitlement to the economic assistance.

By Decision of August 31, 2004, Labor Arbiter Generoso V. Santos dismissed the claims of Nora and Rosemarie, holding that they were not entitled to the P200,000 lump sum retirement pay, they having ceased to be employees of petitioner at the time it was offered or made effective on January 16, 2003. He, however, granted Maricar's claim for the same pay, holding that she was entitled to it because at the time she resigned from the company effective December 1, 2002, such pay was already offered. Besides, the Labor Arbiter ruled, Maricar had a vested right to it as she was given a formal notice of her entitlement to it by petitioner, through its Human Resources Director.

On appeal by both parties,<sup>[12]</sup> the NLRC, by Decision<sup>[13]</sup> of November 22, 2005, *modified* the Labor Arbiters Decision by ordering petitioner to pay Nora P200,000 additional bonus and P2,880 economic assistance, and to pay Rosemarie P200,000 additional bonus and P2,656 economic assistance. It affirmed Maricar's entitlement to the lump sum retirement pay.

Applying the ruling in *Businessday Information Systems and Services, Inc. v. NLRC (Businessday)*,<sup>[14]</sup> the NLRC ratiocinated that petitioner's refusal to give Nora and Rosemarie the lump sum retirement pay was an act of discrimination, more so because a certain Oscar Diokno, another employee who presumably resigned also prior to January 16, 2003, was given said benefit.

As to the award of economic assistance, the NLRC held that Nora and Rosemarie were also entitled to it as the same was given in lieu of the annual performance-based salary increase that was not given in 2002 and, therefore, already earned by them when they resigned. Petitioner's Motion for Reconsideration<sup>[15]</sup> having been denied,<sup>[16]</sup> it filed a Petition for Certiorari<sup>[17]</sup> before the Court of Appeals.

By Decision<sup>[18]</sup> of January 19, 2007, the appellate court affirmed the NLRC Decision. It held that, contrary to petitioner's assertion that the early retirement package was extended to respondents out of generosity, the offer/grant thereof, as well as their inclusion in the termination report submitted to the Department of Labor and Employment, made them "full retirees," hence, they must be given the other benefits extended to petitioner's other employees, following the ruling in *Businessday*.

The appellate court added that since respondents resigned from their respective positions barely a month before the effectivity of the early retirement package, the general principles of fair play and justice dictate that petitioner extend to them the

same benefits in consideration of their long years of service.

The appellant court, noting that Nora and Rosemarie received commendable ratings, upheld their entitlement to the economic assistance as their resignation before the grant of such benefit took effect did not detract from the fact that it was in substitution of the traditional merit increase extended by petitioner to its employees with commendable or outstanding ratings which it failed to give in 2002.

Petitioner's Motion for Reconsideration<sup>[19]</sup> having been denied,<sup>[20]</sup> it filed the present petition, insisting that Nora and Rosemarie are no longer entitled to the economic assistance and lump sum pay considering that they were already retired and have in fact executed quitclaims and waivers.

And petitioner questions the application to the present case by the appellate court of the doctrine laid down in *Businessday*.

The petition is impressed with merit.

It is settled that entitlement of employees to retirement benefits must specifically be granted under existing laws, a collective bargaining agreement or employment contract, or an established employer policy.<sup>[21]</sup> No law or collective bargaining agreement or other applicable contract, or an established company policy was existing during respondents' employment entitling them to the P200,000 lump-sum retirement pay. Petitioner was not thus obliged to grant them such pay.

Respondents nevertheless argue that since other employees who resigned before the announcement of the grant of the lump sum retirement pay received the same, they (respondents) should also receive it,<sup>[22]</sup> citing the pronouncement in *Businessday* that:

x x x The law requires an employer to extend equal treatment to its employees. It may not, in the guise of exercising management prerogatives, grant greater benefits to some and less to others. Management prerogatives are not absolute prerogatives but are subject to legal limits, collective bargaining agreements, or general principles of fair play and justice.<sup>[23]</sup> (Underscoring supplied)

Respondents' reliance on *Businessday* is misplaced. The factual milieu in *Businessday* is markedly different from that of the present case. That case involved the *retrenched* employees' separation pay to which they are entitled under Article 283 of the Labor Code. In the present case, Nora and Rosemarie *resigned* prior to petitioner's offer of the lump sum retirement pay as an incentive to those employees who would voluntarily avail of its early retirement scheme as a cost-cutting and streamlining measure. That respondents resigned, and not retrenched, is clear from their respective letters to petitioner. And nowhere in the letters is there any allegation that they resigned in view of the company's downward trend in sales which necessitated downsizing or streamlining.

The appellate court's finding that petitioner's inclusion of Nora and Rosemarie in the termination report submitted to the DOLE and its grant to them of the early