491 Phil. 256

THIRD DIVISION

[G.R. NO. 149090, February 11, 2005]

BENEDICTO A. CAJUCOM VII, PETITIONER, VS. TPI PHILIPPINES CEMENT CORPORATION, TPI PHILIPPINES VINYL CORPORATION, AND THUN TRITASAVIT, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated April 6, 2001 and the Resolution[2] dated July 18, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 58076, entitled *"Benedicto A. Cajucom VII vs. TPI Philippines Cement Corporation, TPI Philippines Vinyl Corporation, Thun Tritasavit and the National Labor Relations Commission."*

The factual antecedents are:

TPI Philippines Cement Corporation (TP Cement) and TPI Philippines Vinyl Corporation (TP Vinyl), *respondents*, are wholly- owned subsidiaries of Thai Petrochemical Industry Public Company, Ltd. Both respondent companies were registered with the Securities and Exchange Commission. On June 1, 1995, respondents employed Atty. Benedicto A. Cajucom VII, *petitioner*, as Vice-President for Legal Affairs with a monthly salary of P70,000.00.

As a result of the economic slowdown then experienced in this country, respondent TP Cement, having no viable projects, shortened its corporate term from 50 years to 2 years and 7 months. In fact, it was dissolved on January 27, 1998. With respect to respondent TP Vinyl, it shifted its business from production to marketing and trading of Thai Petrochemical products.

Thus, respondents implemented cost-cutting measures resulting in the retrenchment or termination from the service of their employees, including petitioner.

On December 3, 1998, respondents sent petitioner a notice terminating his services effective December 30, 1998. Simultaneously, respondents, on the same day, filed with the Department of Labor and Employment (DOLE) an "Establishment Termination Report" of petitioner's retrenchment from the service. Petitioner contested respondents' action, claiming that his retrenchment was based erroneously on respondents' probable losses, instead of their actual, substantial and imminent losses, as shown by the following: (1) an increase or raise in his monthly salary from P70,000.00 in 1995 to P80,000.00 in 1996; (2) hiring by respondents of more marketing and accounting employees for the period from July 1997 to December 1998; (3) acquisition, in 1998, of a warehouse; and (4) expansion in 1998 of their operations by including sales and marketing of oil products. Petitioner

further claimed that respondents were motivated by revenge in terminating his services. This stemmed from his October 7, 1996 memorandum to respondents' Executive Vice-President Thun Tritasavit, also a *respondent* herein, questioning his financial transactions detrimental to respondents' interests.

Eventually, or on January 12, 1999, petitioner filed with the Office of the Labor Arbiter a complaint for illegal dismissal against respondents, docketed as NLRC-NCR Case No. 00-01-00485-99.

On March 31, 1999, the Labor Arbiter rendered a Decision holding that respondents failed to adduce sufficient evidence to show that their alleged losses are substantial and imminent and concluded that petitioner was illegally dismissed from employment. The dispositive portion of the Decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered ordering respondents TPI Phils. Cement Corp., TPI Phil. Vinyl Corp., and Thun Tritasavit, jointly and solidarily to:
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> 1. reinstate complainant Benedicto A. Cajucom VII to his former position without loss of seniority rights and privileges with backwages of P240,000.00, subject to adjustment upon actual reinstatement;
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> 2. pay complainant moral and exemplary damages at P5,000,000.00.
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> SO ORDERED."

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated October 29, 1999 reversing the Labor Arbiter's Decision. In concluding that the termination from the service of petitioner is justified, the NLRC held:

> "The appeal is meritorious.
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> x x x
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> Respondents, as early as April 1996, began downsizing their operations. More than a year after such initial cost cutting measure or on September 1997, when they sensed a continuous business decline and difficulty in implementing their projects, respondents decided to reduce their office space by moving to a smaller and cheaper three-storey building at Bagtikan St., Makati City. This is to reduce rental costs. Respondents, sometime in April 1998, also reduced their office space from its original 725-square meter area to 76 square meters. These changes are known to complainant.
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> Also known to complainant are the voluntary termination from the service of the following: Accounting Manager on 30 September 1997; Marketing Manager on 30 December 1997; and Executive Assistant on 15 March 1998. This is also in line with the downsizing of respondents' operations.
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> Complainant was even consulted legally. In fact, he vehemently rejected the intention of respondents to fight the business crisis by avoiding mass

lay-offs, and slashing by 15% to 20% employees' salaries.

Despite the downsizing of respondents' group of companies, which started as early as April 1996, they even increased the salary of complainant from P70,000.00 to P80,000.00 effective June 1996. In order to accommodate such increase, respondent Tritasavit agreed to deduct the same from his own salary, thereby, reducing his (respondent Tritasavit's) total monthly salary and making it lower than that of complainant. This fact is also known to complainant.

In addition to these measures being adopted by respondents, they also sold some company vehicles and used the proceeds to meet their operational expenses and pay their obligations.

We are convinced that respondents are suffering from substantial losses and serious business reverses. The audited financial reports prepared by Sycip Gorres Velayo and Co. show that as of 31 December 1997, TPI Philippines Cement Corporation incurred losses at P12,375,166.00. After the start of its business in June 1995, respondent, still having no economically-viable projects in 1996, made use of its entire paid-in capital of P12,815,000.00 for operational and administrative expenses.

On the other hand, TPI Philippines Vinyl Corporation, as of 30 June 1998, suffered losses at P14,186,907.00, which, barely three (3) months thereafter or as of 30 September 1998 increased to P15,236,103.00. Initially, this company was incorporated purposely to engage in manufacturing and trading of plastic raw materials, but due to continuous and worsening economic situation, as shown by its financial trend, the same incurred a deficit of P15,236,103.00, thus, prompting it to shift to marketing and trading of TPI products or being a mere marketing arm of Thai Petrochemicals.

x x x

Respondent was in fact very honest to complainant by forewarning him, a year in advance, of the possibility of his separation from the service, should there be no changes in the economic condition, and by helping complainant in seeking another job by referring him to other companies. These acts of respondents, to us, are clear signs of good faith.

We are persuaded that retrenchment due to substantial losses has been sufficiently established and that the dismissal of complainant pursuant to Art. 283 of the Labor Code, was justified.

WHEREFORE, premises considered, judgment is hereby rendered SETTING ASIDE the decision of the Labor Arbiter. However, respondents are ordered to pay complainant his separation pay equivalent to one month salary per year of service. Claims for moral and exemplary damages are hereby DISMISSED for utter lack of merit.

SO ORDERED."

Both parties filed a motion for reconsideration but it was denied by the NLRC in a Resolution dated January 28, 2000.

Petitioner then filed a petition for certiorari with the Court of Appeals alleging that the NLRC committed grave abuse of discretion in finding that the termination of petitioner's employment is justified.

On April 6, 2001, the Court of Appeals rendered the assailed Decision affirming with modification the NLRC's Decision in the sense that respondents are also ordered to pay petitioner backwages from the time he was dismissed "up to the time the dismissal is adjudged to be just," thus:

> "However, with respect to the monetary reward, we have to modify.
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> x x x
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> In the recent case of *Serrano vs. NLRC, et al.*, the Supreme Court abandoned the policy of just directing the employer to indemnify the dismissed employees by imposing fines of varying amounts. In this landmark case, the High Court enunciated that, should there be any just cause for dismissing an employee under any of the causes enumerated in Art. 282 or any of the authorized causes under Art. 283 of the Labor Code as amended, but there was no prior notice or investigation, the remedy is to order the payment of full backwages although his dismissal must be upheld. His termination should not be considered void but he should simply be paid separation pay.
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> x x x
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> In their memorandum of appeal, private respondents alleged that on November 27, 1998, respondent Tritasavit left, at petitioner's desk, the letter terminating him from the service. It was only on December 3, 1998 that respondent Tritasavit conferred with petitioner regarding the notice of termination. There is no proof that petitioner came to know of such termination before the latter date. The mere act of leaving, on November 27, 1998, the same letter at petitioner's table, is not sufficient notice, as contemplated under the law.
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> Private respondents admitted that a notice of termination was served upon the DOLE on December 3, 1998. This is again contrary to law. **The law requires that a written notice of retrenchment be filed with the DOLE one month before the intended date of retrenchment.** The requirement of the law is very clear.
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> With respect to the payment of separation pay, Sec. 9 (b), Rule VI of the New Rules of Procedure of the NLRC provides:
>
> > 'Sec. 9. x x x
> >
> > (b) Where the termination of employment is due to retrenchment to prevent losses and in case of closure or cessation of operations of establishment or undertaking not