

## SECOND DIVISION

[ G.R. NO. 160391, August 09, 2005 ]

**DUSIT HOTEL NIKKO AND PHILIPPINE HOTELIERS, INC.,  
PETITIONERS, VS. NATIONAL UNION OF WORKERS IN HOTEL,  
RESTAURANT AND ALLIED INDUSTRIES (NUWHRAIN) - DUSIT  
HOTEL NIKKO CHAPTER AND ROWENA AGONCILLO,  
RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before us is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 72006 which affirmed the Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 014111-97 finding Dusit Hotel Nikko (Hotel) and Philippine Hoteliers, Inc. (PHI) of illegally terminating the employment services of respondent Rowena Agoncillo.

#### **The Case for Rowena Agoncillo**

The PHI owned and operated the Dusit Hotel Nikko. Since March 1, 1984, Rowena Agoncillo was employed by the Hotel. After some time, she was promoted as Supervisor of Outlet Cashiers and later promoted as Senior Front Office Cashier, with a monthly salary of P14,600.00, inclusive of service charge.<sup>[3]</sup> In January 1995, the Hotel decided to trim down the number of its employees from the original count of 820 to 750.<sup>[4]</sup>

On February 21, 1996, the Hotel, through an Inter-Office Memorandum signed by the general manager of Dusit, Yoshikazu Masuda, offered a Special Early Retirement Program (SERP) to all its employees. It was stated therein that the program was intended to "provide employees financial benefits prior to prolonged renovation period and, at the same time, to enable management to streamline the organization by eliminating redundant positions and having a more efficient and productive manpower complement."<sup>[5]</sup>

In a Letter dated February 26, 1996 addressed to the Hotel, the National Union of Workers in Hotel, Restaurant and Allied Industries, Hotel Nikko Manila Garden Chapter (Union), through its president, Mr. Reynaldo Rasing, sought "a commitment from the management that the employees terminated due to redundancy will not be replaced by new employees; nor will their positions be given to subcontractors, agencies or casual employees."

The Union received a Letter dated March 30, 1996 from Masuda confirming his earlier decision to separate 243 employees from the Hotel's services anchored on redundancy and that the separation of the said employees will take effect on April

30, 1996.<sup>[6]</sup> Consequently, a total of 243 employees, including Agoncillo, 161 of whom were Union officers and members, were separated from the Hotel's employment. As a result, the membership of the Union was substantially reduced.

On April 1, 1996, the Hotel wrote Regional Director Romeo Young of the Department of Labor and Employment (DOLE), National Capital Region, informing him that the Hotel terminated the employment of 243 employees due to redundancy. On the same day, Agoncillo was summoned by Hotel Comptroller Reynaldo Casacop, who gave her a letter of even date informing the latter of her "separation from service due to redundancy effective close of office hours of April 30, 1996."<sup>[7]</sup>

Casacop advised Agoncillo to just avail of the Hotel's SERP, as embodied in the inter-office memorandum of Masuda.<sup>[8]</sup> He informed her that she had the option to avail of the program and that, in the meantime, he will defer the processing of her termination papers to give her time to decide. On April 3, 1996, Agoncillo finally told Casacop that she would not avail of the SERP benefits. By then, she had decided to file a complaint for illegal dismissal against the Hotel.

Meanwhile, the Hotel temporarily closed operations because of the renovation thereof.

When news spread among the hotel employees that Agoncillo would contest her termination before the NLRC, she was summoned by Personnel Manager Leticia Delarmente to a conference. The two met on May 21, 1996 in the presence of Willy Dizon, who later became the Director for Personnel and Training of the Hotel. At the said meeting, Delarmente and Dizon repeatedly asked Agoncillo to give back the original copy of the April 1, 1996 termination letter. Agoncillo told them that the letter was already in the possession of her counsel. Agoncillo was relieved when she was given another letter of even date stating that, by reason of her non-availing of the SERP, she was still considered an employee but on temporary lay-off due to the ongoing renovation of the Hotel<sup>[9]</sup> and that she will just be advised accordingly of her work schedule when the Hotel reopens.<sup>[10]</sup>

But her relief was shortlived. Delarmente and Dizon offered to reinstate Agoncillo but not to her former position as Senior Front Office Cashier. Agoncillo objected but informed them that she could accept the position of Reservation Clerk.<sup>[11]</sup> However, no response was received.

Meanwhile, the Hotel hired six (6) Front Office Cashiers on October 1, 1996.<sup>[12]</sup> On October 21, 1996, Agoncillo received a telegram from the Human Resources Department of the Hotel directing her to report to Dizon as soon as possible.<sup>[13]</sup> She was told by Dizon that the Hotel was willing to reinstate her but as an Outlet Cashier. Dizon explained that the Hotel had already hired new employees for the positions of Reservation Clerks. Agoncillo, however, pointed out that she was already an Outlet Cashier Supervisor before her promotion as Senior Front Office Cashier and that if she accepted the position, it would be an unjustified demotion on her part. Dizon, however, explained that the management wanted "new graduates" as "front liners," *i.e.*, new graduates who would occupy the front desks and other sections exposed to guests. On the other hand, Agoncillo reiterated that she could accept the lower position of Reservation Clerk, but Dizon rejected the suggestion.

Dizon countered that Agoncillo could be reinstated as a Room Service Cashier "*para nakatago*." At this point, Agoncillo was irked by the comments of Dizon and asked, "*Bakit Sir, nakakaperhuwisyo ba ang physical appearance ko?*" As to which Dizon replied, "*Kasi ikaw, nagpabaya ka sa katawan mo*." The conversation between them transpired in the presence and within hearing distance of other hotel employees, including Reynaldo Rasing, the president of the Union.<sup>[14]</sup>

After Agoncillo's meeting with Dizon on October 22, 1996, the latter kept on promising to find a suitable position for her. In those meetings, Dizon always offered reinstatement to positions that do not require guest exposure like Linen Dispatcher at the hotel basement or Secretary of Roomskeeping. When Agoncillo refused, Dizon just instructed her to return. Agoncillo had no specific position or assigned task to perform.

On November 1, 1996, the Hotel resumed operations. On November 11, 1996, the Union filed a Notice of Strike for unfair labor practice with the DOLE.<sup>[15]</sup> On November 12, 1996, Agoncillo with the assistance of the Union, filed a Complaint against the PHI and Dusit Hotel Nikko for illegal dismissal before the NLRC.

Meantime, the Secretary of Labor and Employment (SOLE) assumed jurisdiction over the dispute on November 29, 1996 after the requisite strike-vote was conducted.<sup>[16]</sup> The case was docketed as NCMB-NCR-NS-11-425-96.

On January 5, 1997, the Hotel published an advertisement in the newspaper Manila Bulletin inviting prospective applicants as guest relations agents, bell service agents/valet parkers, housekeeping agents, and sales executives. The Hotel hired 135 additional employees, mostly on probationary and contractual bases. These new workers performed tasks according to the reclassified positions under the new Job Code, in violation of the Collective Bargaining Agreement (CBA) between the Hotel and the Union.<sup>[17]</sup> A total of 215 workers replaced the previously dismissed employees, including Agoncillo.

### **The Case for the Hotel**

The petitioner Hotel, formerly known as Hotel Nikko Manila Garden, was owned and managed by the PHI, a corporation substantially owned by Japan Airlines (JAL). In November 1995, JAL formally turned over its majority shareholdings in PHI to a Thai corporation, Dusit Thani Public Co., Ltd. (Dusit). This gave Dusit the managerial control over the Hotel, which was then renamed Dusit Hotel Nikko.<sup>[18]</sup>

With the very stiff competition in the hotel industry in mind, Dusit has set a twofold objective, namely: (1) the total renovation of the Hotel, where it had earmarked the amount of about P300,000,000.00; and (2) a complete reorganization of the Hotel's manpower complement. The renovation of the Hotel, which called for its closure, began on May 1, 1996 and ended six months thereafter. On the other hand, the reorganization was done to standardize the Hotel's organizational set-up with all Dusit Hotels around the world and train the employees for their eventual deployment to its other chain of hotels. The reorganization program started with a staff reduction program wherein employees were given the chance to voluntarily avail of the SERP. As per its guidelines, the SERP is a one-time program offered by the Hotel to its regular employees who had at least one year of service as of April

30, 1996, in order to achieve the following:

- a.) realize optimum operational productivity and efficiency through a reorganization that will eliminate redundant position;
- b.) reduce expenses of the company; and
- c.) provide employees the opportunity to receive lump-sum benefits for their immediate use before the 6-month closure.<sup>[19]</sup>

Pursuant to the reorganization program, a reclassification of positions ensued upon resumption of the Hotel's operation. Consequently, the position of Agoncillo as Senior Front Office Cashier was abolished and a new position of Guest Services Agent absorbing its functions was created. Considering that the new position requires skills in both reception and cashiering operations, respondent Hotel deemed it necessary to transfer Agoncillo to another position as Outlet Cashier, which does not require other skills aside from cashiering.<sup>[20]</sup>

The transfer of Agoncillo from Senior Front Office Cashier to Outlet Cashier does not entail any diminution of salary or rank. Despite which, she vehemently refused the transfer and insisted that she be reinstated to her former position. Since Agoncillo was not amenable to the said transfer, she did not assume her new position and since then had stopped reporting for work despite the Hotel's patient reminder to act on the contrary. Instead, she filed a complaint to question the prerogative of the management to validly transfer her to another position as she considers the transfer an act of constructive dismissal amounting to illegal termination and unfair labor practice in the form of union busting.<sup>[21]</sup>

### **Proceedings before the Labor Arbiter, NLRC and the CA**

On September 18, 1997, the Labor Arbiter rendered judgment dismissing the complaint for unfair labor practice and constructive dismissal. The Labor Arbiter ruled that the reassignment of the complainant was done by management in the valid exercise of management prerogative, and that management has not dismissed her in any way.<sup>[22]</sup> On October 27, 1997, the complainant appealed the decision to the NLRC.

In the meantime, on January 6, 1998, the SOLE issued an Order in NCMB-NCR-NS-11-425-96 in favor of the Union. The *fall*o of the Order reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring the termination of 243 employees, including 161 Union officers and members on April 1, 1996, illegal;
2. Ordering the immediate reinstatement of the 243 employees, without loss of seniority rights and with full backwages and benefits from the time of their termination until actual reinstatement, less the amounts received by them on account of the Company's Special Early Retirement Program;
3. Declaring the Company guilty of unfair labor practice for:

- a. implementing an illegal redundancy program in the guise of a Special Early Retirement Program, terminating in the process 243 employees, including 161 Union officers and members;
- b. implementing a New Job and Wage Classification and Manning Standards, in violation of Article 1, Section VII of the parties' Collective Bargaining Agreement; and
- c. violation of the CBA provisions on entry rates of new employees and rice subsidy for retained employees who were on duty during the renovation of the Hotel.
- d. Ordering the Company to cease and desist from further continuing with its commission of the unfair labor practice acts herein complained of.

SO ORDERED. [23]

The respondents therein filed a motion for the reconsideration of the order but the SOLE denied the same. On March 10, 2000, the Union and the Hotel executed a Memorandum of Agreement (MOA) in which the Hotel agreed to pay P15,000.00 to each member of the Union by way of amicable settlement of NCMB-NCR-NS-11-425-96 in addition to the redundancy pay earlier paid to them and that they shall file with the DOLE a motion praying for the following:

- a. Dismissal of the case with prejudice in regard to:
  - (i) illegal redundancy as to those who have received the settlement pay above and signed the Special Power of Attorney and Release, Waiver and Quitclaim;
  - (ii) all ULP charges; and
- b. Dismissal of the case without prejudice as to those who have not yet received the settlement pay. [24]

However, the MOA was not submitted to the NLRC for its approval. Neither did Agoncillo receive any monetary benefits based on the MOA.

After due proceedings, the NLRC rendered judgment on January 30, 2002, reversing the appealed decision of the Labor Arbiter, dated September 18, 1997. The *fallo* of the decision reads:

WHEREFORE, the appealed decision is SET ASIDE. Judgment is hereby rendered ordering respondent to:

1. immediately reinstate complainant to her former or equivalent position without loss of seniority rights and benefits; and
2. to pay complainant full backwages computed from the time it was illegally withheld from her as a result of her illegal dismissal up to the time she is actually reinstated.

SO ORDERED. [25]