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[G.R. No. 117040, January 27, 2000]

RUBEN SERRANO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ISETANN DEPARTMENT STORE, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition seeking review of the resolutions, dated March 30, 1994 and August 26, 1994, of the National Labor Relations Commission (NLRC) which reversed the decision of the Labor Arbiter and dismissed petitioner Ruben Serrano's complaint for illegal dismissal and denied his motion for reconsideration. The facts are as follows:

Petitioner was hired by private respondent Isetann Department Store as a security checker to apprehend shoplifters and prevent pilferage of merchandise.[1] Initially hired on October 4, 1984 on contractual basis, petitioner eventually became a regular employee on April 4, 1985. In 1988, he became head of the Security Checkers Section of private respondent.[2]

Sometime in 1991, as a cost-cutting measure, private respondent decided to phase out its entire security section and engage the services of an independent security agency. For this reason, it wrote petitioner the following memorandum:[3]

> October 11, 1991
>
> MR. RUBEN SERRANO
> P R E S E N T
>
> Dear Mr. Serrano,
>
> In view of the retrenchment program of the company, we hereby reiterate our verbal notice to you of your termination as Security Section Head effective October 11, 1991.
>
> Please secure your clearance from this office.
>
> Very truly yours,
>
> [Sgd.] TERESITA A. VILLANUEVA
> Human Resources Division Manager

The loss of his employment prompted petitioner to file a complaint on December 3, 1991 for illegal dismissal, illegal layoff, unfair labor practice, underpayment of wages, and nonpayment of salary and overtime pay.[4]

The parties were required to submit their position papers, on the basis of which the Labor Arbiter defined the issues as follows:[5]

> Whether or not there is a valid ground for the dismissal of the complainant.
>
> Whether or not complainant is entitled to his monetary claims for underpayment of wages, nonpayment of salaries, 13th month pay for 1991 and overtime pay.
>
> Whether or not Respondent is guilty of unfair labor practice.

Thereafter, the case was heard. On April 30, 1993, the Labor Arbiter rendered a decision finding petitioner to have been illegally dismissed. He ruled that private respondent failed to establish that it had retrenched its security section to prevent or minimize losses to its business; that private respondent failed to accord due process to petitioner; that private respondent failed to use reasonable standards in selecting employees whose employment would be terminated; that private respondent had not shown that petitioner and other employees in the security section were so inefficient so as to justify their replacement by a security agency, or that "cost-saving devices [such as] secret video cameras (to monitor and prevent shoplifting) and secret code tags on the merchandise" could not have been employed; instead, the day after petitioner's dismissal, private respondent employed a safety and security supervisor with duties and functions similar to those of petitioner.

Accordingly, the Labor Arbiter ordered:[6]

> WHEREFORE, above premises considered, judgment is hereby decreed:
>
> (a) Finding the dismissal of the complainant to be illegal and concomitantly, Respondent is ordered to pay complainant full backwages without qualification or deduction in the amount of ~~₱~~74,740.00 from the time of his dismissal until reinstatement (computed till promulgation only) based on his monthly salary of P4,040.00/month at the time of his termination but limited to (3) three years;
>
> (b) Ordering the Respondent to immediately reinstate the complainant to his former position as security section head or to a reasonably equivalent supervisorial position in charges of security without loss of seniority rights, privileges and benefits. This order is immediately executory even pending appeal;
>
> (c) Ordering the Respondent to pay complainant unpaid wages in the amount of ~~₱~~2,020.73 and proportionate 13th month pay in the amount of ~~₱~~3,198.30;

(d) Ordering the Respondent to pay complainant the amount of ₱7,995.91, representing 10% attorney's fees based on the total judgment award of ₱79,959.12.

All other claims of the complainant whether monetary or otherwise is hereby dismissed for lack of merit.

SO ORDERED.

Private respondent appealed to the NLRC which, in its resolution of March 30, 1994, reversed the decision of the Labor Arbiter and ordered petitioner to be given separation pay equivalent to one month pay for every year of service, unpaid salary, and proportionate 13th month pay. Petitioner filed a motion for reconsideration, but his motion was denied.

The NLRC held that the phase-out of private respondent's security section and the hiring of an independent security agency constituted an exercise by private respondent of "[a] legitimate business decision whose wisdom we do not intend to inquire into and for which we cannot substitute our judgment"; that the distinction made by the Labor Arbiter between "retrenchment" and the employment of "cost-saving devices" under Art. 283 of the Labor Code was insignificant because the company official who wrote the dismissal letter apparently used the term "retrenchment" in its "plain and ordinary sense: to layoff or remove from one's job, regardless of the reason therefor"; that the rule of "reasonable criteria" in the selection of the employees to be retrenched did not apply because all positions in the security section had been abolished; and that the appointment of a safety and security supervisor referred to by petitioner to prove bad faith on private respondent's part was of no moment because the position had long been in existence and was separate from petitioner's position as head of the Security Checkers Section.

Hence this petition. Petitioner raises the following issue:

> IS THE HIRING OF AN INDEPENDENT SECURITY AGENCY BY THE PRIVATE RESPONDENT TO REPLACE ITS CURRENT SECURITY SECTION A VALID GROUND FOR THE DISMISSAL OF THE EMPLOYEES CLASSED UNDER THE LATTER?[7]

Petitioner contends that abolition of private respondent's Security Checkers Section and the employment of an independent security agency do not fall under any of the authorized causes for dismissal under Art. 283 of the Labor Code.

Petitioner Laid Off for Cause

Petitioner's contention has no merit. Art. 283 provides:

> *Closure of establishment and reduction of personnel.* - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operations of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended

> date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to at least one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

In *De Ocampo v. National Labor Relations Commission*,[8] this Court upheld the termination of employment of three mechanics in a transportation company and their replacement by a company rendering maintenance and repair services. It held:

> In contracting the services of Gemac Machineries, as part of the company's cost-saving program, the services rendered by the mechanics became redundant and superfluous, and therefore properly terminable. The company merely exercised its business judgment or management prerogative. And in the absence of any proof that the management abused its discretion or acted in a malicious or arbitrary manner, the court will not interfere with the exercise of such prerogative.[9]

In *Asian Alcohol Corporation v. National Labor Relations Commission,*[10] the Court likewise upheld the termination of employment of water pump tenders and their replacement by independent contractors. It ruled that an employer's good faith in implementing a redundancy program is not necessarily put in doubt by the availment of the services of an independent contractor to replace the services of the terminated employees to promote economy and efficiency.

Indeed, as we pointed out in another case, the "[management of a company] cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. To it belongs the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies . . . [While there] should be mutual consultation, eventually deference is to be paid to what management decides."[11] Consequently, absent proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer.[12]

In the case at bar, we have only the bare assertion of petitioner that, in abolishing the security section, private respondent's real purpose was to avoid payment to the security checkers of the wage increases provided in the collective bargaining agreement approved in 1990.[13] Such an assertion is not a sufficient basis for concluding that the termination of petitioner's employment was not a bona fide decision of management to obtain reasonable return from its investment, which is a right guaranteed to employers under the Constitution.[14] Indeed, that the phase-out of the security section constituted a "legitimate business decision" is a factual finding of an administrative agency which must be accorded respect and even finality by this Court since nothing can be found in the record which fairly detracts from such finding.[15]

Accordingly, we hold that the termination of petitioner's services was for an authorized cause, i.e., redundancy. Hence, pursuant to Art. 283 of the Labor Code, petitioner should be given separation pay at the rate of one month pay for every year of service.

Sanctions for Violations of the Notice Requirement

Art. 283 also provides that to terminate the employment of an employee for any of the authorized causes the employer must serve "a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof." In the case at bar, petitioner was given a notice of termination on October 11, 1991. On the same day, his services were terminated. He was thus denied his right to be given written notice before the termination of his employment, and the question is the appropriate sanction for the violation of petitioner's right.

To be sure, this is not the first time this question has arisen. In *Sebuguero v. NLRC*,[16] workers in a garment factory were temporarily laid off due to the cancellation of orders and a garment embargo. The Labor Arbiter found that the workers had been illegally dismissed and ordered the company to pay separation pay and backwages. The NLRC, on the other hand, found that this was a case of retrenchment due to business losses and ordered the payment of separation pay without backwages. This Court sustained the NLRC's finding. However, as the company did not comply with the 30-day written notice in Art. 283 of the Labor Code, the Court ordered the employer to pay the workers ₱2,000.00 each as indemnity.

The decision followed the ruling in several cases involving dismissals which, although based on any of the just causes under Art. 282,[17] were effected without notice and hearing to the employee as required by the implementing rules.[18] As this Court said: "It is now settled that where the dismissal of one employee is in fact for a just and valid cause and is so proven to be but he is not accorded his right to due process, *i.e.,* he was not furnished the twin requirements of notice and opportunity to be heard, the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of, or for failure to observe, due process."[19]

The rule reversed a long standing policy theretofore followed that even though the dismissal is based on a just cause or the termination of employment is for an authorized cause, the dismissal or termination is illegal if effected without notice to the employee. The shift in doctrine took place in 1989 in *Wenphil Corp. v. NLRC*.[20] In announcing the change, this Court said:[21]

> The Court holds that the policy of ordering the reinstatement to the service of an employee without loss of seniority and the payment of his wages during the period of his separation until his actual reinstatement but not exceeding three (3) years without qualification or deduction, when it appears he was not afforded due process, although his dismissal was found to be for just and authorized cause in an appropriate proceeding in the Ministry of Labor and Employment, should be re-examined. It will be highly prejudicial to the interests of the employer to