SUPREME COURT
FIRST DIVISION

BONIFACIO ASUFRIN, JR.,
***Petitioner*,**

-versus-

G.R. No. 156658
March 10, 2004

SAN MIGUEL CORPORATION and the COURT OF APPEALS,
***Respondents*.**
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D E C I S I O N

YNARES-SANTIAGO, *J.*:

Coca Cola Plant, then a department of respondent San Miguel Beer Corporation (SMC), hired petitioner as a utility/miscellaneous worker in February 1972. On November 1, 1973, he became a regular employee paid on daily basis as a Forklift Operator. On November 16, 1981, he became a monthly paid employee promoted as Stock Clerk.

Sometime in 1984, the sales office and operations at the Sum-ag, Bacolod City Sales Office were reorganized. Several positions were abolished including petitioner's position as Stock Clerk. After reviewing petitioner's qualifications, he was designated warehouse checker at the Sum-ag Sales Office.

On April 1, 1996, respondent SMC implemented a new marketing system known as the "pre-selling scheme" at the Sum-ag Beer Sales Office. As a consequence, all positions of route sales and warehouse personnel were declared redundant. Respondent notified the DOLE Director of Region VI that 22 personnel of the Sales Department of the Negros Operations Center[1] would be retired effective March 31, 1995.

Respondent SMC thereafter wrote a letter[2] to petitioner informing him that, owing to the implementation of the "pre-selling operations" scheme, all positions of route and warehouse personnel will be declared redundant and the Sum-ag Sales Office will be closed effective April 30, 1996. Thus, from April 1, 1996 to May 15, 1996, petitioner reported to respondent's Personnel Department at the Sta. Fe Brewery, pursuant to a previous directive.

Thereafter, the employees of Sum-ag sales force were informed that they can avail of respondent's early retirement package pursuant to the retrenchment program, while those who will not avail of early retirement would be redeployed or absorbed at the Brewery or other sales offices. Petitioner opted to remain and manifested to Acting Personnel Manager Salvador Abadesco his willingness to be assigned to any job, considering that he had three children in college.[3]

Petitioner was surprised when he was informed by the Acting Personnel Manager that his name was included in the list of employees who availed of the early retirement package. Petitioner's request that he be given an assignment in the company was ignored by the Acting Personnel Manager.

Petitioner thus filed a complaint for illegal dismissal with the NLRC, docketed as RAB Case No. 06-06-10233-96. On December 27, 1996, the Labor Arbiter dismissed the complaint for lack of merit. Petitioner appealed to the National Labor Relations Commission (NLRC) which set aside the Labor Arbiter's decision and ordered respondent SMC to reinstate petitioner to his former or equivalent position with full backwages.[4]

Respondent filed a petition with the Court of Appeals which reversed the decision of the NLRC and reinstated the judgment of the Labor

Arbiter dismissing the complaint for illegal dismissal. Petitioner's motion for reconsideration[5] was denied in a Resolution dated December 11, 2002.[6]

Hence, this petition for review assigning the following errors:

1. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS, WITH DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONER WAS "NOT SINGLED-OUT FOR TERMINATION, AS MANY OTHERS WERE ALSO ADVERSELY AFFECTED."

2. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GROSS MISAPPREHENSION OF FACT WHEN IT AFFIRMED THE FINDING OF THE LABOR ARBITER THAT THE POSITION OF PETITIONER BECAME REDUNDANT AT THE SUM-AG SALES OFFICES.

3. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE DISMISSAL OF PETITIONER WAS VALID.

4. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN DISMISSING THE ENTIRE RELIEFS PRAYED FOR BY THE PETITIONER.

The primordial issue to be resolved is whether or not the dismissal of petitioner is based on a just and authorized cause.

Factual findings of administrative bodies, being considered experts in their fields, are binding on this Court. However, this is a general rule which holds true only when established exceptions do not obtain. One of these exceptive circumstances is when the findings of the Labor Arbiter and the NLRC are conflicting. Considering that the ruling of the Labor Arbiter was reversed by the NLRC whose judgment was in turn overturned by the appellate court, it behooves us in the exercise of our equity jurisdiction to determine which findings are more conformable to the evidentiary facts. *(Progressive Development*

Corporation vs. NLRC, 344 SCRA 512 [2000]; PAL vs. NLRC, 328 SCRA 273 [2000]; Aklan Electric Cooperative, Inc. vs. NLRC, 323 SCRA 258 [2000]; Samson vs. NLRC, 330 SCRA 460 [2000]).

In the case at bar, petitioner was dismissed on the ground of redundancy, one of the authorized causes for dismissal.[7] In *Dole Philippines, Inc. vs. NLRC*, [417 Phil. 428 (2001)], citing the leading case of *Wiltshire File Co., Inc. vs. NLRC*, [G.R. No. 82249, February 7, 1991, 193 SCRA 665], we explained the nature of redundancy as an authorized cause for dismissal thus:

> "x x x redundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work. That no other person was holding the same position that private respondent held prior to the termination of his services, does not show that his position had not become redundant. Indeed, in any well-organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. We believe that redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.
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> The determination that employee's services are no longer necessary or sustainable and, therefore, properly terminable is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. *Wiltshire File Co., Inc. vs. NLRC, et al., G. R. No. 82249, February 7, 1991, 193 SCRA 665).* In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof that such is the *actual* situation to justify the dismissal of the affected employees for redundancy. *(Golden Thread Knitting*

Industries, Inc. vs. NLRC, 364 Phil. 216 [1999], citing Salonga vs. NLRC, G.R. No. 118120, 23 February 1996, 254 SCRA 111; Guerrero vs. NLRC, G.R. No. 119842, 30 August 1996, 261 SCRA 301; San Miguel Jeepney Service vs. NLRC, G.R. No. 92772, 28 November 1996, 265 SCRA 35).

Persuasive as the explanation proffered by respondent may be to justify the dismissal of petitioner, a number of disturbing circumstances, however, leave us unconvinced.

First, of the 23 SMC employees assigned at the Sum-ag Sales Office/Warehouse, 9 accepted the offer of SMC to avail of the early retirement whose separation benefits was computed at 250% of their regular pay. The rest, including petitioner, did not accept the offer. Out of the remaining fourteen 14, *only* petitioner clearly manifested, through several letters,[8] his desire to be redeployed to the Sta. Fe Brewery or any sales office – and for *any* position not necessarily limited to that of a warehouse checker. In short, he was even willing to accept a demotion just to continue his employment. Meanwhile, other employees who *did not even write a letter to SMC* were redeployed to the Sta. Fe Brewery or absorbed by other offices/outlets outside Bacolod City.[9]

Second, petitioner was in the payroll of the Sta. Fe Brewery and assigned to the Materials Section, Logistics Department, although he was actually posted at the Sum-ag Warehouse.[10] Thus, even assuming that his position in the Sum-ag Warehouse became redundant, he should have been returned to the Sta. Fe Brewery where he was actually assigned and where there were vacant positions to accommodate him.

Third, it appears that despite respondent's allegation that it ceased and closed down its warehousing operations at the Sum-ag Sales Office, actually it is still used for warehousing activities and as a transit point where buyers and dealers get their stocks.[11] Indeed, the Sum-ag Office is strategically situated on the southern part of Bacolod City making it convenient for dealers from the southern towns of Negros Occidental to get their stocks and deposit their empty bottles in the said

warehouse, thereby decongesting the business activities at the Sta. Fe Brewery.

Fourth, in selecting employees to be dismissed, a fair and reasonable criteria must be used, such as but not limited to (a) less preferred status, *e.g.* temporary employee; (b) efficiency; and (c) seniority.[12] In the case at bar, *no criterion whatsoever was adopted by respondent* in dismissing petitioner. Furthermore, as correctly observed by the NLRC, respondent "has not shown how the cessation of operations of the Sum-ag Sales Office contributed to the ways and means of improving effectiveness of the organization with the end in view of efficiency and cutting distribution overhead and other related costs. Respondent, thus, clearly resorted to *sweeping generalization[s]* in dismissing complainant."[13] Indeed, petitioner's predicament may have something to do with an incident where he incurred the ire of an immediate superior in the Sales Logistics Unit for exposing certain irregularities committed by the latter.[14]

In the earlier case of *San Miguel Corporation vs. NLRC, G.R. No. 107693, 23 July 1998, 293 SCRA 13 [1998]* respondent's reasons for terminating the services of its employees in the very *same* Sum-ag Sales Office was rejected, to wit:

> Even if private respondents were given the option to retire, be retrenched or dismissed, they were made to understand that they had no choice but to leave the company. More bluntly stated, they were forced to swallow the bitter pill of dismissal but afforded a chance to sweeten their separation from employment. They either had to voluntarily retire, be retrenched with benefits or be dismissed without receiving any benefit at all.
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> What was the true nature of petitioner's offer to private respondents? It was in reality a Hobson's choice.[15] All that the private respondents were offered was a choice on the *means or method of terminating their services* but never as to the status of their employment. In short, *they were never asked if they wanted to work for petitioner*.

In the case at bar, petitioner is similarly situated. It bears stressing that whether it be by redundancy or retrenchment or any of the other authorized causes, no employee may be dismissed without observance of the fundamentals of *good faith*.

It is not difficult for employers to abolish positions in the guise of a cost-cutting measure and we should not be easily swayed by such schemes which all too often reduce to near nothing what is left of the rubble of rights of our exploited workers. *(Palmeria vs. NLRC, G.R. Nos. 113290-91, 3 August 1995, 247 SCRA 57).* Given the nature of petitioner's job as a Warehouse Checker, it is inconceivable that respondent could not accommodate his services considering that the warehousing operations at Sum-ag Sales Office has not shut down.

All told, to sustain the position taken by the appellate court would be to dilute the workingman's most important right: his constitutional right to security of tenure. While respondent may have offered a generous compensation package to those whose services were terminated upon the implementation of the "pre-selling scheme," we find such an offer, in the face of the prevailing facts, Schemes which are anathema to the underlying principles which give life to our labor statutes because it would be tantamount to likening an employer-employee relationship to a salesman and a purchaser of a commodity. It is an archaic abomination. To quote what has been aptly stated by former Governor General Leonard Wood in his inaugural message before the 6th Philippine Legislature on October 27, 1922 "labor is neither a chattel nor a commodity, but human and must be dealt with from the standpoint of human interest." *(Cited in Dissenting opinion, Puno J., Serrano vs. NLRC, 323 SCRA 445, 519 [2000]).*

As has been said: "We do not treat our workers as merchandise and their right to security of tenure cannot be valued in precise peso-and-centavo terms. It is a right which cannot be allowed to be devalued by the purchasing power of employers who are only too willing to bankroll the separation pay of their illegally

dismissed employees to get rid of them." *(Palmeria vs. NLRC, G.R. Nos. 113290-91, 3 August 1995, 247 SCRA 57)*. This right will never be respected by the employer if we merely honor it with a price tag. The policy of "dismiss now and pay later" favors moneyed employers and is a mockery of the right of employees to social justice. *(Asufrin, Jr. vs. San Miguel Corporation, et al., G. R. No. 156658, March 10, 2004)*.

WHEREFORE, in view of all the foregoing, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 53521 dated April 10, 2002, and the Resolution dated December 11, 2002 denying petitioner's Motion for Reconsideration, are SET ASIDE. The decision of the National Labor Relations Division dated February 20, 1998 is **REINSTATED**. Accordingly, petitioner's dismissal is declared illegal, and respondent is ordered to reinstate him to his former or equivalent position, with full backwages computed from April 1, 1996 up to his actual reinstatement. Respondent is likewise ordered to pay petitioner the sum equivalent to ten percent (10%) of his total monetary award as attorney's fees.

SO ORDERED.

Davide, Jr., *C.J.*, *(Chairman)*, Carpio, and Azcuna, *JJ.*, concur.
Panganiban, *J.*, on official leave.

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[1] Record., p. 98.
[2] Id., p. 104.
[3] Rollo, p. 41.
[4] Id., pp. 35-44.
[5] Id., p. 31.
[6] Id., p. 44.
[7] Article 283, Labor Code.
[8] Record, pp. 324, 326, 501-502.
[9] Id., p. 496.
[10] Id., p. 130.
[11] Id., p. 129.
[12] Capital Wireless, Inc. vs. Confesor, 332 Phil. 78 [1996], citing Asiaworld Publishing House, Inc. vs. Ople, G.R. No. 56398, 23 July 1987, 152 SCRA 219.
[13] NLRC Decision, p. 7; Records, p. 41.

[14] Rollo, pp. 39-41.

[15] Hobson's choice means no choice at all; a choice between accepting what is offered or having nothing at all. It refers to the practice of Tobias Hobson, an English stable-owner in the 17th century, of offering only the horse nearest the stable door.