SUPREME COURT
FIRST DIVISION

CAPITOL WIRELESS, INC.,
***Petitioner*,**

-versus-

G.R. No. 117174
November 13, 1996

HONORABLE SECRETARY MA. NIEVES R. CONFESOR and KILUSANG MANGGAGAWA NG CAPWIRE KMC-NAFLU,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

Petitioner Capitol Wireless, Inc., and respondent Kilusang Manggagawa ng Capwire KMC-NAFLU (Union) entered into a Collective Bargaining Agreement (CBA) on 15 November 1990 covering a period of five (5) years. Towards the end of the third year of their CBA the parties renegotiated the economic aspects of the agreement. On 18 July 1993 when the negotiations were on-going petitioner dismissed on the ground of redundancy eight (8) out of its eleven (11) couriers who were Union members.

As a consequence, respondent Union filed a notice of strike with the National Conciliation and Mediation Board (NCMB) on the ground of bargaining deadlock and unfair labor practice, specifically, for illegal dismissal and violations of the CBA. Conciliation proceedings were conducted by the NCMB but the same yielded negative results. On 20 August 1993 respondent Union went on strike. On the same day, respondent Secretary assumed jurisdiction over the controversy.

In the conference held on 14 September 1993 the parties agreed to confine the scope of the dispute to the following issues: (a) unfair labor practice, consisting of CBA violations and acts inimical to the workers' right to self-organization; (b) redundancy, affecting the dismissed employees; and, (c) CBA deadlock, which includes all items covered by respondent Union's proposals.

On 2 May 1994 respondent Secretary of Labor resolved the controversy in this manner: (1) the parties were ordered to modify the fourth and fifth years of their CBA in accordance with the dispositions she found just and equitable[1] the same to be retroactive to 1 July 1993 and effective until 30 June 1995 or until superseded by a new agreement; (2) all other provisions of the existing CBA were deemed retained but all new demands of respondent Union that were not passed upon by her were deemed denied; (3) the dismissal of the eight (8) employees on the ground of redundancy was upheld, but due to defective implementation petitioner the latter was ordered to pay each of the former an indemnity equivalent to two (2) months' salary based on their adjusted rate for the fourth year in addition to the separation benefits due them under the law and the CBA, and if still unpaid, petitioner to pay the same immediately; and, (4) the charge of unfair labor practice was dismissed for lack of merit.[2]

On 28 July 1994 the motion for reconsideration of petitioner was denied.[3]

Petitioner imputes grave abuse of discretion on respondent Secretary of Labor for holding that it failed to accord due process to the dismissed employees; in not applying to the letter the ruling in Wenphil Corp. vs. NLRC,[4] and, in awarding retirement benefits beyond those granted by R.A. 7641.[5]

Petitioner argues that what it implemented was not retrenchment but redundancy program, as such, respondent Secretary of Labor should not have relied upon Asiaworld Publishing House, Inc. vs. Ople[6] in holding that the dismissed employees were not accorded procedural due process. The additional requirements enumerated in Asiaworld are inapplicable to the present case because that case involved retrenchment, and petitioner's basis in deciding those to be covered by the redundancy program was the area serviced by the couriers. All areas outside the vicinity of its head office, which were the areas of delivery of the dismissed employees, were declared redundant.

Petitioner misses the point. Its violation of due process consists in its failure, as found by respondent Secretary of Labor, to apprise respondent Union of any fair and reasonable criteria for implementation of its redundancy program. In Asiaworld we laid down the principle that in selecting the 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. Although the case of Asiaworld dealt with retrenchment, still the principle is applicable to the present case because in effecting the dismissals petitioner had to select from among its employees.

We agree with respondent Secretary of Labor in her observation and conclusion that the implementation by petitioner of its redundancy program was inconsistent with established principles of procedural due process. She elaborated on this point in her resolution of the motion for reconsideration. Thus —

> Whether it is redundancy or retrenchment, no employee maybe dismissed without observance of the rudiments of good faith. This is the point of our assailed order. If the Company (were) really convinced of the reasons for dismissal, the least it could have done to the employees affected was to observe fair play and transparency in implementing the decision to dismiss. To stress, the redundancy was implemented without the Company so much apprising the Union of any fair and reasonable criteria for implementation.
>
> As a matter of fact, this Office called the parties to a conference on 14 March 1994, at which the Company was given an

opportunity to clarify the criteria it used in effecting redundancy. Represented by Ms. Ma. Lourdes Mendoza of Mercado and Associates, its counsel of record, the Company submitted quitclaims which do not contain any amounts purportedly executed by five of the eight dismissed employees. More importantly, the minutes of the conference show that within two days thereafter, the Company committed to submit a pleading to explain the criteria it used in effecting the redundancy; where no such submission is made by 17 March 1994, the case shall be deemed submitted for resolution. The Company never complied with this commitment.

As has been made clear, even this Office recognized that an authorized cause for dismissal did exist; what it could not countenance is the means employed by the Company in making the cause effective. But no matter what kind of justification the Company presents now, this has become moot, academic and irrelevant. The same should have been communicated to the affected employees prior to or simultaneously with the implementation of the redundancy, or at the very least, before the assailed order was rendered.

In any event, the explanation being advanced by the Company now purportedly based on areas of assignment — loses significance from the more compelling viewpoint of efficiency and seniority. For instance, during the period covered by the Company's own time and motion analysis, Rogelio Varona delivered 96 messages but was dismissed; Resurrecion Bordeos delivered only an average of 75 but was retained. In terms of seniority, the Company itself states the "Ms. Bordeos holds the same position/area as Rogelio Varona, however, she was retained because she is more senior than the latter." The Company should look at its own evidence again. Bordeos had only 16 years of service. Varona had 19, Neves 18, and Valle, Basig and Santos 17, yet all five were dismissed.

One should also consider that the redundancy was implemented at the height of bargaining negotiations. The bargaining process could have been the best opportunity for the Company to apprise the Union of the necessity for redundancy. For

> unknown reasons, the Company did not take advantage of it. Intended or not, the redundancy reinforced the conditions for a deadlock, giving the Union members the impression that it was being used by the Company to obtain a bargaining leverage.[7]

Petitioner argues next that granting that procedural due process was not afforded the dismissed employees, still, the award of two (2) months salary for each of them is not in accord with existing jurisprudence. The Wenphil doctrine teaches, as in other cases, that where the dismissal of an employee is for a just cause but without due process, the employer must indemnify the dismissed employee.

Petitioner must have failed to read the full text of Wenphil or simply chose to ignore the sentence immediately succeeding the P1,000.00 indemnity enunciated therein. The case is explicit that the measure of the award depends on the facts of each case and the gravity of the omission committed by the employer. In fact, in the recent case of Reta vs. NLRC,[8] the Court saw fit to impose P10,000.00 as penalty for the employer's failure to comply with the due process requirement. The ratiocination of respondent Secretary of Labor should have put petitioner's argument at rest —

> Wenphil, however, simply provides the authority to impose the indemnity; it is not meant to be definitive as to the amount of indemnity applicable in all cases, this being dependent on the particular circumstances of a case. Indeed, in the later case of Maritime Seahorse vs. NLRC, G.R. No. 84712, 5 May 1989, the Supreme Court applied the Wenphil doctrine but awarded an indemnity of P5,000.00. Clearly, there is a recognition that the amount of indemnity to be awarded is subject to the discretion of the agency making the award, considering all attendant circumstances.[9]

Lastly, petitioner argues that the retirement benefits granted by respondent Secretary of Labor are in excess of what is required of it under the law and what the Union demands. In particular, R.A. 7641 grants to the employee retirement pay equivalent to 21.82 days per year of service only but respondent Secretary of Labor granted the equivalent of 22.5 days. To this, six (6) more days were granted for compulsory retirement and three (3) days for optional retirement.

The existing provisions of the CBA, the respective proposals of the parties, and the award of respondent Secretary of Labor are reproduced hereunder —

EXISTING PROVISIONS OF THE CBA

a. Normal Retirement — Compulsory upon reaching 60 years of age or after 35 years of continuous service, whichever comes first, provided that those who reach 55 or have 10 years of uninterrupted service may be retired at employee's or Company's option.

PETITIONER'S PROPOSAL

a. Normal Retirement — 60 years old — R.A. 7641

b. Optional Retirement — 55 years old or 10 years of continuous service 1/2 month's basic salary for every year of continuous service plus 1 day equivalent pay.

UNION'S PROPOSAL

a. Normal Retirement — 150% of basic salary

b. Optional Retirement — 50% of basic salary commencing in the 5th year of service.

SECRETARY'S AWARD

a. Compulsory Retirement — An employee shall be compulsorily retired upon reaching the age of sixty (60), or after thirty-five (35) years of continuous service, whichever comes first.

   An employee shall be entitled to a retirement benefit of 1/2 month salary plus six (6) days multiplied by the number of years in service.

b. Optional Retirement — At his option, an employee may retire upon reaching the age of fifty-five (55) or more if he

has served for at least five (5) years; provided, however, that any employee who is under fifty-five (55) years old may retire if he has rendered at least ten (10) years of continuous service.

Such an employee shall be entitled to a retirement benefit of 1/2 month salary plus three (3) days multiplied by the number of years in service.

For purposes of computing compulsory and optional retirement benefits and to align the current retirement plan with the minimum standards of Art. 287 of the Labor Code, as amended by R.A. 7641, and Sec. 5 (5.2) of its implementing rules, "1/2 month salary" means 22.5 days — salary, exclusive of leave conversion benefits.

Article 287 of the Labor Code, as amended by R.A. 7641, provides —

> Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

> Unless the parties provide for broader inclusions, the term 'one-half (1/2 month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.(Emphasis supplied).

The records fail to disclose that petitioner bothered to inform the Court how it arrived at 21.82 days as basis in the computation of the retirement pay. Anyway, it is clear in the law that the term" one-half (1 /2) month salary" means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay plus 5 days of service incentive leave. In this regard, there is no reason for petitioner to complain that the retirement benefits granted by respondent Secretary of Labor exceeded the requirements of the law.

With respect to the additional six (6) days for compulsory retirement and three (3) days for optional retirement, these may appear in excess of the requirements of the law and the demand of respondent Union. Yet, it should be noted that the law merely establishes the minimum retirement benefits as it recognizes that an employee may receive more under existing laws and any CBA or other agreements. Besides, respondent Secretary of Labor had to break the bargaining deadlock. After taking into account all the circumstances, public respondent found it expedient to strike a reasonable middle ground between the parties' respective positions. Unless there are cogent reasons, and we do not find any, this Court will not alter, modify or reverse the factual findings of the Secretary of Labor because, by reason of her official position, she is considered to have acquired expertise as her jurisdiction is confined to specific matters.[10]

As we perceive it, by design or otherwise, petitioner's arguments only scratch the surface, so to speak. They do not extend beneath, as our studies of jurisprudence and the law disclose. Otherwise, the baselessness of the instant petition and the absence of any abuse of discretion, much less grave, would have earlier been exposed.

WHEREFORE, the Petition is **DISMISSED**. The Order of 2 May 1994 of respondent Secretary of Labor and her Resolution of 28 July 1994 are **AFFIRMED.**

SO ORDERED.

Padilla, Vitug, Kapunan and Hermosisima, Jr., *JJ.*, concur.

---

[1] Rollo, pp. 177-179.
[2] Rollo pp. 179-180.
[3] Id., p. 198.
[4] G.R. No. 80587, 8 February 1989, 170 SCRA 69.
[5] An Act amending Art. 287 of P.D. 442 as amended otherwise known as "The Labor Code of the Philippines" by providing for retirement pay to qualified private sector employees.
[6] G.R No. 56398, 23 July 1987, 152 SCRA 219.
[7] Rollo, pp. 195-196.
[8] G.R No. 112100, 27 May 1994, 232 SCRA 613.
[9] Rollo, p. 197.
[10] Maya Farms Employees Organization vs. NLRC, G.R. No. 106256, 28 December 1994, 239 SCRA 508
