SUPREME COURT
SECOND DIVISION

INTERNATIONAL HARVESTER MACLEOD, INC.,
***Petitioner*,**

-versus-

G.R. No. 73287
May 18, 1987

HON. INTERMEDIATE APPELLATE COURT & DIOSDADO L. JOSON,
***Respondents*.**
x----------x

D E C I S I O N

PARAS, *J.*:

This is a Petition for Review on *Certiorari* of the Decision[*] of the Court of Appeals dated December 9, 1985 in AC-G.R. CV No. 67923 entitled Diosdado L. Joson vs. Richard Quinlan, Eduard Lim and International Harvester Macleod, Inc. (IHMI) which affirmed the Decision[**] of the Court of First Instance of Manila in Civil Case No. 110444 finding that plaintiff (private respondent herein) has no cause of action against defendant Richard Quinlan and Eduard Lim, both having acted merely as officers of the corporation but has a legitimate cause against defendant IHMI, and that the position of private respondent had not become redundant so that his termination was

illegal, and his acceptance of his retirement benefits did not operate as a bar against his suit for damages.

The dispositive portion of the trial court's decision reads:

> "WHEREFORE, in view of the findings of the Court, judgment is hereby rendered in favor of the plaintiff and defendant IHMI is hereby ordered to pay the plaintiff moral damages in the sum of P800,000.00; exemplary damages, in the sum of P200,000.00; attorney's fees and expenses of litigation in the amount of P30,000.00 and to pay the costs. The case against defendants Richard Quinlan and Eduard Lim is hereby dismissed and their counterclaim is likewise dismissed." (Amended Record on Appeal, p. 238).

The antecedent facts of this case as found by the trial court and by the Court of Appeals are as follows:

Petitioner, International Harvester Macleod, Inc. (hereinafter referred to as IHMI) first employed Diosdado L. Joson (herein private respondent) in July 1960 as assistant attorney in its Legal Department with a monthly salary of P300.00. In 1968, plaintiff was promoted as Area Credit and Collection Manager with a correspondent increase in his salary. In 1970, plaintiff was promoted to Staff Assistant to the Credit and Collection Manager and his salary was increased to P2,000.00 a month. Finally, in May 1975, private respondent was appointed in the Government Sales Department of defendant (petitioner herein) IHMI as Government Relations Officer with a monthly salary of P2,500.00.

However, on July 25, 1977, Eduard Lim, Vice President of petitioner IHMI, called private respondent and informed him that he was being transferred to the Fleet Account Sales Department as a Fleet Account Salesman with a salary of P1,000.00 a month, without allowance but he was entitled to commissions. Plaintiff was taken completely by surprise at his sudden demotion and he asked Eduard Lim the reason for such action taken against him by the company. Management answered plaintiff stating that his position as Government Relations Officer had become redundant in view of the appointment of the International Heavy Equipment Corporation (herein referred to as

IHEC) as the Company's Dealer with the Government. Subsequently, the petitioner IHMI handed private respondent a check for P39,594.82 representing his termination pay (as plaintiff had refused to accept his transfer, and defendant IHMI had accordingly advised private respondent to resign instead). Plaintiff accepted the check with the following notation:

> "I am accepting this check since I am entitled to it but without prejudice and with reservations, to take whatever necessary actions which I deem fit under the circumstances to protect my interest."

Private respondent signed a voucher indicating that said check was in payment of his termination pay.

Private respondent, Diosdado L. Joson filed a complaint for damages for his illegal termination, Civil Case No. 110444 with the Court of First Instance of Manila, Branch XXXVI, against petitioner IHMI, Richard Quinlan and Eduard Lim (Amended Record on Appeal, pp. 13-19).

A motion to dismiss the complaint was filed by IHMI on September 13, 1977 contending that the lower court has no jurisdiction over the subject of the action which arises from an employer-employee relationship, and which properly falls under the exclusive jurisdiction of the Labor Arbiter and the National Labor Relations Commission on Appeal (Amended Record on Appeal, pp. 20-25).

On October 4, 1977, private respondent in his Opposition to the Motion to Dismiss countered that the suit is an ordinary claim for damages arising from the manner and circumstances of his dismissal, bereft of any claim for labor benefits and is a civil dispute, triable by ordinary courts (Amended Record on Appeal, pp. 26-30).

After the reply by IHMI and a rejoinder to reply by private respondent, the lower court on October 26, 1977, denied the Motion to Dismiss on the ground that the case is principally a civil dispute, not a labor dispute, hence jurisdiction pertains to the lower court and not to the NLRC (Amended Record on Appeal, pp. 44-45).

The lower court, by its order dated December 7, 1977 set the pre-trial for December 15, 1977 (Amended Record on Appeal, pp. 61-63), at which, on motion of private respondent the lower court in its order dated December 29, 1977 declared said petitioner in default for failure to appear at the pre-trial conference and allowed private respondent to present his evidence ex parte (Amended Record on Appeal, pp. 68-69).

However, a motion to set aside the order of default filed by the petitioner was granted by the trial court in its Order dated March 17, 1978, declaring however, that the testimonies of the witnesses of the private respondent presented ex parte should stay and setting the date for trial in order to enable petitioner to cross-examine the witnesses (Amended Record on Appeal, pp. 100-101). A motion for reconsideration of said Order was denied by the lower court on April 20, 1978 (Amended Record on Appeal, pp. 109-110).

On April 27, 1978, the lower court ordered that in view of the position of the defendant (petitioner herein) on the cross-examination of the witnesses who had testified ex parte, the former is deemed to have waived said cross-examination (Amended Record on Appeal, p. 111).

Petitioner filed before the Intermediate Appellate Court a Petition for Certiorari and Prohibition questioning the delegation by the trial judge to the Clerk of Court, the reception of evidence ex parte and the jurisdiction of the trial judge to try the civil case in question. A temporary restraining order was issued by the Appellate Court on June 20, 1978.

In its decision, the Intermediate Appellate Court denied the aforestated petition on September 1, 1978 declaring that as ruled by the Supreme Court, the trial court may authorize the Clerk of Court to receive evidence and that P.D. No. 1367 explicitly provides in effect that actions for damages fall within the jurisdiction of the CFI (Amended Record on Appeal, pp. 128-140). Petitioner moved for reconsideration of the decision which motion was denied in the Resolution of December 4, 1978.

After a protracted trial on the merits, the trial court on February 11, 1980 rendered the above-cited decision finding private respondent's

termination to be illegal and ordering petitioner to pay damages. Unable to get a reconsideration, petitioner appealed. Private respondent then moved for an immediate execution of the decision pending appeal which motion was opposed by petitioner but the trial court denied the motion and approved petitioner's amended record on appeal and ordered the transmittal of the records to the Court of Appeals in its Order dated October 23, 1980 (Record on Appeal, p. 325). On Appeal, respondent Appellate Court affirmed the Decision[***] of the trial court on December 9, 1985 (Rollo, pp. 49-54).

Hence, this petition.

In the resolution dated July 16, 1986, the Second Division of this Court, without giving due course to the petition required private respondent to comment thereon (Rollo, p. 87). Private respondent filed his comment dated July 29, 1986 (Rollo, pp. 88-96), to which petitioner filed a reply on September 3, 1986 (Rollo, pp. 99-106) in compliance with the resolution of August 20, 1986 (Rollo, p. 98). In the Resolution of October 13, 1986, the Court gave due course to the petition, and required both parties to file their respective memoranda (Rollo, p. 107). A memorandum was filed by herein respondent on November 13, 1986 (Rollo, pp. 114-131), while petitioner filed its memorandum on November 26, 1986 (Rollo, pp. 135-170).

Petitioner, both in its petition and memorandum, raised the following issues:

I

> WHETHER THE RESPONDENT COURT COMMITTED AN ERROR IN DRAWING A MANIFESTLY ERRONEOUS INFERENCE FROM THE FACTS OF THE CASE WHEN IT FOUND THAT THERE WAS NO MATERIAL CHANGE IN IHMI'S GOVERNMENT SALES OPERATIONS SO THAT THE PRIVATE RESPONDENT'S POSITION HAD NOT BECOME REDUNDANT, AN ERROR WHICH IS CORRECTIBLE BY THIS HONORABLE COURT UNDER THE RULING IN LINA V. LINATOC, 74 PHIL. 15.

II

WHETHER THE RESPONDENT COURT ERRED IN IGNORING THE LEGAL EFFECTS OF THE REDUNDANCY OF PRIVATE RESPONDENT'S POSITION, A CONCLUSION THAT IS AFFECTED BY PETITIONER'S BENEVOLENT ACT OF OFFERING HIM ANOTHER POSITION IN THE COMPANY.

III

WHETHER THE RESPONDENT COURT ERRED IN RELYING ON A BASELESS SURMISE OR SPECULATION WHEN IT RULED THAT PRIVATE RESPONDENT ACCEPTED THE CHECK FROM IHMI BECAUSE HE HAD A FAMILY TO SUPPORT AND THUS, THE COURT IGNORED THE EXISTENCE OF A COMPROMISE BETWEEN THE PARTIES.

IV

WHETHER THE RESPONDENT COURT ERRED IN AFFIRMING THE GRANT OF MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF SUIT, THERE BEING NO PROOF AT ALL THAT PETITIONER ACTED FRAUDULENTLY OR IN BAD FAITH OR WITH GROSS NEGLIGENCE, BUT ON THE CONTRARY IT WAS PRIVATE RESPONDENT WHO ACTED IN BAD FAITH AND WITH MALICE AMBUSHED PETITIONER INTO AGREEING TO HIS RETIREMENT, AND IMPROVING ON WHAT OTHERWISE HE WOULD RECEIVED, AND EVEN ASSUMING ARGUENDO THAT THERE IS BASIS THEREFOR, THE AWARD IS EXCESSIVE AND NOT WARRANTED UNDER THE CIRCUMSTANCES HEREIN PREVAILING.

V

WHETHER THE LOWER COURT ERRED IN NOT FINDING PETITIONER'S COUNTERCLAIM TO BE MERITORIOUS.

The main issue in this case is, who determines the need for the existence of a department in the employer corporation and the reduction of personnel therein.

Article 284 of the Labor Code reads:

> "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 closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title, by preserving a written notice on the workers and the Ministry 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 on redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher."

There is no dispute that as claimed by petitioner, the sole function of its Government Sales Department of which private respondent is the Government Relations Officer, a managerial position, was to take charge of sales of international trucks, equipment and spare parts to the government of the Republic of the Philippines including government owned or controlled corporations that such function, originally handled by the Asia Pacific Corporation as Special Government Dealer, was taken over by International Heavy Equipment Corporation with bigger manpower and resources and that eventually, the Government Sales Department was phased out and private respondent was offered a lesser position in the fleet account sales with less salary and without allowance, although with commission, on the ground that his position has become redundant. Private respondent refused to transfer, which refusal resulted in the termination of his services under the circumstances above described.

Well established is the rule that while it is true that to dismiss or lay off an employee is management's prerogative, it must be done without abuse of discretion, for what is at stake is not only petitioner's position but also his means of livelihood (Kapisanan ng Manggagawa

sa Camara Shoes vs. Camara Shoes, 111 SCRA 482 [1982]; Bachiller vs. NLRC, 98 SCRA 393 [1980]; Remerco Garments Manufacturing vs. Minister of Labor & Employment, 135 SCRA 167; Hope Christian High School vs. NLRC, 135 SCRA 251 [1985]; D.M. Consunji vs. NLRC, 143 SCRA 204 [1986]).

Equally without question is the fact that International Heavy Equipment Corporation can ably handle the functions in question without the help of petitioner's Government Sales Department and of private respondent in particular and that it would be more economical for petitioner company to transfer its government sales activities to IHEC than to hire the services of the latter and at the same time maintain a department for the same purpose but only in certain isolated cases.

Nonetheless, private respondent insists that his position has not become redundant and that the assailed termination of services is a clever scheme on the part of management to maneuver private respondent's elimination from his position. Thus the trial court held petitioner liable for damages due to its "bad faith."

That such conclusion is precipitate and speculative is readily apparent and brings to the fore, the essential issue as to who should determine the need for the phasing out of a department and the services of private respondent.

This issue has been squarely settled by the Supreme Court in the case of Bondoc vs. People's Bank and Trust Co. (103 SCRA 599 [1981]) where it was held that as petitioner occupied a managerial position, his stay therein depended on his retention of the trust and confidence of the management and where there was any need for his services. "Although some vindictive motivation might have impelled the abolition of his position, yet, it is undeniable that the bank's board of directors possessed the power to remove him and to determine whether the interest of the bank justified the existence of his department."

In an evident reiteration of the employer's right and prerogative to manage its affairs, the Court in a much later case ruled:

> "An employer has a much wider discretion in terminating the employment relationship of managerial personnel as compared to rank-and-file employees. However, such prerogative of management to dismiss or lay-off an employee must be made without abuse of discretion, for what is at stake is not only the private respondent's position but also his means of livelihood." (D.M. Consunji Inc. vs. NLRC, 143 SCRA 204-205 [1986]).

In fact, under Policy Instructions No. 8 of the Secretary of Labor "The employer is not required to obtain a previous written clearance to terminate managerial employees in order to enable him to manage effectively." A managerial employee can be suspended or dismissed without prior clearance from the Secretary of Labor (Bondoc vs. People's Bank and Trust Co. supra; Associated Citizens Bank vs. Ople, 103 SCRA 135 [1981]).

Reverting to the case at bar, a searching review of the records fails to show that petitioner in demoting private respondent and later terminating his services acted oppressively, unjustly or arbitrarily. The lower court observing that the phasing out of the department in question was preceded by a bitter discussion between private respondent and his superiors, alluded to the latter as the probable cause of the alleged illegal dismissal. But such is only a surmise, in the absence of any concrete evidence that the reorganization being undertaken by petitioner company is for any other purpose than its declared objective — as a labor and cost saving device. Indeed, there is no argument against the fact that with the hiring of IHEC, it was no longer economical to retain the services of private respondent; so much so that despite the findings of the trial court that on many occasions, petitioner company undertook direct sales to the Philippine Government despite engagement of the Asia Pacific Corporation as government dealer, it is not precluded from adopting a new policy conducive to a more economical and effective management.

Similarly, evidence on record fails to show bad faith on the part of the employer. On the contrary, it is manifest that from the outset, it had been candid with private respondent, it is not disputed that before the final contract was signed by and between IHMI and IHEC, the former conferred with private respondent informing him of the management

decision and the rationale behind it and although not required by law offered him a position in the fleet account sales which although lesser in basic pay and without allowance, has more opportunities of fetching a bigger income in the form of commissions. Obviously, what is being required of him is the exertion of more effort in exchange for a bigger "take home pay." He refused and considered the demotion as a forced resignation. He cannot now he heard to complain in having been phased out from his position which ceased to exist apart from the fact that he has been given his due under Article 284 of the Labor Code of one (1) month pay for every year of service plus the money equivalent of his unused sick and vacation leave (Rollo, p. 188).

Moreover, the issue as to whether or not his employer has the right to demote him has been laid to rest in Petrophil vs. NLRC (143 SCRA 704 [1986]), where the Supreme Court quoted with approval the ruling of the Labor Arbiter in this regard:

> "Time and again, this Office has sustained the view that it is management prerogative to transfer, demote, discipline and even to dismiss an employee to protect its business, provided it is not tainted with unfair labor practice."

Neither can he complain of arbitrariness because even his senior officer Enrique Gomez, has been transferred to head the Sales Project Department, after which the department in question ceased to operate (Rollo, pp. 135-137).

Thus, although well-settled is the rule that findings of fact of the trial court and the Court of Appeals will not as a general rule be disturbed by the Supreme Court, in the case at bar, where unfair labor practice is evidently absent, no plausible reason could be found to support the conclusion of an illegal termination of services nor a legal basis to warrant what is obviously an exorbitant award of damages.

PREMISES CONSIDERED, the appealed Decision of respondent Court of Appeals holding petitioner liable to private respondent Diosdado L. Joson is hereby **SET ASIDE**, and a new one is hereby rendered absolving petitioner from such liability.

SO ORDERED.

Fernan, Gutierrez, Jr., Padilla, Bidin and Cortes, *JJ.*, concur.

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[*] Penned by Justice Jose C. Campos, Jr. and concurred in by Justices Crisolito Pascual, Serafin E. Camilon and Desiderio P. Jurado.
[**] Written by Judge Alfredo C. Florendo.
[***] Penned by Judge Alfredo C. Florendo.
