

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**TIERRA INTERNATIONAL
CONSTRUCTION CORPORATION,**
Petitioner,

-versus-

**G.R. No. 88912
July 3, 1992**

**NATIONAL LABOR RELATIONS
COMMISSION, SHERIFF OF THE
PHILIPPINE OVERSEAS
EMPLOYMENT ADMINISTRATION and
ISIDRO P. OLIVAR,**
Respondents.

X-----X

DECISION

PADILLA, J.:

This Petition seeks the annulment of the Decision^[*] of the Second Division of the National Labor Relations Commission promulgated on

30 May 1989 in POEA Case No. (L)-86-10-935 entitled “Isidro P. Olivar vs. Tierra International Construction Corporation and FEBROE” which reversed the decision of POEA Administrator Tomas D. Achacoso dated 7 September 1988.

Sometime on 7 March 1984, private respondent Isidro P. Olivar was hired by FEBROE, a foreign shipping company, through its local agent, petitioner Tierra International Construction Corporation, to work as shift supervisor in its Base Operating Support (BOS) project for the U.S. Navy in the British Indian Ocean Territory of Diego Garcia, for a period of one (1) year with a basic monthly salary of US \$680.00.

Private respondent eventually left for Diego Garcia and assumed his position. His employment contract was renewed in 1985, the last renewal was on 8 May 1986. But on 1 October 1986, he was dismissed from employment, and subsequently repatriated to the Philippines.^[1]

Upon his return to the Philippines, private respondent filed a complaint with the Philippine Overseas Employment Administration (POEA), which was docketed as POEA Case No. (L)-86-10-935, against petitioner and FEBROE, as the principal, for breach of employment contract, unfair labor practice and moral damages. Private respondent alleged that he was a victim of improper termination of employment thru gradual and systematic removal of high salaried employees. He averred that granting that there was a decrease in the volume or scope of work of FEBROE, his actual volume of work in the department where he was assigned had increased significantly as evidenced by the assignment of additional personnel in the same department.^[2]

In its Answer to the complaint, petitioner denied having illegally dismissed the private respondent. Petitioner averred that in July and August 1986, FEBROE management undertook a comprehensive audit and evaluation of its entire work force with the end in view of promoting economy, efficiency and profitability in its operations, and to reduce personnel whose positions were considered redundant or surplusage and/or to re-assign personnel to other available useful positions. And based on the Memorandum of the Acting Program Director to the Manager for Administration and Employee Relations

dated 25 August 1986, one of the positions listed for abolition was the position of the private respondent as “13401 — Supervisor, Technical.”^[3]

On 7 September 1988, the POEA rendered a decision holding that the termination of the private respondent from his employment was for an authorized cause. The POEA ordered the therein respondents (FEBROE and Tierra) to pay jointly and severally to the private respondent the sum of US \$680.00 which is equivalent to his one month salary, by way of separation pay, and five percent (5%) thereof as and by way of attorney’s fees.^[4]

Both parties filed their respective motions for reconsideration with the respondent Commission, which were treated as appeals. The petitioner contended that the employment contract does not provide for separation pay in case of termination based on redundancy or reduction of force due to a decrease in volume or scope of work.^[5]

The respondent Commission, in its Decision dated 30 May 1989, reversed the POEA decision. The dispositive portion of the NLRC decision states:

“WHEREFORE, judgment is hereby rendered vacating the decision sought to be modified/reversed and a new one entered directing respondents-appellants to pay complainant-appellant the amount of US \$4,080.00 or its peso equivalent at the time of payment corresponding to his salaries for the unexpired portion of his contract plus ten percent (10%) thereof as and by way of attorney’s fees.

“SO ORDERED.”^[6]

Hence, this petition. A TRO was issued by this Court on 19 July 1989, to enjoin the respondents from enforcing the NLRC decision.^[7]

The primary issue to be resolved in this case is whether or not private respondent’s termination from employment is illegal.

Article XIII (a) of the employment contract executed between the principal FEBROE and the private respondent provides as follows:

“(a) If EMPLOYER terminates the services of EMPLOYEE under this Agreement because of the completion, termination, or suspension of the work in which EMPLOYEE’s services were being utilized, or because of reduction of force due to a decrease in scope of such work, or a change in the type of such work, EMPLOYER will be responsible for EMPLOYEE’s return transportation to his Point of Hire.”^[8]

Termination of an employee’s services because of a reduction of work force due to a decrease in the scope or volume of work of the employer is synonymous to, or a shade of termination because of redundancy under Article 283 (formerly 284) of the Labor Code. Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. 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.^[9]

The records show that on 29 August 1986, private respondent received his notice of termination signed by John D. Springer, Manager of Administrative/Personnel of FEBROE, advising him that his position will be deleted because of a reduction of force due to a decrease in scope of work assigned to FEBROE’s Base Operating Support (BOS) Contract. The notice also stated that in case private respondent qualifies for another position, he will be transferred to said other position. If not, he will be scheduled for a return flight to his point of hire.^[10] Unfortunately, there were no other available positions to which he could qualify.

The records also show that aside from private respondent’s position, there were twenty-eight (28) other positions that were abolished, including both U.S. and Third Country Nations (TCN) positions.^[11] And on 1 October 1986, nine (9) employees, including the private respondent, left the work site as a result of the reduction in work force.^[12] Thus, it would appear that private respondent was not singled out and that his termination was not arbitrary or malicious on the part of the employer.

The respondent Commission held that the petitioner simply breached the terms and conditions of the employment contract when private respondent was separated from the service six (6) months prior to the expiration of the contractual term. The NLRC, in explaining its action, held that:

“We find the credibility for truth of the complainant more convincing than respondents-appellants. Complainant’s position, being a technical one, can be the subject of redundancy only in the remotest possible manner after exhausting first other junior employees in complainant’s department. Singling him out for separation is a hard blow with far reaching damage to the complainant-appellant, pecuniarily and morally, taking into consideration his long years of devoted and efficient job performance.”^[13]

We agree with the petitioner that the law does not make any distinction between a technical and a non-technical position for purposes of determining the validity of termination due to redundancy. Neither does the law nor the stipulations of the employment contract here involved require that junior employees should first be terminated.^[14] In redundancy, what is looked into is the position itself, the nature of the services performed by the employee and the necessity of such position. As held in *Wiltshire File Co., Inc. vs. NLRC*:^[15]

“The determination of the continuing necessity of a particular officer or position in a business corporation is management’s prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or merely arbitrary or malicious action on the part of management is shown.”

We are of the view therefore that private respondent’s termination from employment was for a valid or just cause; consequently, the respondent Commission gravely abused its discretion in awarding to the private respondent the salaries for the unexpired portion of the employment contract, including ten percent (10%) thereof as attorney’s fees.

Having ruled that private respondent's termination was for a just and valid cause, is private respondent entitled nonetheless to a separation pay equivalent to at least one month pay or to at least one (1) month pay for every year of service, whichever is higher? ^[16]

We rule in the affirmative.

Article XIII (a) of the employment contract between the parties provides that where an employee is terminated because of a reduction of work force, the employer will be responsible for the employee's return transportation to his point of hire. There is no mention of an award of separation pay similar to that provided for in Article 283 of the Labor Code.

But as admitted by petitioner itself, Article 283 of the Labor Code governs its employer-employee relationship with the private respondent as the same is deemed written in the employment contract signed by the parties. Thus, although a contract is the law between the parties, thereto, the provisions of law which regulate such contracts are deemed included and shall limit and govern the relations between the parties. ^[17]

In *Abella vs. NLRC*, ^[18] the Court held that not only are existing laws read into contracts in order to fix the obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.

In ordering the petitioner to pay private respondent the sum of US \$680.00 which is equivalent to his one (1) month salary by way of separation pay, POEA Administrator Achacoso was merely exercising the following powers mandated on the POEA by E.O. 247. ^[19]

“X X X

- (c) Protect the rights of Filipino workers for overseas employment to fair and equitable recruitment and employment practices and ensure their welfare;

X X X

- (i) Secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith;
- (j) Promote and protect the well-being of Filipino workers overseas;

X X X

Moreover, when FEBROE applied for a license or authority to recruit, hire and employ construction workers thru petitioner herein, it undertook to guarantee compliance with the existing labor and social legislation of the Philippines.^[20]

Regarding the petitioner's claim for exemplary damages, Art. 2232 of the Civil Code states that:

“ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.”

Petitioner avers that the malicious and baseless complaint filed by private respondent with the POEA could only be characterized as wanton, fraudulent, reckless, oppressive or malevolent, solely for the purpose of enriching himself at the expense of the petitioner. Because of such complaint, petitioner suffered actual damages in terms of attorney's fees and other expenses of litigation to defend itself.^[21]

We are of the opinion that private respondent was in good faith when he filed the complaint. He was merely exercising his right to question and challenge the validity of his termination. “The adverse result of an action does not per se make the action wrongful and subject the actor to make payment of damages, for the law could not have meant to impose a penalty on the right to litigate. If damage results from a person's exercising his legal rights, it is *damnum absque injuria*.”^[22]

In the absence of evidence that the filing of the private respondent's complaint before the POEA was merely to harass petitioner and was tainted with malice, the petitioner's claims for exemplary damages and attorney's fees are hereby denied for lack of merit.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The questioned Decision of the respondent National Labor Relations Commission dated 30 May 1989 is hereby **REVERSED** and **SET ASIDE** and the decision of POEA Administrator Tomas D. Achacoso dated 7 September 1988 is **REVIVED**. The Temporary Restraining Order issued by this Court on 19 July 1989 is hereby made **PERMANENT**. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Paras, Regalado and Nocon, JJ., concur.

[*] Penned by Commissioner Domingo H. Zapanta and concurred in by Presiding Commissioner Daniel M. Lucas, Jr. and Commissioner Oscar N. Abella.

[1] Rollo, p. 47.

[2] Rollo, pp. 25-26.

[3] Rollo, p. 28.

[4] Rollo, p. 52.

[5] Rollo, p. 54.

[6] Rollo, pp. 23-24.

[7] Rollo, p. 68.

[8] Rollo, p. 35.

[9] *Wiltshire File Co., Inc. vs. NLRC, et al.*, G.R. No. 82249, February 7, 1991, 193 SCRA 665.

[10] Rollo, p. 40.

[11] Rollo, p. 37.

[12] Rollo, p. 41.

[13] Rollo, p. 23.

[14] Rollo, p. 12.

[15] *Supra*, p. 673.

[16] Article 283 of the Labor Code of the Philippines, provides that:

“ART. 283. Closure of establishment and reduction of personnel. — 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.”

[17] Rollo, pp. 208-209.

[18] G.R. No. 71813, July 20, 1987, 152 SCRA 140.

[19] “Reorganizing the Philippine Overseas Employment Administration and For Other Purposes,” July 24, 1987.

[20] Sec. 1 par. d, Rule II, Book II of the Philippine Overseas Employment Administration Rules and Regulations.

[21] Rollo, p. 13.

[22] Isidro V. Saba vs. The Hon. Court of Appeals, et al., G.R. No. 77950, August 24, 1990, 189 SCRA 51.

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