

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**WILTSHIRE FILE CO., INC.,
*Petitioner,***

-versus-

**G.R. No. 82249
February 7, 1991**

**THE NATIONAL LABOR RELATIONS
COMMISSION and VICENTE T. ONG,
*Respondents.***

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DECISION

FELICIANO, J.:

Private respondent Vicente T. Ong was the Sales Manager of petitioner Wiltshire File Co., Inc. ("Wiltshire") from 16 March 1981 up to 18 June 1985. As such, he received a monthly salary of P14,375.00 excluding commissions from sales which averaged P5,000.00 a month. He also enjoyed vacation leave with pay equivalent to P7,187.50 per year, as well as hospitalization privileges to the extent of P10,000.00 per year.

On 13 June 1985, upon private respondent's return from a business and pleasure trip abroad, he was informed by the President of petitioner Wiltshire that his services were being terminated. Private respondent maintains that he tried to get an explanation from

management of his dismissal but to no avail. On 18 June 1985, when private respondent again tried to speak with the President of Wiltshire, the company's security guard handed him a letter which formally informed him that his services were being terminated upon the ground of redundancy.

Private respondent filed, on 21 October 1985, a complaint before the Labor Arbiter for illegal dismissal alleging that his position could not possibly be redundant because nobody (save himself) in the company was then performing the same duties. Private respondent further contended that retrenching him could not prevent further losses because it was in fact through his remarkable performance as Sales Manager that the Company had an unprecedented increase in domestic market share the preceding year. For that accomplishment, he continued, he was promoted to Marketing Manager and was authorized by the President to hire four (4) Sales Executives five (5) months prior to his termination.

In its answer, petitioner company alleged that the termination of respondent's services was a cost-cutting measure: that in December 1984, the company had experienced an unusually low volume of orders: and that it was in fact forced to rotate its employees in order to save the company. Despite the rotation of employees, petitioner alleged; it continued to experience financial losses and private respondent's position, Sales Manager of the company, became redundant.

On 2 December 1986, during the proceedings before the Labor Arbiter, petitioner, in a Letter^[1] addressed to the Regional Director of the then Ministry of Labor and Employment, notified that official that effective 2 January 1987, petitioner would close its doors permanently due to substantial business losses.

In a Decision dated 11 March 1987, the Labor Arbiter declared the termination of private respondent's services illegal and ordered petitioner to pay private respondent backwages in the amount of P299,000.00, unpaid salaries in the amount of P22,352.11, accumulated sick and vacation leaves in the amount of P12,543.91, hospitalization benefit package in the amount of P10,000.00, unpaid commission in the amount of P57,500.00, moral damages in the

amount of P100,000.00 and attorney's fees in the amount of P51,639.60.

On appeal by petitioner Wiltshire, the National Labor Relations Commission ("NLRC") affirmed in toto on 9 February 1988 the Decision of the Labor Arbiter. The NLRC held that:

"The termination letter clearly spelled out that the main reason in terminating the services of complainant is REDUNDANT and not retrenchment.

The supposed duplication of work of herein complainant and Mr. Deliva, the Vice-President is absent that would justify redundancy."

On the claim for moral damages, the NLRC pointed out that the effective date of private respondent's termination was 18 July 1985, although it was only 18 June 1985 that he received the letter of termination, and concluded that he was not given any opportunity to explain his position on the matter. The NLRC held that the termination was attended by malice and bad faith on the part of petitioner, considering the manner of private respondent was ordered by the President to pack up and remove his personal belongings from the office. Private respondent was said to have been embarrassed before his immediate family and other acquaintance due to his inability to explain the reasons behind the termination of his services.

In this Petition for *Certiorari*, it is submitted that private respondent's dismissal was justified and not illegal. Petitioner maintains that it had been incurring business losses beginning 1984 and that it was compelled to reduce the size of its personnel force. Petitioner also contends that redundancy as a cause for termination does not necessarily mean duplication of work but a "situation where the services of an employee are in excess of what is demanded by the needs of an undertaking."

Having reviewed the record of this case, the Court has satisfied itself that indeed petitioner had serious financial difficulties before, during and after the termination of the services of private respondent. For one thing, the audited financial statements of the petitioner for its

fiscal year ending on 31 July 1985 prepared by a firm of independent auditors, showed a net loss in the amount of P4,431,321.00 and a total deficit or capital impairment at the end of year of P6,776,493.00.^[2] In the preceding fiscal year (1983-1984), while the company showed a net after tax income of P843,506.00, it actually suffered a deficit or capital impairment of P2,345,172.00. Most importantly, petitioner Wiltshire finally closed its doors and terminated all operations in the Philippines on January 1987, barely two (2) years after the termination of private respondent's employment. We consider that finally shutting down business operations constitutes strong confirmatory evidence of petitioner's previous financial distress. The Court finds it very difficult to suppose that petitioner Wiltshire would take the final and irrevocable step of closing down its operations in the Philippines simply for the sole purpose of easing out a particular officer or employee, such as the private respondent.

Turning to the legality of the termination of private respondent's employment, we find merit in petitioner's basic argument. We are unable to sustain public respondent NLRC's holding that private respondent's dismissal was not justified by redundancy and hence illegal. In the first place, we note that while the letter informing private respondent of the termination of his services used the word "redundant", that letter also referred to the company having "incur[red] financial losses which [in] fact has compelled [it] to resort to retrenchment to prevent further losses."^[3] Thus, what the letter was in effect saying was that because of financial losses, retrenchment was necessary, which retrenchment in turn resulted in the redundancy of private respondent's position.

In the second place, we do not believe that 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 our 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.^[4] The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.

In the third place, in the case at bar, petitioner Wiltshire, in view of the contraction of its volume of sales and in order to cut down its operating expenses, effected some changes in its organization by abolishing some positions and thereby effecting a reduction of its personnel. Thus, the position of Sales Manager was abolished and the duties previously discharged by the Sales Manager simply added to the duties of the General Manager, to whom the Sales Manager used to report.

It is of no legal moment that the financial troubles of the company were not of private respondent's making. Private respondent cannot insist on the retention of his position upon the ground that he had not contributed to the financial problems of Wiltshire. The characterization of private respondent's services as no longer necessary or sustainable, and therefore properly terminable, was an exercise of business judgment on the part of petitioner company. The wisdom or soundness of such characterization or decision was not subject to discretionary review on the part of the Labor Arbiter nor of the NLRC so long, of course, as violation of law or merely arbitrary and malicious action is not shown. It should also be noted that the position held by private respondent, Sales Manager, was clearly managerial in character. In *D.M. Consunji, Inc. vs. National Labor Relations Commission*,^[5] the Court held:

“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.”^[6]

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.^[7]

On the issue of moral damages, petitioner assails the finding of the NLRC that the dismissal was done in bad faith. Petitioner argues that it had complied with the one-month notice required by law; that there was no need for private respondent to be heard in his own defense considering that the termination of his services was for a statutory or authorized cause; and that whatever humiliation might have been suffered by private respondent arose from a lawful cause and hence could not be the basis of an award of moral damages.

Termination of an employee's services because of retrenchment to prevent further losses or redundancy, is governed by Article 283 of the Labor Code which provides as follows:

“ART. 283. 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 operation 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 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 or 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. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.”

Termination of services for any of the above described causes should be distinguished from termination of employment by reason of some blameworthy act or omission on the part of the employee, in which case the applicable provision is Article 282 of the Labor Code which provides as follows:

“ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.”

Sections 2 and 5 of Rule XIV entitled “Termination of Employment:” of the “Rules to Implement the Labor Code” read as follows:

“SEC. 2. Notice of dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker’s last known address.

SEC. 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.” (Emphasis supplied)

We note that Section 2 of Rule XIV quoted above requires the notice to specify “the particular acts or omissions constituting the ground for his dismissal”, a requirement which is obviously applicable where the ground for dismissal is the commission of some act or omission falling within Article 282 of the Labor Code. Again, Section 5 gives the employee the right to answer and to defend himself against “the allegations stated against him in the notice of dismissal”. It is such allegations by the employer and any counter-allegations that the employee may wish to make that need to be heard before dismissal is effected. Thus, Section 5 may be seen to envisage charges against an employee constituting one or more of the just causes for dismissal listed in Article 282 of the Labor Code. Where, as in the instant case, the ground for dismissal or termination of services does not relate to a blameworthy act or omission on the part of the employee, there appears to us no need for an investigation and hearing to be conducted by the employer who does not, to begin with, allege any malfeasance or non-feasance on the part of the employee. In such case, there are no allegations which the employee should refute and defend himself from. Thus, to require petitioner Wiltshire to hold a hearing, at which private respondent would have had the right to be present, on the business and financial circumstances compelling retrenchment and resulting in redundancy, would be to impose upon the employer an unnecessary and inutile hearing as a condition for legality of termination.

This is not to say that the employee may not contest the reality or good faith character of the retrenchment or redundancy asserted as grounds for termination of services. The appropriate forum for such controversion would, however, be the Department of Labor and Employment and not an investigation or hearing to be held by the employer itself. It is precisely for this reason that an employer seeking to terminate services of an employee or employees because of “closure of establishment and reduction of personnel”, is legally required to

give a written notice not only to the employee but also to the Department of Labor and Employment at least one month before effectivity date of the termination. In the instant case, private respondent did controvert before the appropriate labor authorities the grounds for termination of services set out in petitioner's letter to him dated 17 June 1985.

We hold, therefore, that the NLRC's finding that private respondent had not been accorded due process, is bereft of factual and legal bases. The award of moral damages that rests on such ground must accordingly fall.

While private respondent may well have suffered personal embarrassment by reason of termination of his services, such fact alone cannot justify the award of moral damages. Moral damages are simply a species of damages awarded to compensate one for injuries brought about by a wrongful act.^[8] As discussed above, the termination of private respondent's services was not a wrongful act. There is in this case no clear and convincing evidence of record showing that the termination of private respondent's services, while due to an authorized or statutory cause, had been carried out in an arbitrary, capricious and malicious manner, with evident personal ill-will. Embarrassment, even humiliation, that is not proximately caused by a wrongful act does not constitute a basis for an award of moral damages.

Private respondent is, of course, entitled to separation pay and other benefits under Act 283 of the Labor Code and petitioner's letter dated 17 June 1985.

ACCORDINGLY, the Court Resolved to **GRANT** due course to the Petition for *Certiorari*. The Resolutions of the National Labor Relations Commission dated 9 February 1988 and 7 March 1988 are hereby **SET ASIDE** and **NULLIFIED**. The Temporary Restraining Order issued by this Court on 21 March 1988 is hereby made **PERMANENT**. No pronouncement as to costs.

SO ORDERED.

**Fernan, C.J., Gutierrez, Jr., Bidin and Davide, Jr., JJ.,
concur.**

[1] Annex "B" of Petition. Rollo, p. 47.

[2] Exhibit "2", Audited 1984-1985 Financial Statements of the Company;
Records, p. 107.

[3] The full text of the letter follows —

“June 17, 1985

Mr. Vicente T. Ong
Eleuterio de Leon St.
BF Executive Village
BF Homes, Parañaque
Metro Manila

Dear Mr. Ong:

As you are aware, the Company has been incurring financial losses which fact has compelled us to resort to retrenchment to prevent further losses. As a result of the financial difficulty we are in, it has likewise become necessary to abolish certain positions which have become redundant.

We regret to advise you that your position as Sales Manager has become redundant for which reason your services will be terminated effective July 18, 1985.

During the period of June 17 to July 17, 1985, you will be paid your regular wages and benefits. However, you will not be required to report for work unless requested by the Company to enable you to look for another job. On July 18, 1985, you will be given separation pay in full and all other benefits to which you are entitled under the law and existing Company policy upon your accomplishment of the required clearance form and execution of the release, waiver and quitclaim.

This very difficult decision has been taken as a last recourse and only after exhausting all possible alternatives.

Please accept our best wishes of your future endeavors.

Very truly yours,
WILTSHIRE FILE COMPANY INC.
By:
BERNARD S. MORGAN
President

- (Annex “E” of “Position Paper and Affidavit of Complainant Mr. Vicente [Vic] Ong”, Records, p. 18.)
- [4] See, in this connection F.M. Bacungan. *The Security of Tenure Law in the Philippines* (1976).
- [5] 143 SCRA 204 (1986).
- [6] 143 SCRA at 209.
- [7] E.g., *International Harvester Macleod, Inc. vs. Intermediate Appellate Court*, 149 SCRA 641 (1987); *Kapisanan ng Manggagawa sa Camara Shoes vs. Camara Shoes*, 111 SCRA 482 (1982).
- [8] See *Makabali vs. Court of Appeals*, 157 SCRA 253 (1988); *Guita vs. Court of Appeals*, 139 SCRA 576 (1985); *Enervida vs. de la Torre*, 55 SCRA 340 (1974); *San Miguel Brewery, Inc. vs. Magno*, 21 SCRA 292 (1969).