

SECOND DIVISION

[G.R. No. 202388, April 10, 2019]

**ELPIDIO* T. QUE, PETITIONER, VS. ASIA BREWERY, INC.
AND/OR MICHAEL G. TAN, RESPONDENTS.**

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*^[1] (Petitio under Rule 45 of the Rules of Court assailing the Decision^[2] dated October 24, 2011 and Resolution^[3] dated June 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 113493. The CA affirmed the Decision^[4] dated August 27, 2009 and Resolution dated February 1, 2010 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 052278-07, which found that respondent Asia Brewery, Inc. (Asia Brewery) validly implemented a redundancy program.

Facts

The facts, as narrated by the CA, are as follows:

Petitioner [Elpidio T. Que] had been the Regional Sales Manager (RSM) of Asia Brewery Inc. ("private-respondent") for eight (8) years and stationed in Northern Luzon covering the areas of Ilocos Sur, Ilocos Norte, Abra, Cagayan, Kalinga Apayao, Isabel, Nueva Vizcaya, Ifugao and Quirino Province. As RSM, his compensation package consisted of a monthly salary amounting to P67,000.00 and P250.00 a day per diem allowance. He also contributed to the retirement plan of private respondent, the Employees Investment and Savings Plan (EISP).

Previously, there were twelve (12) sales offices comprising the North Central Luzon Region (NCLR) which were situated in San Leonardo, Tarlac, Sta. Maria, San Fernando, Olongapo, Bataan, La Union, Baguio, Vigan, Dagupan, Cauayan and Tuguegarao. However, in February of 2004, the management of private respondent split the said region into two to spur a better growth rate in its income and to give a more direct and focused handling of the areas covered by these sales offices. The first part is composed of the sales offices at San Leonardo, Tarlac, Sta. Maria, San Fernando, Olongapo, Bataan, La Union, Baguio and Dagupan. The second part, over which the petitioner was made RSM, consisted of the sales offices in Vigan, Tuguegarao and Cauayan.

On May 2, 2005 or one year and three months after the split of the NCLR, Raymundo T. Gatmaitan, the vice president for sales of private-respondent made an evaluation of the experimental split of the NCLR and recommended the reversion to the old set up of putting the NCLR under

one RSM. He opined that the decision did not achieve any gain. He further recommended that since the re-merger would result to redundancy in the office of a Regional Sales Manager the office of the petitioner should be abolished on the ground of redundancy.^[5]

The parties' version of the subsequent events are conflicting. The CA summarized these as follows:

The petitioner's version of the facts

On May 4, 2005, Raymundo Gatmaitan informed the petitioner that he had already talked with Michael G. Tan the COO of Asia Brewery, Inc. and that the latter wishes to extend to him an offer because, apparently, his performance is no longer effective. Thereafter, the petitioner went to Mr. Tan's office where he was able to confirm that, in the eyes of the company, he has ceased to be effectual. Consequently, petitioner was told that he will be given a separation package. Moreover, Mr. Tan assured him that since his forte is on distribution^ they will surely be dealing with each other again as he sees him to be a person with brains. After their meeting, petitioner left the office of Mr. Tan without saying that he was either retiring or resigning.

On May 27, 2005, Raymundo Gatmaitan called petitioner and instructed him to report to the Head Office which he did on May 30, 2005. On that date at about 9 a.m., Raymundo Gatmaitan and Jerry Manipor showed him a document containing a computation of the amount that he is supposed to receive. Then at 11 a.m. Anthony U. Dy, the private-respondent's VP for National Operation's Services asked petitioner to submit the resignation letter demanded by Michael Tan. He persisted that he was neither retiring nor resigning. At 4 p.m. petitioner and Anthony Dy both went to Mr. Tan's office where the latter told him "Elpidio, I thought we have made an agreement already?" to which the petitioner retorted that the package was unlawful and way too low. Then petitioner explained his circumstances why he deserves to receive higher package from the management. After said meeting, Mr. Dy further pressured him to submit his resignation letter. He was also asked to surrender the company vehicle that he was then using.

On June 3, 2005, while petitioner was in Pangasinan, Mr. Dy called him and asked him when he will return to the head office. Thereafter, the phone was passed to Mr. Manipor who informed him not to proceed anymore to the Vigan sales office because Jimmy Uy had already taken over it.

On June 4, 2005, the Market Territory Manager of Cauayan Sales Office, Marciano Uy Jr. relayed to petitioner the information that he was instructed not to allow him entry into the said office premises. Petitioner tried to confirm the said information but failed.

On June 5, 2005, while in Vigan, petitioner tried to gas-up his vehicle using his issued fleet card but it was refused by Petron Gas station for the reason that it was a "terminated card". He texted Mssrs. Dy,

Gatmaitan and Manipor to inquire from them about it but none of them responded.

On June 6, 2005, petitioner drove to WCT/ABI Vigan sales office but the security guard prevented him from entering the premises. Thus, he went to the Vigan Regional Trial Court and requested sheriffs Terencio Florendo and Jonathan Florentino to accompany him and help him enter the premises since he remains to be the RSM to which both sheriffs agreed. Back at the gate of the sales office, the manager of Vigan Sales office came out and met them at the guardhouse. Petitioner was handed a letter addressed to him spelling out instruction emanating from the head office that he is not allowed to enter the said sales office.

On June 20, 2005, Mariel Casyao of private-respondent's Human Resource Department went to petitioner's residence in Sta. Mesa and demanded from him the surrender of the service vehicle. When petitioner resisted[,] and the latter was handed a letter dated June 20, 2005 signed by Mr. Manipor formally terminating his services as RSM for NCLR due to redundancy effective July 21, 2005.

On June 27, 2005, petitioner once again proceeded to the Vigan Sales Office, this time he was accompanied by Gerry Singson, his brother in the Mason and Dennis Rivas, also a brother in the Mason and Vigan's Tourism Director. However, he was again denied entry. Notwithstanding, he insisted to enter and advised Mr. Chua to verify his letter of termination but was told that his concerns about it should be directed to the head office in Manila. The same thing happened on July 11, 2005 at the Tuguegarao Sales Office.

On July 14, 2005, petitioner's son forwarded to him a mail containing another letter dated June 21, 2005 this time informing petitioner that effective immediately he is no longer the Regional Sales Manager for Northern Luzon as the same had already been merged with the sales offices under Mr. Jimmy L. Uy. Such letter, petitioner claims, had effectively nullified or super[s]eded the first letter of termination which has for its effectivity date of July 21, 2005.

Private respondent's version

On May 4, 2005 the petitioner was verbally informed by Mr. Jerry Manipor of the Human Resources Department about the private-respondent's move to consolidate the North and Central Luzon areas under one (1) Regional Sales Manager which will result to the abolition of his position once the reorganization is implemented. The petitioner was shown an initial computation of his separation pay in the amount of Php536,000.00. The petitioner, thence, started to negotiate for a higher separation pay. First, he asked that the amount shown to him as his separation pay be rounded off to Php600,000.00 and in addition thereto, the ownership of the service vehicle be transferred to him to complete his separation pay package. In his meeting with private-respondent's COO, Michael Tan, he verbally informed the latter that he decided to voluntarily tender his resignation and started discussing with him the matter of his

separation pay and the possibility of getting distributorship agreement with the company for its products in Vigan City. He assured Michael G. Tan that the resignation letter will be handed to him as soon as he has bade farewell to the people from the sales offices in Vigan, Tuguegarao and Cauayan.

On May 20, 2005, Michael Tan, (sic) received a letter from the petitioner confirming that he was verbally informed of the said corporate decision of the private-respondent and he is looking forward to the separation pay he is entitled to receive from the company. Through the said letter[,] petitioner also sought the help of Mr. Tan in realizing his dream of getting reconnected with the Lucio Tan Group of Companies through the grant of exclusive distributorship of Virgin Drinks and likewise mentioned therein about his meeting with the three Marketing Territory Managers or "MTM's" in Laoag on May 9, 2005 informing them that he will be parting with them soon.

On May 30, 2005, petitioner once again met with private-respondent's key officers. He was shown an increased amount of separation pay in line with his plea for the rounding off of the first computation showed to him. However, instead of being pleased, the petitioner showed displeasure and further negotiated for higher separation pay in the amount of Php888,888.00 in addition to the service vehicle he had earlier asked. Thus, no agreement was reached.

On June 1, 2005, petitioner was instructed to turn over the key to his service vehicle[,] but he refused retorting that he had his gun and gold inside the vehicle and threatening to make a scene.

Further, in another meeting at the Manila Peninsula Hotel, petitioner presented a much higher separation package in the staggering amount of Php8,876,189.70 which was flatly rejected by the [private respondent] for want of any legal or factual basis.^[6]

Labor Arbiter's Decision

The Labor Arbiter (LA) ruled that petitioner Elpidio T. Que (Que) was constructively dismissed. For the LA, from the date that Que was informed of his impending dismissal, he could no longer work with ease as he was constantly prodded to submit his resignation letter.^[7] The LA believed Que's narration of facts and ruled that he was irregularly prevented from reporting to work when the security guards refused to let him enter the sales offices, in addition to the cancellation of his fleet card for his gas expenses.^[8] The LA also ruled that Asia Brewery failed to prove its claim of redundancy as no financial statement from an independent auditor was submitted.^[9] The dispositive portion of the LA Decision states:

IN VIEW THEREOF, judgment is hereby rendered against the Asia Brewery Inc., with the following dispositions.

1. That the complainant was illegally dismissed consequently, the Asia Brewery Inc., must pay his backwages, separation pay and 13th month pay, P1,228,333.30, P536,000.00 and [P]139,583.33;

2. That the Asia Brewery Inc[.] must pay his unpaid salary in the amount of P64,069.00[;]
3. That respondent must reimburse his EISP contributions in the amount of P182,274.94;
4. That respondent must pay the money value of his sick leave and vacation leave credits, in the amount of P268,818.00 and P307,221.00 respectively;
5. That respondent must pay the complainant moral damages in the amount of P100,000.00 and exemplary damages of P100,000.00, plus 10% of the total award us (sic) attorney[']s fees.

All of which having a total of THREE MILLION TWO HUNDRED EIG[HT]EEN THOUSAND NINE HUNDRED TWENTY NINE AND FIFTY TWO CTVS. (P3,218,929.52).

SO ORDERED.^[10]

NLRC Decision

Both parties appealed to the NLRC. Que claimed he is entitled to higher monetary awards^[11] while Asia Brewery claimed that Que was not illegally dismissed.^[12]

The NLRC reversed the LA and found that instead of being pressured to relinquish his employment, Que actually negotiated for a suitable separation package after he was informed that he was being retrenched because his position had become redundant.^[13] The NLRC gave weight to a letter of Que dated May 18, 2005 which showed that he was not against the plan to ease him out from being RSM of North Luzon or the re-merging of such area with the Central Luzon sales office under one RSM.^[14] In the same letter, Que did not show any animosity or bitterness, or any pressure in the submission of a resignation letter.^[15] The dispositive portion of the NLRC Decision states:

WHEREFORE, premises considered, the assailed decision is hereby **modified** in that the respondents are adjudged not guilty of illegal dismissal and that complainant is declared validly terminated on the ground of redundancy under Article 283 of the Labor Code. Consequently, the award of backwages, moral damages and exemplary damages are deleted from the Decision. The following awards are affirmed:

(a) Separation pay	-	P536,000.00
(b) Unpaid salary	-	64,069.00
(c) 13 th month pay	-	139,583.33
(d) Reimbursement of EISP contributions plus interest	-	182,274.94