

## THIRD DIVISION

[ G.R. No. 232870, June 03, 2019 ]

**MANUEL G. ACOSTA, PETITIONER, VS. MATIERE SAS AND  
PHILIPPE GOUVARY, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

In redundancy, an employer must show that it applied fair and reasonable criteria in determining what positions have to be declared redundant. Otherwise, it will be held liable for illegally dismissing the employee affected by the redundancy.

This Court resolves a Petition for Review on Certiorari<sup>[1]</sup> assailing the April 7, 2017 Decision<sup>[2]</sup> and July 12, 2017 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 140108.<sup>[4]</sup> The Court of Appeals upheld the January 30, 2015 Decision<sup>[5]</sup> and February 27, 2015 Resolution<sup>[6]</sup> of the National Labor Relations Commission, which had reversed and set aside the Labor Arbiter's August 18, 2014 Decision<sup>[7]</sup> holding petitioner Manuel G. Acosta's (Acosta) dismissal illegal.

Matiere SAS is a French company "engaged m the fabrication, supply[, ] and delivery of unibridges and flyovers[.]"<sup>[8]</sup>

On October 29, 2008, Matiere SAS and the Department of Public Works and Highways executed a contract for the construction of flyovers and bridges.<sup>[9]</sup> On March 19, 2009, Matiere SAS also entered into a contract with the Department of Agrarian Reform to construct bridges for better access to agricultural lands.<sup>[10]</sup>

On November 1, 2009, Matiere SAS, represented by its resident manager Philippe Gouvary (Gouvary), executed a Consulting Agreement<sup>[11]</sup> with Acosta. Per the agreement, Matiere SAS engaged Acosta as its technical consultant for 12 months, with a monthly salary of P70,000.00.<sup>[12]</sup> Upon the Consulting Agreement's expiration, Matiere SAS hired Acosta as its technical assistant with the same P70,000.00 monthly salary.<sup>[13]</sup>

Under the Employment Agreement<sup>[14]</sup> dated November 1, 2010, Acosta was tasked to:

1. Prepare reports regarding WCI [Woodfields Consultants, Inc.] consultants.
2. Be the intermediary between the CAD operators in WCI and the management in the office.

3. Attend coordination meetings with consultant.
4. Evaluate billings.
5. Follow the SIT and prepare reports.
6. Prepare various reports as required by the resident manager.
7. Site visits.<sup>[15]</sup>

On December 14, 2011, Matiere SAS wrote Acosta a letter,<sup>[16]</sup> increasing his salary from P70,000.00 to P76,000.00, effective January 1, 2012. On the same day, Matiere SAS wrote Acosta another letter,<sup>[17]</sup> giving him a bonus of P30,000.00 for his good performance in the second half of 2011.<sup>[18]</sup>

On June 27, 2013, Matiere SAS sent Acosta a letter<sup>[19]</sup> with the subject, "*Ending of the employment agreement*["<sup>[20]</sup> It read:

We have to inform you that your employment contract within the company MATIERE/EIFFAGE will end July 31, 2013.

This decision is due to the cessation of our delivery operations and the diminution of our activities. We cannot find any reinstatement at the office. Nevertheless[,] we would like to thank you for your cooperation since the 01, November 2009.

You are authorized not to report at the office starting July 1, 2013.

Regarding the calculation of your separation pay, we will signify you the amount as soon as possible.<sup>[21]</sup>

In a June 26, 2013 letter,<sup>[22]</sup> Matiere SAS informed the Department of Labor and Employment that because its last shipment had been delivered,<sup>[23]</sup> it would have to terminate the employment of its five (5) workers: Wilson G. Comia (Wilson), Richard E. Comia (Richard), Alexander M. Menor (Menor), Alvin P. Roselim (Roselim), and Acosta. Matiere SAS stated that Wilson, Richard, and Menor were all based in Subic, while Roselim was based in Cagayan de Oro.<sup>[24]</sup> All four (4) of them were "assigned to the stripping operations["<sup>[25]</sup> Meanwhile, Acosta, who was based in the office, was "primarily in charge [of] the monitoring of shipments."<sup>[26]</sup>

On June 28, 2013, Matiere SAS filed before the Department of Labor and Employment: (1) an Establishment Employment Report,<sup>[27]</sup> citing redundancy and the completion of delivery of supplies as its reasons for dismissing its employees; and (2) a List of Affected Workers by Displacements/Flexible Work Arrangements,<sup>[28]</sup> enumerating the five (5) dismissed employees. The employment termination was made effective on July 31, 2013.<sup>[29]</sup>

On July 23, 2013, Acosta filed before the National Labor Relations Commission a Complaint<sup>[30]</sup> for illegal dismissal against Matiere SAS and Gouvary.<sup>[31]</sup>

Mediation conferences were conducted but the parties failed to arrive at a settlement. Thus, they were required to submit their respective pleadings.<sup>[32]</sup>

While the case was pending, Matiere SAS and Gouvary, through their counsel, wrote Acosta a letter<sup>[33]</sup> dated July 29, 2013, offering him a separation pay of P322,998.60. Acosta, however, refused the offer.<sup>[34]</sup>

In her August 18, 2014 Decision,<sup>[35]</sup> Labor Arbiter Vivian Magsino Gonzalez found Acosta's dismissal illegal. She held that Matiere SAS and Gouvary failed to prove the factual bases for the reduction of its workforce. She pointed out that while Matiere SAS submitted a Certificate of Completion from the Department of Public Works and Highways to support its claim of project completion, it submitted no such certificate from the Department of Agrarian Reform.<sup>[36]</sup>

Moreover, the Labor Arbiter noted that Matiere SAS failed to submit any redundancy plan.<sup>[37]</sup> It also failed to provide "fair and reasonable criteria in ascertaining what positions are redundant and how the selection of employees to be dismissed was made."<sup>[38]</sup> The Labor Arbiter pointed out:

[I]f there are employees who should be affected by the reduction of workforce due to completion of deliveries, the field engineers in-charge of deliveries in the projects, and who supervised the stripping works/removing the unibridges parts from the container vans, may be the first ones to go. These field engineers, however, are undisputedly retained by respondents.

. . . While Alvin Roselim is a forklift operator, [Wilson, Richard, and Menor] are helpers who work under the supervision of field engineers. The latter were the ones in charge of deliveries and respondents may have had reasons to terminate them on [the] ground of redundancy. As a Technical Assistant whose duties include monitoring of projects until completion, there is no substantial basis why complainant was also affected by respondents' redundancy plan.<sup>[39]</sup>

The dispositive portion of the Labor Arbiter's Decision read:

**WHEREFORE**, foregoing considered, complainant is hereby found to have been illegally dismissed. Respondent Matiere SAS is hereby ordered to pay complainant separation pay with backwages totaling **Php241,793.62**, inclusive of attorney's fees.

Other claims are dismissed for lack of basis.

**SO ORDERED.**<sup>[40]</sup> (Emphasis in the original)

Both parties appealed the Labor Arbiter's Decision before the National Labor Relations Commission.<sup>[41]</sup> Praying that the award be modified to P1,846,389.44, Acosta argued in his Partial Memorandum of Appeal<sup>[42]</sup> that the computation of the Labor Arbiter's award should be based on his monthly salary before his employment termination, which was P78,280.00.<sup>[43]</sup> Meanwhile, in their Memorandum of Appeal,

[44] Matiere SAS and Gouvary contended that Acosta's employment termination was valid and that they implemented the redundancy based on fair and reasonable criteria.[45]

In its January 30, 2015 Decision,[46] the National Labor Relations Commission reversed the Labor Arbiter's Decision.[47] It found that Matiere SAS and Gouvary proved that there was a significant decrease in the volume of their business when they presented before the National Labor Relations Commission a Certificate of Completion from the Department of Agrarian Reform. It noted that the completion of the government contracts would render unnecessary the services offered by Acosta, whose "main function was to monitor the delivery of materials . . . from France to the Philippines." [48]

The National Labor Relations Commission found that Acosta and the four (4) other employees were similarly situated, noting that even if Acosta had a higher position, their tasks were all related to the shipment of materials.[49] Moreover, since Acosta's dismissal was not done with ill motive or in bad faith, Matiere SAS and Gouvary's decision should be respected "as a valid exercise of a management prerogative." [50]

The dispositive portion of the National Labor Relations Commission Decision read:

**WHEREFORE**, premises considered, the appeal of respondents Matiere SAS and Philippe Gouvary is **GRANTED** and the assailed Decision of the Labor Arbiter dated August 18, 2014 is **REVERSED** and **SET ASIDE**. Accordingly, the instant complaint for illegal dismissal is hereby **DISMISSED** for lack of merit.

The Partial Appeal of complainant-appellant Manuel G. Acosta is **DENIED**.

**SO ORDERED.** [51] (Emphasis in the original)

Acosta moved for reconsideration.[52] He submitted a certification [53] from Woodfields Consultants, Inc. and a certification [54] from the Department of Public Works and Highways to support his claim that his task was not limited to monitoring shipments. He also alleged that Matiere SAS hired a certain Charlie Desamito as his replacement. [55]

In its February 27, 2015 Resolution, [56] the National Labor Relations Commission partially granted Acosta's Motion. It amended the dispositive portion of its January 30, 2015 Decision to include the payment of Acosta's separation pay:

**IN VIEW OF THE FOREGOING**, complainant's motion for reconsideration is **partially granted** and the dispositive portion of Our decision dated January 30, 2015 is hereby amended to read as follows:

*"WHEREFORE, premises considered, the appeal of respondents [Matiere] SAS and Philippe Gouvary is **GRANTED** and the assailed Decision of the Labor Arbiter dated August 18, 2014 is **REVERSED** and **SET ASIDE**. Accordingly, the*

*instant complaint for illegal dismissal is hereby **DISMISSED** for lack of merit.*

*Respondent-appellants are, however, ordered to pay complainant-appellant Manuel G. Acosta separation pay as provided by law.*

*The Partial Appeal of complainant-appellant Manuel G. Acosta is DENIED."*

**SO ORDERED.**<sup>[57]</sup> (Emphasis in the original)

Thus, Acosta filed before the Court of Appeals a Petition for Certiorari.<sup>[58]</sup>

In its April 7, 2017 Decision,<sup>[59]</sup> the Court of Appeals denied Acosta's Petition. It held that Matiere SAS and Gouvary were able to establish that Acosta's position became redundant upon the completion of its contracts with the Department of Public Works and Highways and the Department of Agrarian Reform.<sup>[60]</sup> It added:

Even assuming that Acosta's functions included reporting and coordination, he completely failed to show that these particular functions were not incidental only to the supply and delivery of the bridges. Acosta does not dispute the completion of the shipments for the covered projects. Neither did he ever dispute that the DPWH and the DAR projects were Matiere's only activities locally. It follows clearly that with the completion of the shipments, Acosta's role became unnecessary. Despite the continuation of installation and erection of the bridges, Acosta cannot pretend any involvement in such activities. His task was indubitably office- and table-bound and not field work.<sup>[61]</sup>

Acosta moved for reconsideration, but his Motion was denied by the Court of Appeals in its July 12, 2017 Resolution.<sup>[62]</sup>

Hence, Acosta filed this Petition for Review on Certiorari<sup>[63]</sup> against Matiere SAS and Gouvary. Maintaining that the declaration of redundancy of his position was not based on fair and reasonable criteria, petitioner pointed out that he, the most senior engineer, was dismissed while the other engineers remained.<sup>[64]</sup>

As to the certifications from the Department of Public Works and Highways and the Department of Agrarian Reform, petitioner states that the completeness of delivery merely pertained to one (1) of his tasks as technical assistant. Thus, he claims that it was wrong to dismiss him based only on these certifications:<sup>[65]</sup>

The supply contract of the Respondents could not have ended up upon completion of delivery. The supply contract satisfies only the delivery of the Supply of Bridging Material. The design, technical supervision during the erection, installation and commissioning were still ongoing and to be completed in 2016. Petitioner checks on the designs of the Design Consultants, coordinate[s] with them, evaluate[s] their billings. Such activities were still ongoing when the Petitioner was terminated.