

FIRST DIVISION

[G.R. No. 220647, December 10, 2019]

**NOLI D. APARICIO AND RENAN CLARITO, PETITIONERS, VS.
MANILA BROADCASTING COMPANY, RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari assails the following issuances of the Court of Appeals in CA-G.R. SP No. 04514 entitled "*Noli D. Aparicio, Renan N. Clarito, Noel Solutan, Delmer Dilig and Abelardo Brillantes v. National Labor Relations Commission (NLRC), Fourth Division, Cebu City and Manila Broadcasting Company:*"

- 1) Decision^[1] dated August 20, 2013, finding petitioners to have been validly dismissed on ground of redundancy; and
- 2) Resolution^[2] dated August 25, 2015, denying petitioners' partial motion for reconsideration.

Proceedings before the Labor Arbiter

Petitioners Noli Aparicio and Renan Clarito together with Delmer Dilig, Abelardo Brillantes, and Noel Solutan (petitioners et al.) filed separate complaints for illegal dismissal, reinstatement, backwages, moral damages, exemplary damages, and attorney's fees against respondent Manila Broadcasting Company (MBC).

Petitioners et al.'s Position Paper

In their Consolidated Position Paper^[3] dated July 4, 2003, petitioners et al. essentially alleged:

They worked as radio technicians with MBC, a corporation engaged in radio broadcasting.

Noli Aparicio and Renan Clarito were both assigned at the transmitter site of DYEZ (local AM radio) and DZRH (a relaying station and a nationwide AM radio) in Barangay Taloc, Bago City; Noel Solutan, at the studio transmitter of YES FM at Rizal-Locsin Streets, Bacolod City; and Delmer Dilig and Abelardo Brillantes, at the studio of DYEZ and the transmitter site, Barangay Taloc.^[4]

On February 28, 2002, they were surprised to receive a Notice dated February 22,

2002 from MBC President Roberto Nicdao, Jr., terminating their employment with separation pay effective thirty (30) days from notice or on March 31, 2002. Noel Aparicio, Delmer Dilig and Abelardo Brillantes signed a quitclaim, believing their dismissal was valid. The rest sued for illegal dismissal.^[5]

After preliminary conference before the labor arbiter, their money claims were settled except their claims for moral damages, exemplary damages, and attorney's fees. The validity of their dismissal was also not amicably settled.^[6]

They were dismissed without just or authorized cause. The notice requirement was likewise not observed. The alleged authorized ground for retrenchment or redundancy was not proven. Their dismissal was tainted with bad faith because the so-called retrenchment was merely a ploy to replace the employees.^[7]

MBC's Position Paper

In its Consolidated Position Paper^[8] dated July 16, 2002, MBC countered, in the main:

Sometime in the last quarter of 2001, the management was directed to review the operations of all MBC stations. The review revealed several losing stations were subsidized by the more profitable Manila stations. As remedial measure, Chairman Fred Elizalde, through Memorandum dated January 10, 2002, implemented the policy dubbed as "*Hating Kapatid*." Under it, each station was considered independent of the Head Office and will no longer be subsidized. As a result, each station had to review its own manpower complement.^[9]

Being one (1) of the losing MBC stations, FFES Bacolod, a relay station of DZRH, was shut down. The employees assigned there, including Noli Aparicio and Renan Clarito were retrenched. It was ascertained that FFES Bacolod need not continue to operate as a relay station of DZRH since anyway DZRH can be heard in Bacolod City through FFES Iloilo.^[10]

On the other hand, although DYEZ-AM was not similarly shut down, its manpower was downsized. Delmer Dilig and Abelardo Brillantes who were assigned there got retrenched because the station needed only the service of two (2) not four (4) radio technicians. As for YES-FM Bacolod, it was not shut down but only retained one (1) technician.^[11] Radio technician Noel Solutan had to go.^[12]

Except for Noel Solutan, who received the notice of retrenchment on March 1, 2002, petitioners et al. received theirs on February 28, 2002. On the same day, the company submitted its Revised RRS Form and the Establishment Termination Report to the Department of Labor and Employment (DOLE). It informed the DOLE that the retrenchment program was brought about by redundancy and company reorganization and downsizing.^[13]

The retrenched employees, thereafter, received their separation pay equivalent to one (1) month salary for every year of service effective thirty (30) days from notice.

The Ruling of the Labor Arbiter

By Decision dated July 27, 2007, Labor Arbiter Elias Salinas held that petitioners et al. were illegally dismissed. There was no evidence that MBC suffered from serious business losses and financial reverses. There was no showing either that it used fair and reasonable criteria in choosing the positions to be retrenched. The mechanics of the "*Hating Kapatid*" program was not even explained to the employees. Instead of reinstatement, petitioners et al. should be awarded separation pay by reason of their strained relations with MBC. Labor Arbiter Salinas decreed:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainants to have been illegally dismissed from the service. As such, respondent Manila Broadcasting Company is hereby ordered to pay complainants their [backwages] and separation pay, to wit:

NAME	BACKWAGES	SEPARATION PAY
1. Noli [Aparicio]	P427,209.32	P1,776.56
2. Renan Clarito	P357,068.36	P15,333.79
3. Noel Solutan	P427,026.44	P(10,423.09)
4. Delmer Dilig	P427,238.27	P49,194.36
5. Abelardo Brillantes	P357,068.36	P(25,239.84)

Respondent is further ordered to pay the sum equivalent to ten percent of the judgment award as attorney's fees.

All other claims are ordered dismissed for lack of merit and/or by reason of settlement.

SO ORDERED. [15]

Proceedings before the NLRC

By Memorandum of Appeal [16] dated October 31, 2007, petitioners et al. sought a partial appeal on the award of backwages, separation pay, and attorney's fees. They argued that the award of separation pay instead of reinstatement was not in accord with law. It was not shown that their continued employment with MBC would be inconsistent with peace and tranquility in the workplace. Strained relations should be raised as a factual issue. [17]

The labor arbiter also omitted to rule on their claim for 13th month pay, vacation leave pay and damages; and to include in the computation of their backwages their 13th month pay and vacation leave pay.^[18]

In its Memorandum of Appeal^[19] dated February 15, 2008, MBC asserted that petitioners et al. voluntarily received their separation pay as a consequence of their retrenchment. Further, they filed their position paper only eight (8) months after it fell due. At any rate, it only became aware of the labor arbiter's decision when it received petitioners et al.'s memorandum of appeal. It therefore filed a manifestation for the labor arbiter to furnish it with copy of the decision but petitioners et al. opposed it. Petitioners et al. argued that the decision had become final and executory as against the company. The NLRC, nonetheless, furnished them, by mail, with copy of the labor arbiter's decision on January 25, 2008. It received the decision on February 7, 2007.^[20] The retrenchment program was a valid exercise of its management prerogative to pave the way for adoption of new methods.^[21]

By Decision^[22] dated November 25, 2008, the NLRC reversed. It found that MBC's appeal was timely filed. On the merits, it ruled that reorganization is a jurisprudentially acknowledged cost-saving measure. An employer is not precluded from adopting a new policy conducive to a more economical and effective management. The law does not require that financial losses be actually suffered by the company before it can terminate the services of an employee on ground of redundancy.

Petitioners et al. moved for reconsideration^[23] which the NLRC denied through Resolution^[24] dated April 24, 2009.

The Proceedings before the Court of Appeals

Aggrieved, petitioners et al. went on certiorari to the Court of Appeals charging the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction for resolving the appeal in MBC's favor. They argued it was highly implausible for MBC to have received copy of the labor arbiter's decision only on February 7, 2008. In fact, the labor arbiter's Notice of Decision dated August 23, 2007 indicated that all counsels were furnished copies of the labor arbiter's decision at their respective addresses on record. Copy of the labor arbiter's decision was even furnished not only to MBC's counsel but to its president, as well.^[25]

The office address of MBC's counsel, Atty. Rodinil Bugay, as indicated on record, is FJE Bldg., Esteban Street, Legaspi Village, Makati City. Atty. Bugay moved his office to the 2nd Floor, MBC Building, V. Sotto, CCP Complex, Roxas Boulevard, Pasay City, without notice to the labor arbiter. On November 5, 2007, the notice of the decision was served on Atty. Bugay's address on record (FJE Bldg) but was returned unserved because he "[m]oved [o]ut." Five (5) days thereafter, on November 10, 2007, the service of notice of the decision on MBC was deemed complete. From November 10, 2007, MBC only had ten (10) days or until November 20, 2007 to appeal to the NLRC. The appeal, nonetheless, was belatedly filed on February 18, 2008.^[26]

MBC responded that when the labor arbiter sent copy of one (1) of its Orders to Atty. Bugay's new address on June 7, 2004, the same was already a formal recognition on record of said address. The NLRC is not bound to adopt the labor arbiter's findings. It is in fact authorized to make its own evaluation of the evidence and based thereon make its own factual findings.^[27]

Ruling of the Court of Appeals

By its assailed Decision dated August 20, 2013, the Court of Appeals held that MBC's appeal was timely filed. There was no valid service of the labor arbiter's decision on counsel's new address on record. On this score, there was no evidence showing that counsel failed to give notice of his new office address to the labor arbiter.

It further ruled that the termination of Delmer Dilig, Abelardo Brillantes, and Noel Solutan was only deemed illegal because MBC failed to consider the factors of preferred status, efficiency, and seniority, in determining the employees to be retrenched. But the termination of the aforesaid employees was untainted with bad faith.

As for Noli Aparicio and Renan Clarito, the Court of Appeals found that their services were no longer needed because FFES Bacolod, where they were assigned, was already abolished.

The Court of Appeals pronounced:

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED** in that the assailed Decision and Resolution of the National Labor Relations Commission are **REVERSED** and **SET ASIDE** with respect to petitioners Dilig, Brillantes, and Solutan, but the said Decision is **UPHELD** with respect to petitioners Aparicio and Clarito.

SO ORDERED.^[28]

Both MBC and petitioners et al. moved for partial reconsideration, which the Court of Appeals denied under Resolution^[29] dated August 25, 2015.

The Present Petition

Only petitioners Noli Aparicio and Renan Clarito are now seeking this Court's discretionary appellate jurisdiction to grant them affirmative relief from the Court of Appeals' assailed dispositions.

Petitioners plead anew the circumstances supposedly showing the date when MBC was presumed to have received the decision of the labor arbiter and when it was deemed to have lapsed into finality; and why MBC's "*Hating Kapatid*" redundancy