

## FIRST DIVISION

[ G.R. No. 156658, March 10, 2004 ]

**BONIFACIO ASUFRIN, JR., PETITIONER, VS. SAN MIGUEL CORPORATION AND THE COURT OF APPEALS, RESPONDENTS.**

***DECISION***

**YNARES-SATIAGO, J.:**

Coca Cola Plant, then a department of respondent San Miguel Beer Corporation (SMC), hired petitioner as a utility/miscellaneous worker in February 1972. On November 1, 1973, he became a regular employee paid on daily basis as a Forklift Operator. On November 16, 1981, he became a monthly paid employee promoted as Stock Clerk.

Sometime in 1984, the sales office and operations at the Sum-ag, Bacolod City Sales Office were reorganized. Several positions were abolished including petitioner's position as Stock Clerk. After reviewing petitioner's qualifications, he was designated warehouse checker at the Sum-ag Sales Office.

On April 1, 1996, respondent SMC implemented a new marketing system known as the "pre-selling scheme" at the Sum-ag Beer Sales Office. As a consequence, all positions of route sales and warehouse personnel were declared redundant. Respondent notified the DOLE Director of Region VI that 22 personnel of the Sales Department of the Negros Operations Center<sup>[1]</sup> would be retired effective March 31, 1995.

Respondent SMC thereafter wrote a letter<sup>[2]</sup> to petitioner informing him that, owing to the implementation of the "pre-selling operations" scheme, all positions of route and warehouse personnel will be declared redundant and the Sum-ag Sales Office will be closed effective April 30, 1996. Thus, from April 1, 1996 to May 15, 1996, petitioner reported to respondent's Personnel Department at the Sta. Fe Brewery, pursuant to a previous directive.

Thereafter, the employees of Sum-ag sales force were informed that they can avail of respondent's early retirement package pursuant to the retrenchment program, while those who will not avail of early retirement would be redeployed or absorbed at the Brewery or other sales offices. Petitioner opted to remain and manifested to Acting Personnel Manager Salvador Abadesco his willingness to be assigned to any job, considering that he had three children in college.<sup>[3]</sup>

Petitioner was surprised when he was informed by the Acting Personnel Manager that his name was included in the list of employees who availed of the early retirement package. Petitioner's request that he be given an assignment in the company was ignored by the Acting Personnel Manager.

Petitioner thus filed a complaint for illegal dismissal with the NLRC, docketed as RAB Case No. 06-06-10233-96. On December 27, 1996, the Labor Arbiter dismissed the complaint for lack of merit. Petitioner appealed to the National Labor Relations Commission (NLRC) which set aside the Labor Arbiter's decision and ordered respondent SMC to reinstate petitioner to his former or equivalent position with full backwages.<sup>[4]</sup>

Respondent filed a petition with the Court of Appeals which reversed the decision of the NLRC and reinstated the judgment of the Labor Arbiter dismissing the complaint for illegal dismissal. Petitioner's motion for reconsideration<sup>[5]</sup> was denied in a Resolution dated December 11, 2002.<sup>[6]</sup>

Hence, this petition for review assigning the following errors:

1. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS, WITH DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONER WAS "NOT SINGLED-OUT FOR TERMINATION, AS MANY OTHERS WERE ALSO ADVERSELY AFFECTED."
2. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GROSS MISAPPREHENSION OF FACT WHEN IT AFFIRMED THE FINDING OF THE LABOR ARBITER THAT THE POSITION OF PETITIONER BECAME REDUNDANT AT THE SUM-AG SALES OFFICES.
3. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE DISMISSAL OF PETITIONER WAS VALID.
4. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN DISMISSING THE ENTIRE RELIEFS PRAYED FOR BY THE PETITIONER.

The primordial issue to be resolved is whether or not the dismissal of petitioner is based on a just and authorized cause.

Factual findings of administrative bodies, being considered experts in their fields, are binding on this Court. However, this is a general rule which holds true only when established exceptions do not obtain. One of these exceptive circumstances is when the findings of the Labor Arbiter and the NLRC are conflicting. Considering that the ruling of the Labor Arbiter was reversed by the NLRC whose judgment was in turn overturned by the appellate court, it behooves us in the exercise of our equity jurisdiction to determine which findings are more conformable to the evidentiary facts.<sup>[7]</sup>

In the case at bar, petitioner was dismissed on the ground of redundancy, one of the authorized causes for dismissal.<sup>[8]</sup> In *Dole Philippines, Inc. v. NLRC*,<sup>[9]</sup> citing the leading case of *Wiltshire File Co., Inc. v. NLRC*,<sup>[10]</sup> we explained the nature of redundancy as an authorized cause for dismissal thus:

. . . 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 the 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.

The determination that employee's services are no longer necessary or sustainable and, therefore, properly terminable is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act.<sup>[11]</sup> In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof that such is the *actual* situation to justify the dismissal of the affected employees for redundancy.<sup>[12]</sup>

Persuasive as the explanation proffered by respondent may be to justify the dismissal of petitioner, a number of disturbing circumstances, however, leave us unconvinced.

*First*, of the 23 SMC employees assigned at the Sum-ag Sales Office/Warehouse, 9 accepted the offer of SMC to avail of the early retirement whose separation benefits was computed at 250% of their regular pay. The rest, including petitioner, did not accept the offer. Out of the remaining fourteen 14, *only* petitioner clearly manifested, through several letters,<sup>[13]</sup> his desire to be redeployed to the Sta. Fe Brewery or any sales office – and for any position not necessarily limited to that of a warehouse checker. In short, he was even willing to accept a demotion just to continue his employment. Meanwhile, other employees who *did not even write a letter to SMC* were redeployed to the Sta. Fe Brewery or absorbed by other offices/outlets outside Bacolod City.<sup>[14]</sup>

*Second*, petitioner was in the payroll of the Sta. Fe Brewery and assigned to the Materials Section, Logistics Department, although he was actually posted at the Sum-ag Warehouse.<sup>[15]</sup> Thus, even assuming that his position in the Sum-ag Warehouse became redundant, he should have been returned to the Sta. Fe Brewery where he was actually assigned and where there were vacant positions to accommodate him.

*Third*, it appears that despite respondent's allegation that it ceased and closed down its warehousing operations at the Sum-ag Sales Office, actually it is still used for warehousing activities and as a transit point where buyers and dealers get their stocks.<sup>[16]</sup> Indeed, the Sum-ag Office is strategically situated on the southern part of Bacolod City making it convenient for dealers from the southern towns of Negros