

LABOR LAW PRACTICE GROUP UPDATE

JANUARY 2013

Terminating an employee because of redundancy is still part of business judgment. In *General Milling Corp. vs. Violeta L. Viajar* (G.R. No. 181738, January 30, 2013), the Philippine Supreme Court reiterated however that a company must still exercise this discretion in good faith and that there must be fair and reasonable criteria in ascertaining redundant positions. To do this, according to the High Court, a company claiming to be overmanned must produce adequate proof such as but not limited to (1) new staffing pattern; (2) feasibility studies or proposals on the viability of the newly created positions; (3) job description and the approval by the management of the restructuring; and (4) audited financial documents like balance sheets, annual income tax returns and similar documents.

In *General Milling*, Violeta Viajar (Viajar) filed a Complaint for Illegal Dismissal with damages against GMC.

REDUNDANCY STILL VALID BASIS FOR TERMINATING EMPLOYEE BUT COMPANY NEEDS TO SHOW “ADEQUATE PROOF” TO ESTABLISH GOOD FAITH

GMC countered that it was forced to terminate Viajar’s services due to the economic setbacks the company was suffering which affected its profitability, and the continuing rise of its operating and interest expenditures. Redundancy was part of the GMC’s concrete and actual cost reduction measures, according to the company. GMC also presented the “Establishment Termination Report” which it filed before the Department of Labor and Employment (DOLE) involving thirteen (13) of its employees, including Viajar.

The Supreme Court held that Viajar’s termination was illegal. The Supreme Court found that the letter-memorandum issued by GMC to prove redundancy which contained

general allegations was not enough to show that Viajar termination of employment was warranted. There was no indication that GMC made an evaluation of the existing positions and their effect to the company. Neither did GMC exert efforts to present tangible proof that it was experiencing business slow down or over hiring.

The High Court ruled that based on Article 283 of the Labor Code, it is imperative that the employer must comply with the requirements for a valid implementation of the company’s redundancy program, to wit: (a) the employer must serve a written notice to the affected employees and the DOLE at least one (1) month before the intended date of retrenchment;

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(b) the employer must pay the employees a separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (c) the employer must abolish the redundant positions in good faith; and (d) the employer must set fair and reasonable criteria in ascertaining which positions are redundant and may be abolished.

Citing *Smart Communications, Inc. v. Astorga* (G.R. No. 148132, January 28, 2008), the High Tribunal explained that the “characterization of an employee’s services as superfluous or no longer necessary and properly terminable, is an exercise of business judgment on the part of the employer,” the exercise of such judgment must not be contra-

ry to law, and must not be arbitrary or malicious.

While GMC had been harping that it was on a “reduction mode” of its employees, it failed to present any evidence (such as new staffing pattern, feasibility studies or proposal, viability of newly created positions, job description and the approval of the management of the restructuring, audited financial documents like balance sheets, annual income tax returns and other documents) which could readily show that the company’s declaration of redundant positions was justified. Such proof would suffice to show the good faith on the part of the employer or that this business prerogative, was not whimsically exercised in terminating Viajar’s

employment on the ground of redundancy.

On the other hand, Viajar presented evidence that GMC had been hiring new employees while it was firing the old ones, negating the claim of redundancy.

In termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. GMC had to show by substantial evidence that it validly terminated the employment of Viajar. Failure to discharge this burden would only mean that the dismissal was not justified and therefore illegal. *LF* © February 26, 2013

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