Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

MANGGAGAWA NG KOMUNIKASYON SA PILIPINAS,
Petitioner,

-versus-

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY INCORPORATED,
Respondent.

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MANGGAGAWA NG KOMUNIKASYON SA PILIPINAS,
Petitioner,

-versus-

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY INCORPORATED,
Respondent.

x----------x

G.R. No. 190389

G.R. No. 190390

Present:

CARPIO, *J., Chairperson,*
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, *JJ.*

Promulgated:
19 APR 2017

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DECISION

LEONEN, *J.*:

An employer's declaration of redundancy becomes a valid and authorized cause for dismissal when the employer proves by substantial evidence that the services of an employee are more than what is reasonably demanded by the requirements of the business enterprise.[1]

This resolves the Petition for Review on Certiorari[2] filed by Manggagawa ng Komunikasyon sa Pilipinas assailing the Court of Appeals' Decision[3] dated August 28, 2008 and Resolution[4] dated November 24, 2009 in CA-G.R. SP No. 94365 and CA-G.R. SP No. 98975. CA-G.R. SP No. 94365 upheld the October 28, 2005[5] and January 31, 2006[6] Resolutions of the National Labor Relations Commission in NLRC Certified Case No. 000232-03 (NLRC NCR NS 11-405-02 & 11-412-02). In turn, CA-G.R. SP No. 98975 upheld the Secretary of Labor and Employment's August 11, 2006 Resolution[7] and March 16, 2007 Order.[8]

On June 27, 2002, the labor organization Manggagawa ng Komunikasyon sa Pilipinas, which represented the employees of Philippine Long Distance Telephone Company, filed a notice of strike with the National Conciliation and Mediation Board.[9] Manggagawa ng Komunikasyon sa Pilipinas charged Philippine Long Distance Telephone Company with unfair labor practice "for transferring several employees of its Provisioning Support Division to Bicutan, Taguig."[10]

The first notice of strike was amended twice by Manggagawa ng Komunikasyon sa Pilipinas.[11] On its second amendment dated November 4, 2002, docketed as NCMB-NCR-NS No. 11-405-02,[12] Manggagawa ng Komunikasyon sa Pilipinas accused Philippine Long Distance Telephone Company of the following unfair labor practices:

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1 *Wiltshire File Co. Inc. v. National Labor Relations Commission,* 271 Phil. 694, 703 (1991) [Per J. Feliciano, Third Division].

2 *Rollo,* pp. 9–48.

3 Id. at 50–60. The Decision was penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Estela M. Perlas-Bernabe and Ramon M. Bato, Jr. of the Seventeenth Division, Court of Appeals, Manila.

4 Id. at 62–63. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Josefina Guevara-Salonga and Estela M. Perlas-Bernabe of the Special Former Seventeenth Division, Court of Appeals, Manila.

5 Id. at 96–113.

6 Id. at 115–116.

7 Id. at 669–670.

8 Id. at 671–673.

9 Id. at 51.

10 Id.

11 Id. at 51–52.

12 Id. at 272.

UNFAIR LABOR PRACTICES, to wit:

1. PLDT's abolition of the Provisioning Support Division. Such action, together with the consequent redundancy of PSD employees and the farming out of the jobs to casuals and contractuals, violates the duty to bargain collectively with MKP in good faith.
2. PLDT's unreasonable refusal to honor its commitment before this Honorable Office that it will provide MKP its comprehensive plan/s with respect to personnel downsizing/ reorganization and closure of exchanges. Such refusal violates its duty to bargain collectively with MKP in good faith.
3. PLDT's continued hiring of "contractual," "temporary," "project," and "casual" employees for regular jobs performed by union members, resulting in the decimation of the union membership and in the denial of the right to self-organization to the concerned employees.[13]

On November 11, 2002, while the first notice of strike was pending, Manggagawa ng Komunikasyon sa Pilipinas filed another notice of strike,[14] docketed as NCMB-NCR-NS No. 11-412-02, and accused Philippine Long Distance Telephone Company of:

UNFAIR LABOR PRACTICES, to wit:

1. PLDT's alleged restructuring of its [Greater Metropolitan Manila] Operation Services December 31, 2002 and its closure of traffic operations at the Batangas, Calamba, Davao, Iloilo, Lucena, Malolos and Tarlac Regional Operator Services effective December 31, 2002. These twin moves unjustly imperil the job security of 503 of MKP's members and will substantially decimate the parties' bargaining unit. And in the light of PLDT's previous commitment before this Honorable Office that it will provide MKP its comprehensive plan/s with respect to personnel downsizing/reorganization and closure of exchanges and of its more recent declaration that the Davao operator services will not be closed, these moves are treacherous and are thus violative of PLDT's duty to bargain collectively with MKP in good faith. That these moves were effected with PLDT paying only lip service to its duties under Art. III, Section 8 of the parties' CBA do [sic] signifies PLDT's gross violation of said CBA.[15]

On December 23, 2002, Manggagawa ng Komunikasyon sa Pilipinas went on strike.[16]

On December 31, 2002, Philippine Long Distance Telephone Company declared only 323 employees as redundant as it was able to redeploy 180 of the 503 affected employees to other positions.[17]

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13 Id.
14 Id. at 273–274.
15 Id. at 273.
16 Id. at 52.
17 Id.

On January 2, 2003, the Secretary of Labor and Employment certified the labor dispute for compulsory arbitration.[18] The dispositive portion of the Secretary of Labor and Employment's Order read as follows:

> WHEREFORE, FOREGOING PREMISES CONSIDERED, this Office hereby CERTIFIES the labor dispute at the Philippine Long Distance Telephone Company to the National Labor Relations Commission (NLRC) for compulsory arbitration pursuant to Article 263 (g) of the Labor Code, as amended.
>
> Accordingly, the strike staged by the Union is hereby enjoined. All striking workers are hereby directed to return to work within twenty four (24) hours from receipt of this Order, except those who were terminated due to redundancy. The employer is hereby enjoined to accept the striking workers under the same terms and conditions prevailing prior to the strike. The parties are likewise directed to cease and desist from committing any act that might worsen the situation.
>
> Let the entire records of the case be forwarded to the NLRC for its immediate and appropriate action.
>
> SO ORDERED.[19]

Manggagawa ng Komunikasyon sa Pilipinas filed a Petition for *Certiorari* before the Court of Appeals, challenging the Secretary of Labor and Employment's Order insofar as it created a distinction among the striking workers in the return-to-work order. The petition was docketed as CA-G.R. SP No. 76262.[20]

On November 25, 2003, the Court of Appeals granted the Petition for *Certiorari*, setting aside and nullifying the Secretary of Labor and Employment's assailed Order.[21]

The Philippine Long Distance Telephone Company appealed the Court of Appeals' Decision to this Court. The appeal was docketed as G.R. No. 162783.[22]

On July 14, 2005,[23] this Court upheld the Court of Appeals' Decision, and directed Philippine Long Distance Telephone Company to readmit all striking workers under the same terms and conditions prevailing before the strike. This Court held:

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18 Id. at 821–823, Order.
19 Id. at 822–823.
20 Id. at 52.
21 Id. at 660–668. The Decision was penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong of the Second Division, Court of Appeals, Manila.
22 Id. at 53.
23 501 Phil. 704 (2005) [Per J. Chico-Nazario, Second Division].

> As Article 263(g) is clear and unequivocal in stating that ALL striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit ALL workers under the same terms and conditions prevailing before the strike or lockout, then the unmistakable mandate must be followed by the Secretary.[24]

On October 28, 2005, the National Labor Relations Commission dismissed Manggagawa ng Komunikasyon sa Pilipinas' charges of unfair labor practices against Philippine Long Distance Telephone Company.[25]

The National Labor Relations Commission held that Philippine Long Distance Telephone Company's redundancy program in 2002 was valid and did not constitute unfair legal practice.[26] The redundancy program was due to the decline of subscribers for long distance calls and to fixed line services produced by technological advances in the communications industry.[27] The National Labor Relations Commission ruled that the termination of employment of Philippine Long Distance Telephone Company's employees due to redundancy was legal.[28] The dispositive portion of the National Labor Relations Commission's Resolution read:

> WHEREFORE, premises considered, the Union[']s charge of unfair labor practice against PLDT is ordered DISMISSED for lack of merit.
>
> SO ORDERED.[29]

On January 31, 2006, the National Labor Relations Commission denied Manggagawa ng Komunikasyon sa Pilipinas' motion for reconsideration.[30]

On May 8, 2006, Manggagawa ng Komunikasyon sa Pilipinas filed a Petition for *Certiorari*[31] with the Court of Appeals. The petition was docketed as CA-G.R. SP No. 94365, and it assailed the National Labor Relations Commission's resolutions, which upheld the validity of Philippine Long Distance Telephone Company's redundancy program.[32]

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24 Id. at 719.
25 Id. at 96–113, Resolution.
26 Id. at 109–110.
27 Id.
28 Id. at 112–113.
29 Id. at 113.
30 Id. at 115–116, Resolution.
31 Id. at 64–94.
32 Id. at 54.

On August 11, 2006, the Secretary of Labor and Employment dismissed Manggagawa ng Komunikasyon sa Pilipinas' Motion for Execution[33] of this Court's July 14, 2005 Decision.[34]

On March 16, 2007, the Secretary of Labor and Employment denied[35] Manggagawa ng Komunikasyon sa Pilipinas' motion for reconsideration.[36]

On May 21, 2007, Manggagawa ng Komunikasyon sa Pilipinas filed a Petition for *Certiorari*[37] before the Court of Appeals, assailing the August 11, 2006 Resolution and March 16, 2007 Order of the Secretary of Labor and Employment. The petition was docketed as CA-G.R. SP No. 98975.

The Court of Appeals consolidated CA-G.R. SP No. 94365 with CA-G.R. SP No. 98975, and dismissed Manggagawa ng Komunikasyon sa Pilipinas' appeals on August 28, 2008.[38]

For CA-G.R. SP No. 94365, the Court of Appeals ruled that the National Labor Relations Commission did not commit grave abuse of discretion when it found that Philippine Long Distance Telephone Company's declaration of redundancy was justified and valid, as the redundancy program was based on substantial evidence.[39]

The Court of Appeals also found that Philippine Long Distance Telephone Company's 2002 declaration of redundancy "was not attended by [unfair labor practice] . . . [because it was] transparent and forthright in its implementation of the redundancy program."[40] Philippine Long Distance Telephone Company also successfully redeployed 180 of the 503 affected employees to other positions.[41]

As for CA-G.R. SP No. 98975, the Court of Appeals confirmed that its assailed order of reinstatement indicated that all employees, even those declared separated effective December 31, 2002, should be reinstated *pendente lite*.[42] However, the Court of Appeals stated that the order of reinstatement became moot due to the National Labor Relations Commission's October 28, 2005 Decision, which upheld the validity of the dismissal of the employees affected by the redundancy program.[43]

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33 Id. at 674–677.
34 Id. at 669–670, Resolution.
35 Id. at 671–673, Order.
36 Id. at 678–686.
37 Id. at 631–657.
38 Id. at 50–60.
39 Id. at 56.
40 Id. at 57.
41 Id.
42 Id. at 59.
43 Id.

The Court of Appeals also denied Manggagawa ng Komunikasyon sa Pilipinas' prayer that:

> [T]he affected employees should at least be paid their salaries during the period from January 3, 2003 (the working day immediately following the effectivity of their separation) to April 29, 2006 (the date when the October 28, 2005 decision of the NLRC (declaring the employees' dismissal as valid) became final and executory).[44]

The Court of Appeals compared the case to an illegal dismissal case where the Labor Arbiter found for the employee and ordered the payroll reinstatement of the employee; however, the finding of illegality was later reversed on appeal.[45]

The dispositive portion of the Court of Appeals' Decision read:

> WHEREFORE, the PETITIONS FOR *CERTIORARI* IN CA-G.R. SP Nos. 94365 and 98975 are DISMISSED for lack of merit.
>
> SO ORDERED.[46] (Emphasis in the original)

On November 24, 2009, the Court of Appeals denied Manggagawa ng Komunikasyon sa Pilipinas' motion for reconsideration.[47]

In its Petition for Review on Certiorari, Manggagawa ng Komunikasyon sa Pilipinas states that employees in the Provisioning Support Division and in the Operator Services Section had their positions declared redundant in 2002.[48] Manggagawa ng Komunikasyon sa Pilipinas asserts that the total number of rank-and-file positions actually declared redundant was 538, or 35 positions in the Provisioning Support Division and 503 positions in the Operator Services Section.[49]

Manggagawa ng Komunikasyon sa Pilipinas maintains that Philippine Long Distance Telephone Company failed to submit evidence in support of its declaration of redundancy of the 35 rank-and-file employees in the Provisioning Support Division.[50] It claimed that "[Philippine Long Distance Telephone Company] only notified [the Department of Labor and

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44 Id.
45 Id. at 59–60.
46 Id. at 60.
47 Id. at 62–63.
48 Id. at 31.
49 Id.
50 Id. at 1098, MKP Memorandum. The memorandum mistakenly reported this as 335 rank-and-file employees.

Employment] of the 'closure of traffic operations at Regional Operator Services affecting three hundred ninety-two (392) employees and the restructuring of [Greater Metropolitan Manila] Operator Services affecting one hundred eleven (111) employees.'"[51] Manggagawa ng Komunikasyon sa Pilipinas asserts that there was no notice given regarding the closure of Philippine Long Distance Telephone Company's Provisioning Support Division, and the termination of employment due to redundancy of the affected rank-and-file employees.[52] It points out that the justifications for the redundancy put forth by Philippine Long Distance Telephone Company "only pertained to the affected operator services positions and not the affected [Provisioning Support Division] positions."[53]

Manggagawa ng Komunikasyon sa Pilipinas also maintains that the National Labor Relations Commission committed grave abuse of discretion when it disallowed the written interrogatories that Manggagawa ng Komunikasyon sa Pilipinas submitted.[54]

As for the issue of reinstatement *pendente lite*, Manggagawa ng Komunikasyon sa Pilipinas cites *Garcia v. Philippine Airlines, Inc.*[55] to bolster its stand. It holds that an employee is entitled to reinstatement or backwages pending appeal if the Labor Arbiter's finding of illegal dismissal is later on reversed by the National Labor Relations Commission.[56]

For its part, Philippine Long Distance Telephone Company claims that the validity of redundancy of the affected Provisioning Support Division employees was only raised by Manggagawa ng Komunikasyon sa Pilipinas for the first time on appeal.[57] Philippine Long Distance Telephone Company asserts that the real issue in that case was whether Philippine Long Distance Telephone Company was obligated to transfer the affected Provisioning Support Division employees, and not whether their redundancies were valid.[58] Philippine Long Distance Telephone Company maintains that the affected Provisioning Support Division personnel were given the opportunity to apply for another division, yet they chose not to.[59]

Philippine Long Distance Telephone Company avers that Manggagawa ng Komunikasyon sa Pilipinas' resort to interrogatories has been denied with finality by the Court of Appeals.[60] It also claims that the National Labor Relations Commission's Rules of Procedure do not allow the

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51 Id. at 1098–1099.
52 Id. at 1099.
53 Id.
54 Id. at 1101–1107.
55 596 Phil. 510 (2009) [Per J. Carpio Morales, En Banc].
56 *Rollo*, p. 39.
57 Id. at 795–796, Comment.
58 Id. at 797, Comment.
59 Id. at 1038, PLDT Memorandum.
60 Id. at 798–804, Comment.

use of discovery proceedings; thus, Manggagawa ng Komunikasyon sa Pilipinas cannot assert that their resort to interrogatories is a matter of procedural right.[61]

Philippine Long Distance Telephone Company states that neither the Court of Appeals nor the Supreme Court ordered the reinstatement of Manggagawa ng Komunikasyon sa Pilipinas' members, since their decisions set aside Secretary of Labor and Employment's January 2, 2003 Order.[62] The order enjoined the striking workers to return to work, except those who were terminated due to redundancy.[63] Philippine Long Distance Telephone Company asserts that "what controls execution is the dispositive or decretal statement of the [d]ecision sought to be executed."[64] Furthermore, Philippine Long Distance Telephone Company maintains that the Court of Appeals correctly ruled that the reinstatement of the excluded employees was rendered moot when the National Labor Relations Commission upheld its redundancy program.[65]

Finally, Philippine Long Distance Telephone Company holds that *Garcia* is not applicable because the case at bar does not involve a reinstatement award by a Labor Arbiter.[66]

We resolve the following issues:

First, whether the Court of Appeals committed grave abuse of discretion in upholding the validity of Philippine Long Distance Telephone Company's 2002 redundancy program; and

Second, whether the return-to-work order of the Secretary of Labor and Employment was rendered moot when the National Labor Relations Commission upheld the validity of the redundancy program.

The Petition is partly meritorious.

I

A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited only to questions of law.[67] In labor cases, a Rule

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61 Id. at 1052, PLDT Memorandum.
62 Id. at 1056–1057.
63 Id. at 1056.
64 Id. at 1057.
65 Id. at 1063.
66 Id. at 1064–1065.
67 RULES OF COURT, Rule 45, sec. 1 provides:

45 petition "can prosper only if the Court of Appeals . . . fails to correctly determine whether the National Labor Relations Commission committed grave abuse of discretion."[68]

A court or tribunal is said to have acted with grave abuse of discretion when it capriciously acts or whimsically exercises judgment to be "equivalent to lack of jurisdiction."[69] Furthermore, the abuse of discretion must be so flagrant to amount to a refusal to perform a duty or to act as provided by law.[70]

Career Philippines Shipmanagement, Inc. v. Serna,[71] citing *Montoya v. Transmed*,[72] provides the parameters of judicial review for a labor case under Rule 45:

> As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
>
> > In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[73] (Emphasis in the original)

Justice Arturo D. Brion's dissent in *Abbot Laboratories, Philippines v.*

Section 1. Filing of petition with Supreme Court. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

68 *Philippine Airlines v. Dawal,* G.R. Nos. 173921 and 173952, February 24, 2016 [Per J. Leonen, Second Division].

69 *Hongkong Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 421 Phil. 864, 870 (2001) [Per J. Sandoval-Gutierrez, Third Division].

70 Id.

71 700 Phil. 1 (2012) [Per J. Brion, Second Division].

72 613 Phil. 696 (2009) [Per J. Brion, Second Division].

73 *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012) [Per J. Brion, Second Division], citing *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009) [Per J. Brion, Second Division].

Alcaraz[74] thereafter laid down the guidelines to be followed in reviewing a petition for review under Rule 45:

> If the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, ***dismiss*** the petition. If grave abuse of discretion exists, then the CA must grant the petition and nullify the NLRC ruling, entering at the same time the ruling that is justified under the evidence and the governing law, rules and jurisprudence. In our Rule 45 review, this Court must ***deny*** the petition if it finds that the CA correctly acted.[75] (Emphasis in the original)

We shall adopt these parameters in resolving the substantive issues in the Petition.

II

Redundancy is one of the authorized causes for the termination of employment provided for in Article 298[76] of the Labor Code, as amended:

> Article 298. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Wiltshire File Co. Inc. v. National Labor Relations Commission[77] has explained that redundancy exists when "the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise."[78]

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74 714 Phil. 510 (2013) [Per J. Perlas-Bernabe, En Banc].

75 Dissenting Opinion of J. Brion in *Abott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 549 (2013) [Per J. Perlas-Bernabe, En Banc].

76 Article 298 was formerly Article 283, before it was renumbered by DOLE Department Advisory No. 1, Series of 2015.

77 271 Phil. 694 (1991) [Per J. Feliciano, Third Division].

78 Id. at 703.

While a declaration of redundancy is ultimately a management decision in exercising its business judgment, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations,[79] management must not violate the law nor declare redundancy without sufficient basis.[80]

Asian Alcohol Corporation v. National Labor Relations Commission[81] listed down the elements for the valid implementation of a redundancy program:

> For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[82] (Citations omitted)

To establish good faith, the company must provide substantial proof that the services of the employees are in excess of what is required of the company, and that fair and reasonable criteria were used to determine the redundant positions.[83]

In order to prove the validity of its redundancy program, Philippine Long Distance Telephone Company has presented data on the decreasing volume of the received calls by the Operator Services Center for the years 1996 to 2002:[84]

RECEIVED CALLS			
YEAR	108	109	TOTAL
1996	33,641,751	430,125,633	463,767,384
1997	34,834,800	318,942,573	353,777,373
1998	28,651,703	209,458,041	238,109,744
1999	24,797,870	212,363,846	237,161,716
2000	21,697,367	218,380,277	240,077,644
2001	15,773,988	158,310,276	174,084,264
2002	14,363,918	114,430,469	128,794,387

Philippine Long Distance Telephone Company has stated that "from 1996 to 2002, the [t]otal [d]emand of [c]alls dropped by 334,972,997 or a

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79 Id.
80 *General Milling Corp. v. Viajar,* 702 Phil. 532, 543 (2013) [Per J. Reyes, First Division].
81 364 Phil. 912 (1999) [Per J. Puno, Second Division].
82 Id. at 930.
83 *General Milling Corp. v. Viajar,* 702 Phil. 532, 543 (2013) [Per J. Reyes, First Division].
84 *Rollo,* p. 412.

72% reduction."[85] It has attributed the reduction of demand for operator-assisted 108/109 calls to "migration calls to direct distance dialing," and to "more usage/substitution of text message over voice."[86] It has added that "migration of calls from landline to cell," competitors' eating into the Philippine Long Distance Telephone Company's market, and "compliance with the regulatory requirement of local integration per province" likewise aggravated the situation.[87]

Philippine Long Distance Telephone Company claims that the pattern of decline with operator-assisted calls has been consistent through the years,[88] and it has summarized the challenges facing its long distance services as follows:

> (a) international long distance revenues in 2001 stood at P11.4 billion; in 2002, this declined to P10.6 billion (pg. 33, PLDT's Financial Statement and Annual Report; Annex "4-A") – a decrease of P813 million. More drastically, this figure stood at P18.2 billion in 1997, indicating that international long distance call revenue has declined to the tune of P8 billion in five years!
> (b) national long distance revenues in 2001 were P8.388 billion in 2001; in 2002, this declined to P7.6 billion (pg. 35, PLDT's Financial Statement and Annual Report; Annex "4-B") – a decrease of P719 million. As with international calls, there is a pattern on decline: PLDT earned P10.6 billion from this service in 2000, so it is accurate to say that the company has seen revenue from national long distance decline by more than a billion pesos a year.[89]

The National Labor Relations Commission has found that Philippine Long Distance Telephone Company was able to discharge its burden of proving that its redundancy measures had substantial basis:

> Guided by the foregoing jurisprudence, it is evident that PLDT discharged the burden of proving that the declaration or implementation of redundancy measures have basis. For one, PLDT experienced a decline of subscribers, long distance calls, operated both local and abroad, has declined, landline or fixed line services also declined. This decrease of the need of PLDT services resulted from the advent of wireless telephone, of texting as means of communication, the use of direct dialing including prepaid telesulit and teletipid measures introduced in the communication services. For another, PLDT has a debt burden of P70 billion pesos and it cannot subsidize the salaries of employees whose positions are redundant.[90]

The Court of Appeals echoed the findings of the National Labor

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85 Id. at 413.
86 Id.
87 Id.
88 Id. at 260, PLDT Position Paper.
89 Id. at 261–262.
90 Id. at 109–110, Resolution.

Relations Commission regarding the validity of Philippine Long Distance Telephone Company's redundancy measures:

> We find that MKP demonstrated no such patent and gross evasion of a positive duty on the part of the NLRC. On the contrary, the NLRC's finding that the 2002 redundancy declaration of PLDT was justified and valid rested on substantial evidence, for the NLRC ostensibly based its finding on established facts showing the decline of subscribers, the decline in long distance local and international calls, and the decline in landline or fixed line services, constraining PLDT to declare certain positions redundant. There could be no question that such factual circumstances were traceable to "the advent of wireless telephone, of texting as a means of communication, the use of direct dialing including prepaid *telesulit* and *teletipid* measures introduced in the communication services."
>
> As such, the NLRC did not commit any grave abuse of discretion when it regarded the technological advancements resulting in less work for the redundated employees as justifying PLDT's declaration of redundancy.[91]

This Court sees no reason to depart from the findings of the Court of Appeals and of the National Labor Relations Commission.

Philippine Long Distance Telephone Company's declaration of redundancy was backed by substantial evidence showing a consistent decline for operator-assisted calls for both local and international calls because of cheaper alternatives like direct dialing services, and the growth of wireless communication. Thus, the National Labor Relations Commission did not commit grave abuse of discretion when it upheld the validity of PLDT's redundancy program. Redundancy is ultimately a management prerogative, and the wisdom or soundness of such business judgment is not subject to discretionary review by labor tribunals or even this Court, as long as the law was followed and malicious or arbitrary action was not shown.[92]

III

Nonetheless, there is a need to review the redundancy package awarded to the employees terminated due to redundancy. For either redundancy or retrenchment, the law requires that the employer give separation pay equivalent to at least one (1) month pay of the affected employee, or at least one (1) month pay for every year of service, whichever is higher. The employer must also serve a written notice on both the employees and the Department of Labor and Employment at least one (1) month before the effective date of termination due to redundancy or

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91 Id. at 56.

92 *Wiltshire File Co., Inc. v National Labor Relations Commission,* 271 Phil. 694, 703–704 (1991) [Per J. Feliciano, Third Division].

retrenchment.[93]

While we agree that Philippine Long Distance Telephone Company complied with the notice requirement, the same cannot be said as regards the separation pay received by some of the affected workers.

Philippine Long Distance Telephone Company claims that most employees who were declared redundant received a very generous separation package or "as much as 2.75 months [worth of salary] for every year of service, with the average separation package at [₱]586,580.27."[94] However, the records belie its claims as shown by the notice of termination of employment received by the workers affected by the redundancy program:

November 25, 2002

MYRNA C. CASTRO
OPERATOR SERVICES-NORTH

Dear Ms. Castro:

After a thorough review of operations, Management has determined that there is a need to reduce its manpower requirements considering technological, organization, and process developments. This reduction is inevitable to ensure the company's survival in the long term.

Your position is one of those affected by such changes and developments. Thus, with much regret, your service to the company will be considered completed by **December 30, 2002.**

In recognition of your loyalty and dedicated service, the company is granting a generous separation pay package that will assist you in making the necessary adjustments to your new situation.

This separation package consists of your *regular retirement benefits plus 75% of basic monthly pay for every year of service*, or a minimum of 175% of basic monthly pay for every year of service for employees with less than 15 years of service.

Counseling service on financial options in the future will be available to assist you during your period of adjustment.

We would like to take this opportunity to thank you for your service to the Company and wish you well in all your future undertakings.

Very truly yours,

PHILIPPINE LONG DISTANCE TELEPHONE CO., INC

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93 LABOR CODE, art. 298.
94 *Rollo*, p. 1049, PLDT Memorandum.

(signed)
ERLINDA S. KABIGTING[95]

(Emphasis supplied)

The notices of termination of employment[96] signed by Erlinda S. Kabigting, Philippine Long Distance Telephone Company Vice-President for Operator Services Section,[97] provided two (2) types of separation packages for the terminated workers. These were: (1) regular retirement benefits plus 75% basic monthly pay for every year of service for employees who had been with Philippine Long Distance Telephone Company for more than 15 years; and (2) 175% of basic monthly pay for every year of service for employees who had been with PLDT for less than 15 years.

When an employer declares redundancy, Article 298 of the Labor Code requires that the employer provides a separation pay equivalent to at least one (1) month pay of the affected employee, or at least one (1) month pay for every year of service, whichever is higher.[98] In this case, Philippine Long Distance Telephone Company claims that the terminated workers received a generous separation package of about 2.75 months' worth of salary for every year of service. But it seems that the retirement benefits of the terminated workers were added to the separation pay due them, hence the large payout. This should not be the case.

Aquino v. National Labor Relations Commission[99] differentiated between separation pay and retirement benefits:

> Separation pay is required in the cases enumerated in Articles 283 and 284 of the Labor Code, which include retrenchment, and is computed at at least one month salary or at the rate of one-half month salary for every month of service, whichever is higher. We have held that it is a statutory right designed to provide the employee with the wherewithal during the period that he is looking for another employment.
>
> Retirement benefits, where not mandated by law, may be granted

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95 Id. at 496.

96 Id. at 479–557.

97 Id. at 55.

98 LABOR CODE, art. 298 provides:
Article 298. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

99 283 Phil. 1 (1992) [Per J. Cruz, First Division].

> by agreement of the employees and their employer or as a voluntary act on the part of the employer. Retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying for his financial support, and are a form of reward for his loyalty and service to the employer.[100] (Citation omitted)

Separation pay brought about by redundancy is a statutory right, and it is irrelevant that the retirement benefits together with the separation pay given to the terminated workers resulted in a total amount that appeared to be more than what is required by the law. The facts show that instead of the legally required one (1) month salary for every year of service rendered, the terminated workers who were with Philippine Long Distance Telephone Company for more than 15 years received a separation pay of only 75% of their basic pay for every year of service, despite the clear wording of the law.

The workers, who were terminated from employment as a result of redundancy, are entitled to the separation pay due them under the law.

IV

Department of Labor and Employment Secretary Patricia A. Sto. Tomas (Secretary Sto. Tomas) assumed jurisdiction over the labor dispute between Manggagawa ng Komunikasyon sa Pilipinas and Philippine Long Distance Telephone Company pursuant to Article 278(g)[101] of the Labor Code. She certified[102] the case to the National Labor Relations Commission for compulsory arbitration. This return-to-work order from the Secretary of Labor and Employment aims to preserve the status *quo ante*[103] while the validity of the redundancy program is being threshed out in the proper forum.

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100 Id. at 6.

101 LABOR CODE, art. 278 provides:
Article 278 – Strikes, Picketing and Lockouts-
....
(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

102 *Rollo*, pp. 821–823. Order.

103 *YSS Employees Union-Philippine Transport and General Workers Organization v YSS Laboratories, Inc.* 622 Phil. 201, 212–213 (2009) [Per J. Chico-Nazario, Third Division].

In *Telefunken Semiconductors Employees Union-FFW v. Secretary of Labor,*[104] pending resolution of the legality of the strike, the Secretary of Labor and Employment directed the employer to accept all the striking workers except the Union Officers, shop stewards, and those with pending criminal charges.[105] This Court struck down the Secretary of Labor and Employment's order for being issued with grave abuse of discretion,[106] and directed the employer to accept all the striking workers without qualifications.[107]

The ruling in *Telefunken* cannot be applied to the case at bar.

In *Philippine Long Distance Telephone Co. Inc. v. Manggagawa ng Komunikasyon sa Pilipinas*,[108] which was promulgated on July 14, 2005, this Court struck down the return-to-work order dated January 2, 2003 issued by Secretary Sto. Tomas for being tainted with grave abuse of discretion. We ruled that the return-to-work order should have included all striking workers, and should not have excluded the workers affected by the redundancy program.[109] However, barely three (3) months after *Philippine Long Distance Telephone Co. Inc.*'s promulgation, the National Labor Relations Commission in its October 28, 2005 Resolution[110] upheld the validity of Philippine Long Distance Telephone Company's redundancy program. This resolution also dismissed the charges of unfair labor practice, and illegal dismissal against Philippine Long Distance Telephone Company.[111]

When petitioner filed its Motion for Execution[112] on January 17, 2006 pursuant to this Court's ruling in *Philippine Long Distance Telephone Co. Inc.*, there was no longer any existing basis for the return-to-work order. This was because the Secretary of Labor and Employment's return-to-work order had been superseded by the National Labor Relations Commission's Resolution. Hence, the Secretary of Labor and Employment did not err in dismissing the motion for execution on the ground of mootness.

Petitioner cites *Garcia v. Philippine Airlines*[113] to support its claim that the affected and striking workers are entitled to reinstatement and backwages from January 2, 2003, when Secretary Sto. Tomas directed the striking workers to return to work, up to April 29, 2006, when the National Labor Relations Commission's Resolution upholding Philippine Long

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104 347 Phil. 447 (1997) [Per J. Bellosillo, First Division].
105 Id. at 456.
106 Id.
107 Id. at 461.
108 501 Phil. 704 (2005) [Per J. Chico-Nazario, Second Division].
109 Id. at 715.
110 *Rollo*, pp. 96–113.
111 Id. at 112–113.
112 Id. at 674–677.
113 596 Phil. 510 (2009) [Per J. Carpio Morales, En Banc].

Distance Telephone Company's redundancy program became final and executory.[114]

Petitioner is mistaken.

Garcia upholds the prevailing doctrine that even if a Labor Arbiter's order of reinstatement is reversed on appeal, the employer is obligated "to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court."[115]

There is no order of reinstatement from a Labor Arbiter in the case at bar, instead, what is at issue is the return-to-work order from the Secretary of Labor and Employment. An order of reinstatement is different from a return-to-work order.

The award of reinstatement, including backwages, is awarded by a Labor Arbiter to an illegally dismissed employee pursuant to Article 294[116] of the Labor Code:

> Article 294. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to *reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.* (Emphasis supplied)

If actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement.[117]

On the other hand, a return-to-work order is issued by the Secretary of Labor and Employment when he or she assumes jurisdiction over a labor dispute in an industry that is considered indispensable to the national interest. Article 278(g) of the Labor Code provides that the assumption and certification of the Secretary of Labor and Employment shall automatically enjoin the intended or impending strike. When a strike has already taken place at the time the Secretary of Labor and Employment assumes jurisdiction over the labor dispute, all striking employees shall immediately return to work. Moreover, the employer shall immediately resume

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114 *Rollo*, p. 1108.

115 *Garcia v Philippine Airlines,* 596 Phil. 510, 536 (2009) [Per J. Carpio Morales, En Banc].

116 Art. 294 was formerly Art. 279, before it was renumbered by DOLE Department Advisory No. 1, Series of 2015.

117 *Golden Ace Builders, et al. v. Talde*, 634 Phil. 364, 370 (2010) [Per J. Carpio Morales, First Division].

operations, and readmit all workers under the same terms and conditions prevailing before the strike.

Return-to-work and reinstatement orders are both immediately executory; however, a return-to-work order is interlocutory in nature, and is merely meant to maintain *status quo* while the main issue is being threshed out in the proper forum. In contrast, an order of reinstatement is a judgment on the merits handed down by the Labor Arbiter pursuant to the original and exclusive jurisdiction provided for under Article 224(a)[118] of the Labor Code. Clearly, *Garcia* is not applicable in the case at bar, and there is no basis to reinstate the employees who were terminated as a result of redundancy.

WHEREFORE, premises considered, the Petition is **PARTIALLY GRANTED**. The Court of Appeals' August 28, 2008 Decision and November 24, 2009 Resolution in CA-G.R. SP No. 94365 and CA-G.R. SP No. 98975 are **AFFIRMED with MODIFICATION**. Private respondent Philippine Long Distance Telephone Company, Inc. is **DIRECTED** to pay the workers affected by its 2002 redundancy program and who had been employed for more than fifteen (15) years prior to their dismissal, the balance of the separation pay due them or a sum equivalent to twenty-five percent (25%) of their basic monthly pay for every year of service with Philippine Long Distance Telephone Company, Inc.

A legal interest of 6% per annum[119] shall be imposed on the total

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[118] Art. 224 was formerly Art. 217, before it was renumbered by the DOLE Department Advisory No. 1, Series of 2015.
LABOR CODE, art. 224 provides:
Art. 224. Jurisdiction of the Labor Arbiters and the Commission.
(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
(1) Unfair labor practice cases;
(2) Termination disputes;
(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
(4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
(6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.
(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.
(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

[119] *Nacar v. Gallery Frames,* 716 Phil 267, 282-283 (2013) [Per J. Peralta, En Banc].

judgment award from the finality of this Decision until its full satisfaction.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice