Pio

Republic of the Philippines
Supreme Court
Baguio City

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
JUL 10 2019
BY: YSA
TIME: 8:30

SECOND DIVISION

ELPIDIO[•] T. QUE,
Petitioner,

- versus -

ASIA BREWERY, INC. AND/OR MICHAEL G. TAN,
Respondents.

G.R. No. 202388

Present:

CARPIO, *J., Chairperson,*
PERLAS-BERNABE,[*]
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

10 APR 2019

x---x

DECISION

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated October 24, 2011 and Resolution[3] dated June 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 113493. The CA affirmed the Decision[4] dated August 27, 2009 and Resolution dated February 1, 2010 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 052278-07, which found that respondent Asia Brewery, Inc. (Asia Brewery) validly implemented a redundancy program.

Facts

The facts, as narrated by the CA, are as follows:

• Also spelled as "Elpideo" in some parts of the records.

* On leave.

1 *Rollo*, pp. 9-43.

2 Id. at 48-61. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Romeo F. Barza.

3 Id. at 45-46.

4 Id. at 153-181. Penned by Commissioner Angelita A. Gacutan, with Presiding Commissioner Alex A. Lopez and Commissioner Perlita B. Velasco concurring.

> Petitioner [Elpidio T. Que] had been the Regional Sales Manager (RSM) of Asia Brewery Inc. ("private-respondent") for eight (8) years and stationed in Northern Luzon covering the areas of Ilocos Sur, Ilocos Norte, Abra, Cagayan, Kalinga Apayao, Isabela, Nueva Vizcaya, Ifugao and Quirino Province. As RSM, his compensation package consisted of a monthly salary amounting to P67,000.00 and P250.00 a day per diem allowance. He also contributed to the retirement plan of private respondent, the Employees Investment and Savings Plan (EISP).
>
> Previously, there were twelve (12) sales offices comprising the North Central Luzon Region (NCLR) which were situated in San Leonardo, Tarlac, Sta. Maria, San Fernando, Olongapo, Bataan, La Union, Baguio, Vigan, Dagupan, Cauayan and Tuguegarao. However, in February of 2004, the management of private respondent split the said region into two to spur a better growth rate in its income and to give a more direct and focused handling of the areas covered by these sales offices. The first part is composed of the sales offices at San Leonardo, Tarlac, Sta. Maria, San Fernando, Olongapo, Bataan, La Union, Baguio and Dagupan. The second part, over which the petitioner was made RSM, consisted of the sales offices in Vigan, Tuguegarao and Cauayan.
>
> On May 2, 2005 or one year and three months after the split of the NCLR, Raymundo T. Gatmaitan, the vice president for sales of private-respondent made an evaluation of the experimental split of the NCLR and recommended the reversion to the old set up of putting the NCLR under one RSM. He opined that the decision did not achieve any gain. He further recommended that since the re-merger would result to redundancy in the office of a Regional Sales Manager the office of the petitioner should be abolished on the ground of redundancy.[5]

The parties' version of the subsequent events are conflicting. The CA summarized these as follows:

> The petitioner's version of the facts
>
> On May 4, 2005, Raymundo Gatmaitan informed the petitioner that he had already talked with Michael G. Tan the COO of Asia Brewery, Inc. and that the latter wishes to extend to him an offer because, apparently, his performance is no longer effective. Thereafter, the petitioner went to Mr. Tan's office where he was able to confirm that, in the eyes of the company, he has ceased to be effectual. Consequently, petitioner was told that he will be given a separation package. Moreover, Mr. Tan assured him that since his forte is on distribution[,] they will surely be dealing with each other again as he sees him to be a person with brains. After their meeting, petitioner left the office of Mr. Tan without saying that he was either retiring or resigning.
>
> On May 27, 2005, Raymundo Gatmaitan called petitioner and instructed him to report to the Head Office which he did on May 30, 2005. On that date at about 9 a.m., Raymundo Gatmaitan and Jerry Manipor showed him a document containing a computation of the amount that he is supposed to receive. Then at 11 a.m. Anthony U. Dy, the private-

---

5 Id. at 49.

respondent's VP for National Operation's Services asked petitioner to submit the resignation letter demanded by Michael Tan. He persisted that he was neither retiring nor resigning. At 4 p.m. petitioner and Anthony Dy both went to Mr. Tan's office where the latter told him "Elpidio, I thought we have made an agreement already?" to which the petitioner retorted that the package was unlawful and way too low. Then petitioner explained his circumstances why he deserves to receive higher package from the management. After said meeting, Mr. Dy further pressured him to submit his resignation letter. He was also asked to surrender the company vehicle that he was then using.

On June 3, 2005, while petitioner was in Pangasinan, Mr. Dy called him and asked him when he will return to the head office. Thereafter, the phone was passed to Mr. Manipor who informed him not to proceed anymore to the Vigan sales office because Jimmy Uy had already taken over it.

On June 4, 2005, the Market Territory Manager of Cauayan Sales Office, Marciano Uy Jr. relayed to petitioner the information that he was instructed not to allow him entry into the said office premises. Petitioner tried to confirm the said information but failed.

On June 5, 2005, while in Vigan, petitioner tried to gas-up his vehicle using his issued fleet card but it was refused by Petron Gas station for the reason that it was a "terminated card". He texted Mssrs. Dy, Gatmaitan and Manipor to inquire from them about it but none of them responded.

On June 6, 2005, petitioner drove to WCT/ABI Vigan sales office but the security guard prevented him from entering the premises. Thus, he went to the Vigan Regional Trial Court and requested sheriffs Terencio Florendo and Jonathan Florentino to accompany him and help him enter the premises since he remains to be the RSM to which both sheriffs agreed. Back at the gate of the sales office, the manager of Vigan Sales office came out and met them at the guardhouse. Petitioner was handed a letter addressed to him spelling out instruction emanating from the head office that he is not allowed to enter the said sales office.

On June 20, 2005, Mariel Casyao of private-respondent's Human Resource Department went to petitioner's residence in Sta. Mesa and demanded from him the surrender of the service vehicle. When petitioner resisted[,] and the latter was handed a letter dated June 20, 2005 signed by Mr. Manipor formally terminating his services as RSM for NCLR due to redundancy effective July 21, 2005.

On June 27, 2005, petitioner once again proceeded to the Vigan Sales Office, this time he was accompanied by Gerry Singson, his brother in the Mason and Dennis Rivas, also a brother in the Mason and Vigan's Tourism Director. However, he was again denied entry. Notwithstanding, he insisted to enter and advised Mr. Chua to verify his letter of termination but was told that his concerns about it should be directed to the head office in Manila. The same thing happened on July 11, 2005 at the Tuguegarao Sales Office.

On July 14, 2005, petitioner's son forwarded to him a mail containing another letter dated June 21, 2005 this time informing petitioner that effective immediately he is no longer the Regional Sales Manager for Northern Luzon as the same had already been merged with the sales offices under Mr. Jimmy L. Uy. Such letter, petitioner claims, had effectively nullified or super[s]eded the first letter of termination which has for its effectivity date of July 21, 2005.

Private respondent's version

On May 4, 2005 the petitioner was verbally informed by Mr. Jerry Manipor of the Human Resources Department about the private-respondent's move to consolidate the North and Central Luzon areas under one (1) Regional Sales Manager which will result to the abolition of his position once the reorganization is implemented. The petitioner was shown an initial computation of his separation pay in the amount of Php536,000.00. The petitioner, thence, started to negotiate for a higher separation pay. First, he asked that the amount shown to him as his separation pay be rounded off to Php600,000.00 and in addition thereto, the ownership of the service vehicle be transferred to him to complete his separation pay package. In his meeting with private-respondent's COO, Michael Tan, he verbally informed the latter that he decided to voluntarily tender his resignation and started discussing with him the matter of his separation pay and the possibility of getting distributorship agreement with the company for its products in Vigan City. He assured Michael G. Tan that the resignation letter will be handed to him as soon as he has bade farewell to the people from the sales offices in Vigan, Tuguegarao and Cauayan.

On May 20, 2005, Michael Tan, (sic) received a letter from the petitioner confirming that he was verbally informed of the said corporate decision of the private-respondent and he is looking forward to the separation pay he is entitled to receive from the company. Through the said letter[,] petitioner also sought the help of Mr. Tan in realizing his dream of getting reconnected with the Lucio Tan Group of Companies through the grant of exclusive distributorship of Virgin Drinks and likewise mentioned therein about his meeting with the three Marketing Territory Managers or "MTM's" in Laoag on May 9, 2005 informing them that he will be parting with them soon.

On May 30, 2005, petitioner once again met with private-respondent's key officers. He was shown an increased amount of separation pay in line with his plea for the rounding off of the first computation showed to him. However, instead of being pleased, the petitioner showed displeasure and further negotiated for higher separation pay in the amount of Php888,888.00 in addition to the service vehicle he had earlier asked. Thus, no agreement was reached.

On June 1, 2005, petitioner was instructed to turn over the key to his service vehicle[,] but he refused retorting that he had his gun and gold inside the vehicle and threatening to make a scene.

Further, in another meeting at the Manila Peninsula Hotel, petitioner presented a much higher separation package in the staggering

amount of Php8,876,189.70 which was flatly rejected by the [private respondent] for want of any legal or factual basis.[6]

Labor Arbiter's Decision

The Labor Arbiter (LA) ruled that petitioner Elpidio T. Que (Que) was constructively dismissed. For the LA, from the date that Que was informed of his impending dismissal, he could no longer work with ease as he was constantly prodded to submit his resignation letter.[7] The LA believed Que's narration of facts and ruled that he was irregularly prevented from reporting to work when the security guards refused to let him enter the sales offices, in addition to the cancellation of his fleet card for his gas expenses.[8] The LA also ruled that Asia Brewery failed to prove its claim of redundancy as no financial statement from an independent auditor was submitted.[9] The dispositive portion of the LA Decision states:

IN VIEW THEREOF, judgment is hereby rendered against the Asia Brewery Inc., with the following dispositions.

1. That the complainant was illegally dismissed consequently, the Asia Brewery Inc., must pay his backwages, separation pay and 13th month pay, P1,228,333.30, P536,000.00 and [P]139,583.33;

2. That the Asia Brewery Inc[.] must pay his unpaid salary in the amount of P64,069.00[;]

3. That respondent must reimburse his EISP contributions in the amount of P182,274.94;

4. That respondent must pay the money value of his sick leave and vacation leave credits, in the amount of P268,818.00 and P307,221.00 respectively;

5. That respondent must pay the complainant moral damages in the amount of P100,000.00 and exemplary damages of P100,000.00, plus 10% of the total award us (sic) attorney[']s fees.

All of which having a total of THREE MILLION TWO HUNDRED EIG[HT]EEN THOUSAND NINE HUNDRED TWENTY NINE AND FIFTY TWO CTVS. (P3,218,929.52).

SO ORDERED.[10]

---

6 Id. at 50-53.
7 Id. at 75.
8 Id. at 76-77.
9 Id. at 78.
10 Id. at 89-90.

NLRC Decision

Both parties appealed to the NLRC. Que claimed he is entitled to higher monetary awards[11] while Asia Brewery claimed that Que was not illegally dismissed.[12]

The NLRC reversed the LA and found that instead of being pressured to relinquish his employment, Que actually negotiated for a suitable separation package after he was informed that he was being retrenched because his position had become redundant.[13] The NLRC gave weight to a letter of Que dated May 18, 2005 which showed that he was not against the plan to ease him out from being RSM of North Luzon or the re-merging of such area with the Central Luzon sales office under one RSM.[14] In the same letter, Que did not show any animosity or bitterness, or any pressure in the submission of a resignation letter.[15] The dispositive portion of the NLRC Decision states:

> **WHEREFORE**, premises considered, the assailed decision is hereby **modified** in that the respondents are adjudged not guilty of illegal dismissal and that complainant is declared validly terminated on the ground of redundancy under Article 283 of the Labor Code. Consequently, the award of backwages, moral damages and exemplary damages are deleted from the Decision. The following awards are affirmed:
>
> | | | |
> |---|---|---|
> | (a) Separation pay | - | P536,000.00 |
> | (b) Unpaid salary | - | 64,069.00 |
> | (c) 13th month pay | - | 139,583.33 |
> | (d) Reimbursement of EISP contributions plus interest | - | 182,274.94 |
> | (e) Money value of sick leave credits | - | 268,818.00 |
> | (f) Money value of vacation leave credit[s] | - | 307,221.00 |
> | | | P1,497,966.20 |
> | plus: 10% of award as attorney's fees | | 149,796.62 |
> | TOTAL | | **P1,647,762.82** |
>
> **SO ORDERED**.[16]

CA Decision

The CA affirmed the NLRC Decision. The CA ruled that the NLRC did not commit grave abuse of discretion when it ruled that the May 18, 2005 letter of Que showed that he was not coerced and that it belied any

---

11 Id. at 54.
12 Id. at 55.
13 Id. at 55, 168-169.
14 Id. at 55, 170-174.
15 Id. at 55.
16 Id. at 180-181.

claim of animosity when he was informed that his position had become redundant.[17] The CA also ruled that the NLRC was correct in ruling that Asia Brewery complied with the formal and substantial requirements for termination of employment due to redundancy.[18] The dispositive portion of the CA Decision states:

> **WHEREFORE**, in the view of the foregoing premises, the petition is **DENIED**. The Decision of the NLRC dated August 27, 2009 and its Resolution dated February 01, 2010 are AFFIRMED *in toto.*
>
> **SO ORDERED.**[19]

Aggrieved, Que filed this Petition.

Issue

The issue raised in the Petition is as follows:

> WHETHER OR NOT THE x x x COURT OF APPEALS ABUSED ITS DISCRETION, AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, WHEN IT AFFIRMED IN TOTO THE DECISION OF [THE] x x x NLRC THAT x x x [ASIA BREWERY] DID NOT ILLEGALLY TERMINATE [QUE].[20]

The Court's Ruling

The Petition is denied.

Essentially, Que questions the validity of Asia Brewery's claim that his position had become redundant, which is a question of fact.[21] This, however, cannot be done in the present petition given the limited nature of the review under a petition for review under Rule 45 arising from labor cases. As the Court held in *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*,[22] CA decisions in labor cases "will be examined only using the prism of whether it correctly determined the existence of grave abuse of discretion".[23] This follows the Court's ruling in *Montoya v. Transmed Manila Corp.*,[24] where the Court held that:

---

17 Id. at 58.
18 Id. at 59.
19 Id. at 61.
20 Id. at 30.
21 *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc.* (CCBPI), G.R. No. 200499, October 4, 2017, 842 SCRA 1, 9-10, citing *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc. (General Santos City)*, 598 Phil. 879, 884 (2009).
22 G.R. No. 200499, October 4, 2017, 842 SCRA 1.
23 Id. at 10.
24 613 Phil. 696 (2009).

> x x x 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.** x x x[25]

The question for the Court's determination is whether the CA correctly ruled that the NLRC did not commit grave abuse of discretion in ruling that Que's employment was validly terminated due to redundancy.

The Court believes, and so holds, that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion.

Que's position became redundant.

Article 298 of the Labor Code states that an employer may terminate the employment of any employee on the ground of redundancy, thus:

> ART. 298. [283] *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.

As defined, "[r]edundancy exists when the service of an employee is in excess of what is reasonably demanded by the actual requirements of the business. A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service activity formerly undertaken by the enterprise."[26]

---

25 Id. at 707; emphasis in the original; citations omitted.

26 *Lowe, Inc. v. Court of Appeals*, 612 Phil. 1044, 1056 (2009).

In *Lowe, Inc. v. Court of Appeals*[27] (*Lowe*), the Court laid down the requirements for the valid implementation of a redundancy program, as follows:

> For a valid implementation of a redundancy program, the employer must comply with the following requisites: (1) written notice served on both the employee and the DOLE at least one month prior to the intended date of termination; (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 position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant.
>
> In this case, there is no dispute that, on 28 September 2001, Mutuc was duly advised of the termination of her services on the ground of redundancy. On the same date, the DOLE was also served a copy of Mutuc's notice of termination. Likewise, Lowe made available to Mutuc her separation pay equivalent to one month salary for every year of service and her proportionate 13th month pay upon completion of her clearance. However, Mutuc did not accomplish her clearance and instead filed a complaint for illegal dismissal.
>
> The controversy lies on whether Lowe used any fair and reasonable criteria in declaring Mutuc's position redundant and whether there was bad faith in the abolition of her position.
>
> Lowe insists that it used fair and reasonable criteria in declaring Mutuc's position redundant. Lowe argues that Mutuc was the most junior of all the executives of Lowe and that, based on its performance evaluation, Mutuc was also the least efficient among the Creative Directors.
>
> Mutuc maintains that she was dismissed from the service because of her "rift" with Castro. Mutuc claims that Lowe singled her out and "just included" her position in the redundancy program to cover up her illegal dismissal.
>
> The Court recognizes that a host of relevant factors comes into play in determining who among the employees should be retained or separated. Among the accepted criteria in implementing a redundancy program are: (1) preferred status; (2) efficiency; and (3) seniority.
>
> We agree with the Labor Arbiter that Lowe employed fair and reasonable criteria in declaring Mutuc's position redundant. Mutuc, who was hired only on 23 June 2000, did not deny that she was the most junior of all the executives of Lowe. Mutuc also did not present contrary evidence to disprove that she was the least efficient and least competent among all the Creative Directors.[28]

---

27 Id.

28 Id. at 1056-1058.

The Court likewise ruled that "[t]he determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere unless arbitrary or malicious action on the part of management is shown."[29] As the Court further ruled in *Lowe*: "It is also within the exclusive prerogative of management to determine the qualification and fitness of an employee for hiring and firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for the operation of its business."[30] In determining who among the employees should be retained or separated, the Court explained in *Lowe* that preferred status, efficiency, and seniority are among the accepted criteria in implementing a redundancy program.[31]

Here, Que's only argument against the implementation of the redundancy program was that there was no supporting documents that the business was performing poorly.[32] This is, however, belied by the findings of facts of the NLRC and the CA.

The NLRC found that Asia Brewery based its decision to terminate Que's employment on an Evaluation Report dated May 2, 2005, which showed the need to revert to the original set-up of having one RSM for Northern Luzon, thus:

> The justification for the redundancy program is contained in the Evaluation Report dated May 2, 2005 (Annex "A", Respondents' Position Paper) which was quoted in full as follows:
>
> > *"Before February 2004, twelve (12) sales offices – San Leonardo, Tarlac, Sta. Maria, San Fernando, Olongapo, Bataan, La [U]nion, Baguio, Vigan, Dagupan, [C]auayan and Tuguegarao - consisted the North Central Luzon Region (NCLR) and were under one Regional Sales Manager (RSM).*
> >
> > *Beginning 2003, the company had initiated aggressive sales and marketing programs to improve business performance in the NCLR. By the end of 2003, NCLR had achieved a (sic) 18% growth compared to the previous year but that performance, although at par with its counterpart in South Luzon, was very much lower compared to the 80% positive growth registered by Metro Manila.*
> >
> > *It was determined that the NCLR Sales offices up north were underperforming and were not effective in the implementation of sales and marketing programs and, therefore, there was an urgent need to give a more direct and focused handling of the areas covered by these sales*

---

29 Id. at 1058.
30 Id.
31 Id.
32 *Rollo*, p. 32.

offices. This also involved the development of the skills and capabilities of the people assigned in those sales offices.

To address that problem, the company decided to try the concept of splitting the NCLR into two regions, the Central Luzon Region or CLR (composed of the sale[s] offices of San Leonardo, Tarla[c], Sta. Maria, San Fernando, Olongapo, Bataan, [L]a [U]nion, Baguio and Dagupan), and the North Luzon Region or NLR (consisting of the sales offices of Vigan, Tuguegarao and Cauayan), each with its own RSM. Mr. Jimmy Uy was appointed RSM for CLR and Mr. Elpidio Que for NLR.

After more than a year of the experimental organizational set up, no gain was achieved. In fact, the company did not accomplish anything in terms of accelerating development and improving the sales performance of the subject areas especially those under the NLR, as shown by the following information:

Region	*YTD April 30, 2005*	*Total 04 vs. 03*
Central Luzon	*-10%*	*2%*
North Luzon	*-25%*	*-2%*

Having Mr. Que as RSM of the NLR, with only three sales offices to man, did not provide the expected outcome. Performance of the NLR under him even had nothing to be proud of. Sales dropped. The quality of accounts receivables deteriorated. Unpaid and outstanding accounts posted huge figures.

Maintaining the two (2) RSMs has proven ineffective especially in terms of boosting sales in the region, particularly the NLR under Mr. Que. Moreover, the set up only served to increase the company's operation expenses. At this time when sales is not doing well, the company can ill afford to incur unnecessary costs.

In view of the foregoing, the undersigned recommends that the experimental set up be discontinued effective immediately and that the company return to the old set up of having 12 sales offices considered as one region and under just one RSM.

Necessarily, the position of one of the two RSMs will become an excess of what is reasonably required by the company. Hence, the employment of the excess RSM has to be terminated on the ground of redundancy, subject to the payment of separation pay as mandated by law.

The undersigned recommends the retention of Mr. Uy as RSM for (to be revived) NCLR and the separation of Mr. Que on the ground of redundancy. I[n] the short time that Mr. Uy took over the CLR, he has proven to be very

> *professional, qualified and competent to perform the duties and responsibilities of an RSM, as partly evidenced by the good sales performance of his region. O[n] the other hand, Mr. Que failed miserably to meet the sales expectations of Management, aside from other matters which proved his inefficiency and ineffectiveness as RSM."*
>
> The reversion to the old set-up resulting in the redundancy of complainant's position as Regional Sales Manager of the North Luzon Region was a management prerogative, an exercise of business judgment on the part of the employer. It is settled jurisprudence that a[n] employer is not precluded from adopting a new policy conducive to a more economical and effective management.[33]

Although it was not required to conduct its own review of the facts, the CA made its own review of the facts and also found that Asia Brewery complied with the written notice requirement, the payment of separation pay, good faith in abolishing Que's position, and the use of fair and reasonable criteria in choosing Que as the one whose employment will be terminated. As the CA ruled:

> x x x We rule as the public respondent did in finding the dismissal of petitioner's employment as valid on the ground of redundancy. Viewing the records in its entirety, We find that the formal and substantial requirements of the law in terminating the employment of an employee due to redundancy were properly complied with by the private respondents. In the case of Caltex (Phils.), Inc. vs. NLRC, it was held that:
>
> > "Requisites to ensure the validity of implementation of a redundancy program: (1) a written notice served on both the employees and the Department of Labor and Employment (DOLE) 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."
> >
> > "In selecting the employee to be dismissed, fair and reasonable criteria must be used such as but not limited to (a) less preferred status, [e.g.] Temporary employee, (b) efficiency, and (c) seniority."
>
> Here, We find that first, a written notice to both petitioner and the DOLE were properly complied with. Second, the payment of separation pay was never denied [by] the petitioner. In fact, he had consistently negotiated with the private respondents for a higher compensation package but his ever changing position on the amount to be given

[33] Id. at 177-179.

> resulted in the failure of the negotiations. Third, We find there is good faith in abolishing the position of the petitioner, and fourth, the fairness and x x x reasonableness of the criteria in choosing who between the petitioner and Mr. Jimmy Uy will be retained as RSM for North Central Luzon Sales Office were all done regularly and without any taint. It was established by the private-respondent in its "*Evaluation Report/Recommendation on the Experimental Set Up of Splitting North Central Luzon Region into Two Regions*" dated May 2, 2005, that the experimental set up of establishing two regions for its sales office did not yield any material gain. Further, in the said evaluation, it was stated that petitioner, with only three sales offices to man, did not provide the expected outcome. The sales dropped and the quality of accounts receivables deteriorated. The unpaid and outstanding accounts posted higher figures. Thus, when Raymundo Gatmaitan recommended the plan to revert to the old set up of having North and Central Luzon Region to be again merged under the same RSM, it necessitated the petitioner's termination from his post due to redundancy. Digging deeper into the records of this case, the petitioner's reaction to such decision was unfavorable but was met with acceptance and obligingly opened the door to a negotiation with respect to his separation pay. He, however, put hope on the private conversation he had with Mr. Michael Tan in his bid of becoming a distributor of Virgin Drinks in Ilocos Sur. Moreover, he had also [bidden] goodbye to the Marketing Territory Managers or "MTM's" under his stewardship. Lastly, while said "MTM's" wrote to the upper management about petitioner's efficiency, he, nonetheless, concluded that "*My retention is not the purpose of my nod for their coming letters as I am now earnestly praying for your mercy and benevolence for my family's coming days ahead through the separation pay that you will grant and Virgin Drinks distributorship that I now have in mind.*" These statements by petitioner aided in the conclusion that the decision of the company to revert to the old set up of having one RSM for both North and Central Luzon all the more supported the wisdom of private respondents' decision to terminate the petitioner from his position. With these, We believe that there is no more need to belabor the alleged saddening experiences of petitioner before the sales offices he so adamantly visited despite standing orders from his superiors for him not to report thereat and just stay in the main office. To Our mind, his insistence in entering the premises of the sales offices and bringing along with him, court personnels (sic), fraternity brothers, Mason brothers and political personalities were more of proving a point that he can summon influential people should he choose to do so. Sadly, these actuations by petitioner negate evidence of constructive dismissal.[34]

"Substantial evidence, as amply explained in numerous cases, is that amount of 'relevant evidence which a reasonable mind might accept as adequate to support a conclusion.'"[35] Here, the May 2, 2005 Report and the proof of sending of notices to Que and the DOLE show that the CA was correct in affirming the NLRC's finding of a valid implementation of a

---

34 Id. at 59-60; citations omitted.

35 *Raymundo v. Central Azucarera Dela Carlota,* G.R. No. 211585, April 23, 2014 (Unsigned Resolution).

redundancy program since the findings were supported by substantial evidence.[36] This negates a finding of grave abuse of discretion.[37]

There was no constructive dismissal.

Constructive dismissal has been defined as the "cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."[38] It may exist "if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[39]

Here, there was no constructive dismissal. The LA found Que was subjected to persistent pressures to resign from his post and these amounted to constructive dismissal.[40] The NLRC, however, found that Asia Brewery specifically denied the allegations of Que of harassment and coercion. In fact, when Que was informed of the planned implementation of a redundancy program, he accepted the decision and negotiated for a separation package that would be more than what the law required. When the parties failed to agree on the separation package primarily because of the demands of Que, Asia Brewery had no choice but to implement the redundancy program. The NLRC further ruled that Que failed to prove the work environment became hostile thus making it unbearable for him to remain an employee of Asia Brewery. As the NLRC found:

> x x x. The allegations by complainant of harassment or coercion are not supported by credible proofs. The acts imputed to respondents as constitutive of constructive dismissal were specifically denied by respondents. Even if such acts did exist[,] complainant proved himself equal to the situation as he did not succumb under the adverse circumstances described by him. Expressed in another way, we are led to believe by complainant that respondents were not successful in forcing complainant to resign.
>
> We can therefore infer that the work environment was not hostile and unbearable to complainant as in fact he even insisted that he was not resigning and despite the alleged ban from entering the office premises[,] he sought the assistance of the Sheriffs from the Regional Trial Court to accompany him so he could enter the company premises. Then on June 27, 2005[,] he went to the WTC/ABI Sales Office because of his intention to perform his duties since his termination was still to take effect on July 21, 2005. So determined was complainant in wanting to enter the office that he braved the revolver-bearing security guard who allegedly pushed, shoved and grappled with him. According to

---

36 See id.

37 See *Soriano, Jr. v. National Labor Relations Commission*, 550 Phil. 111, 124 (2007).

38 *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 120 (2012).

39 Id. at 121; citations omitted.

40 *Rollo*, pp. 57-58.

complainant[,] he attempted several times until his polo-jack uniform was ripped off in the process. If this account is true, then it would only show that the alleged ill-treatment employed by respondents did not really produce such degree of fear or discomfort to make the situation unbearable to complainant. A constructive dismissal under these circumstances is untenable.

On the other hand, we find credible the allegation that complainant negotiated for a suitable separation package after being informed on May 4, 2005 by Mr. Jerry Manipor, Human Resources Department of ABI that his position would be redundated when the move to place the North and Central Luzon areas under one (1) Regional Sales Manager is implemented. Complainant was given an advance verbal notice before the implementation of the reorganization, as a courtesy to his managerial position. He was offered a separation pay of P536,000.00 representing one month salary multiplied by eight (8) years, his length of service with respondent company.

Complainant requested Mr. Manipor to round off the separation pay to P600,000.00 and in addition he asked that the Isuzu pick-up he was using be given [to] him as part of the separation package. Respondents alleged that complainant went to the office of respondent Michael Tan and informed the latter the he has decided to voluntarily resign from the company. Complainant discussed with respondent Tan about his separation package and the possibility of getting a distributorship agreement with the company for its products in Vigan City. Respondents also alleged that complainant told respondent Tan that he would submit his resignation letter as soon as he bade farewell to the people from the sales office in Vigan, Tuguegarao and Cauayan. Respondents alleged that this agreement was sealed with a handshake. There is a truth in this allegation as shown in the letter of complainant to respondent Tan dated May 18, 2005 wherein complainant reiterated his request for separation pay and the grant of the distributorship agreement. We quote in full complainant's letter as follows:

> *"As I try to regroup my thoughts from the shock of your sudden disposition to cut me off as your employee, considering the economic impact of which on my family, for reason that I can not (sic) be accepted by any company anymore due to my age among others, I put hope on the words you imparted in our private talks in your office last May 4 to deter me from facing economic dislocation as I still have a mission to fulfill while in this life – that a fighting the legal battle for justice to my father who succumbed to death after being made a human guinea pig and to my mother who consequentially died from extreme grief of which, and of supporting a son who is visually handicapped.*
>
> *You have said that despite reasoning ineffectiveness for my work termination, you have "mutual" appreciation to what I have done in my work as RSM. You interspersed that you view me as with brains, that I should go into distribution business as distribution is my forte, that you want us to stay friends and that we might get into dealings*

in the future. You also asked me emphatically if I am indeed from Vigan, which I retorted having been born and grown up there, adding that you can use me for your interests in the locality as I can mingle even with the political bigwigs of the province. These considerations give light to my seemingly darkened future.

x x x x

Sir, in my meeting with the MTMs in Laoag last May 9, I informed those present after taking up business matters that I will be parting with them soon. Their collective performance were cited as the reasons for my being eased out. I told them that my fate was what they made straying out from the "No fate but what we make" dictum I often cited to them when their performance shortfalls were being taken up. I asked each of them what shortcomings have they observed on me as their RSM to be considered ineffective. They could say nothing but to disagree, forcing them, probably out of guilt, to ask if it was okay for them to write you about their sentiments. I welcome their gestures and suggested to write you and Mr. James Yu in confidentiality of how they evaluate me as their superior to include how and what they know about my person and character. My object is to let you know how my subordinates view me as such which, on several times in our private talks, I pleased you talk and ask from the Central Luzon MTMs about me for fairness to prevail. It was communicated to me by Eddie Go and Jun Abesamis about the positive views they have of me [vis-à-vis] Jimmy Uy that they responded to Rey Gatmaitan when they were talked to separately. My retention is not the purpose of my nod for their coming letter as I am now earnestly praying for your mercy and benevolence for my family's coming days ahead through the separation pay that you will grant and Virgin Drinks distributorship that I now have in mind.

x x x x

There is no indication in the said letter that complainant was being forced to resign. He was the one asking for his separation pay and the Virgin Drinks distributorship. He also said farewell to the people from the regional sales office. He said in his letter: "Sir, in my meeting with the three MTM[s] in Laoag last May 9, I informed those present after taking up business matters that I will be parting with them soon."

The expected settlement failed because according to respondents, **the complainant asked for P888,888.00 plus the Isuzu Vehicle. But this was not the end of it, the demand ballooned to P8,876,189.70 which complainant presented in a meeting at the Manila Peninsula Hotel** x x x.

x x x x

> Obviously, complainant did not get what he wanted leaving respondents no choice but to let the redundancy measure run its course.[41]

The CA affirmed this ruling of the NLRC, as follows:

> x x x We see no reason to issue a writ of certiorari against the assailed decision of the NLRC. We are of the opinion that, indeed, the Labor Arbiter had brushed aside an important piece of evidence in its disposition of the instant case. We agree that when the Labor Arbiter believed fully the statement of facts of petitioner that he was subjected to intense pressures tantamount to a constructive dismissal without looking into the legal or factual ramifications of the pieces of evidence against such facts as claimed by the petitioner, the Labor Arbiter had indeed gravely erred in failing to fully appreciate all these pieces of evidence at hand, specifically petitioner's own written account that belied any claim of undue compulsion.[42]

The foregoing findings of the NLRC were supported by substantial evidence, and the CA was therefore correct in ruling that the NLRC did not commit grave abuse of discretion.

Que's claim that he was pressured to resign was belied by his May 18, 2005 letter. It would seem that Que had initially accepted this but had hoped to get a separation package that was higher than what the law provided. And when he failed to get his demands, his attitude turned sour and he refused to communicate with the head office. What Que claims as pressures to make him resign were actually a result of his disobedience to orders for him to report to work at the head office. He even insisted on visiting the sales offices where he used his connections in order to force the sales offices to give him access to the premises. Any embarrassment he might have experienced was not because Asia Brewery acted maliciously and arbitrarily in terminating his employment but because he failed in getting what he wanted. Absent proof of malicious and arbitrary conduct of Asia Brewery, there can be no basis for a finding that Que was constructively dismissed.

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision dated October 24, 2011 and Resolution dated June 20, 2012 of the Court of Appeals in CA-G.R. SP No. 113493 are **AFFIRMED**.

---

41 Id. at 168-176; emphasis and italics in the original.
42 Id. at 58-59.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

(On leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
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.

LUCAS P. BERSAMIN
Chief Justice