

## THIRD DIVISION

[ G.R. No. 209085, June 06, 2018 ]

**NICANOR F. MALCABA, CHRISTIAN C. NEPOMUCENO, AND  
LAURA MAE FATIMA F. PALIT-ANG, PETITIONERS, V.  
PROHEALTH PHARMA PHILIPPINES, INC., GENEROSO R. DEL  
CASTILLO, JR., AND DANTE M. BUSTO, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

This case involves fundamental principles in labor cases.

*First*, in appeals of illegal dismissal cases, employers are strictly mandated to file an appeal bond to perfect their appeals. Substantial compliance, however, may merit liberality in its application.

*Second*, before any labor tribunal takes cognizance of termination disputes, it must first have jurisdiction over the action. The Labor Arbiter and the National Labor Relations Commission only exercise jurisdiction over termination disputes between an employer and an employee. They do not exercise jurisdiction over termination disputes between a corporation and a corporate officer.

*Third*, while this Court recognizes the inherent right of employers to discipline their employees, the penalties imposed must be commensurate to the infractions committed. Dismissal of employees for minor and negligible offenses may be considered as illegal dismissal.

This is a Petition for Review on Certiorari<sup>[1]</sup> assailing the Court of Appeals February 19, 2013 Decision<sup>[2]</sup> and September 10, 2013 Resolution<sup>[3]</sup> in CA-G.R. SP No. 119093, which reversed the judgments of the Labor Arbiter and of the National Labor Relations Commission. The Court of Appeals found that Nicanor F. Malcaba (Malcaba), a corporate officer, should have questioned his dismissal before the Regional Trial Court, not before the Labor Arbiter. It likewise held that Christian C. Nepomuceno (Nepomuceno) and Laura Mae Fatima F. Palit-Ang (Palit-Ang) were validly dismissed from service for loss of trust and confidence, and insubordination, respectively.

ProHealth Pharma Philippines, Inc. (ProHealth) is a corporation engaged in the sale of pharmaceutical products and health food on a wholesale and retail basis. Generoso Del Castillo (Del Castillo) is the Chair of the Board of Directors and Chief Executive Officer while Dante Busto (Busto) is the Executive Vice President. Malcaba, Tomas Adona, Jr. (Adona), Nepomuceno, and Palit-Ang were employed as its President, Marketing Manager, Business Manager, and Finance Officer, respectively. <sup>[4]</sup>

Malcaba had been employed with ProHealth since it started in 1997. He was one of its incorporators together with Del Castillo and Busto, and they were all members of the Board of Directors in 2004. He held 1,000,000 shares in the corporation. He was initially the Vice President for Sales then became President in 2005.<sup>[5]</sup>

Malcaba alleged that Del Castillo did acts that made his job difficult. He asked to take a leave on October 23, 2007. When he attempted to return on November 5, 2007, Del Castillo insisted that he had already resigned and had his things removed from his office. He attested that he was paid a lower salary in December 2007 and his benefits were withheld.<sup>[6]</sup> On January 7, 2008, Malcaba tendered his resignation effective February 1, 2008.<sup>[7]</sup>

Nepomuceno, for his part, alleged that he was initially hired as a medical representative in 1999 but was eventually promoted to District Business Manager for South Luzon. On March 24, 2008, he applied for vacation leave for the dates April 24, 25, and 28, 2008, which Busto approved. When he left for Malaysia on April 23, 2008, ProHealth sent him a Memorandum dated April 24, 2008 asking him to explain his absence. He replied through email that he tried to call ProHealth to inform them that his flight was on April 22, 2008 at 9:00p.m. and not on April 23, 2008 but was unable to connect on the phone. He tried to explain again on May 2, 2008 and requested for a personal dialogue with Del Castillo.<sup>[8]</sup>

On May 7, 2008, Nepomuceno was given a notice of termination, which was effective May 5, 2008, on the ground of fraud and willful breach of trust.<sup>[9]</sup>

Palit-Ang, on the other hand, was hired to join ProHealth's audit team in 2007. She was later promoted to Finance Officer.<sup>[10]</sup> On November 26, 2007, Del Castillo instructed Palit-Ang to give P3,000.00 from the training funds to Johnmer Gamboa (Gamboa), a District Business Manager, to serve as cash advance. <sup>[11]</sup>

On November 27, 2007, Busto issued a show cause memorandum for Palit-Ang's failure to release the cash advance. Palit-Ang was also relieved of her duties and reassigned to the Office of the Personnel and Administration Manager. <sup>[12]</sup>

In her explanation, Palit-Ang alleged that when Gamboa saw that she was busy receiving cash sales from another District Business Manager, he told her that he would just return the next day to collect his cash advance.<sup>[13]</sup> When he told her that the cash advance was for car repairs, Palit-Ang told him to get the cash from his revolving fund, which she would reimburse after the repairs were done. Del Castillo was dissatisfied with her explanation and transferred her to another office.<sup>[14]</sup>

On December 3, 2007, Palit-Ang was invited to a fact-finding investigation,<sup>[15]</sup> which was held on December 10, 2007, where Palit-Ang was again asked to explain her actions.<sup>[16]</sup>

On December 17, 2007, she was handed a notice of termination effective December 31, 2007, for disobeying the order of ProHealth's highest official.<sup>[17]</sup>

Malcaba, Nepomuceno, Palit-Ang, and Adona separately filed Complaints<sup>[18]</sup> before the Labor Arbiter for illegal dismissal, nonpayment of salaries and 13th month pay, damages, and attorney's fees.

The Labor Arbiter found that Malcaba was constructively dismissed. He found that ProHealth never controverted the allegation that Del Castillo made it difficult for Malcaba to effectively fulfill his duties. He likewise ruled that ProHealth's insistence that Malcaba's leave of absence in October 2007 was an act of resignation was false since Malcaba continued to perform his duties as President through December 2007. [19]

The Labor Arbiter declared that Nepomuceno's failure to state the actual date of his flight was an excusable mistake on his part, considering that this was his first infraction in his nine (9) years of service. He noted that no administrative proceedings were conducted before Nepomuceno's dismissal, thereby violating his right to due process. [20]

Palit-Ang's dismissal was also found to have been illegal as delay in complying with a lawful order was not tantamount to disobedience. The Labor Arbiter further noted that delay in giving a cash advance for car maintenance would not have affected the company's operations. He declared that Palit-Ang's dismissal was too harsh of a penalty. [21]

The dispositive portion of the Labor Arbiter's April 5, 2009 Decision [22] read:

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants were illegally dismissed by respondents. Accordingly, respondents are directed solidarily to pay complainants the following:

1. Complainant Nicanor F. Malcaba:

- a. Separation pay of P1,800,000.00;
- b. Full backwages from the time of his illegal dismissal [o]n 11 November 2007 until the finality of this decision, which as of this date amounts to P2,810,795.40;
- c. 13<sup>th</sup> month pay for the years 2007 and 2008 amounting to P126,625.00;

2. Complainant Christian C. Nepomuceno:

- a. Separation pay of P190,000.00;
- b. Full backwages from the time of his illegal dismissal [i]n May 2007 until the finality of this decision, which as of this date amounts to P568,827.45;
- c. 13<sup>th</sup> month pay for 2008 amounting to P6,333.33;

3. Complainant Laura Mae Fatima F. Palit-Ang:

- a. Separation pay of P30,000.00;
- b. Full backwages from the time of her illegal dismissal on 1 January 2008 until the finality of this decision, which as of [t]his date amounts to P266,694.63;
- c. 13<sup>th</sup> month pay for 2008 of P18,000.00; and

4. Complainant Tomas C. Adona, Jr.:

- a. Separation pay of P75,000.00;

- b. Full backwages from time of his illegal dismissal [i]n June 2007 until the finality of this decision, which as of this date amounts to P609,832.37;
- c. 13<sup>th</sup> month pay for 2008 of P10,416.66.

Complainants are further awarded moral damages of Php100,000.00 each and exemplary damages of Php100,000.00 each.

Finally, respondents are assessed the sum equivalent to ten percent (10%) of the total monetary award as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[23]</sup>

ProHealth appealed to the National Labor Relations Commission.<sup>[24]</sup> On September 29, 2010, the National Labor Relations Commission rendered its Decision,<sup>[25]</sup> affirming the Labor Arbiter's April 5, 2009 Decision with modifications. The dispositive portion of this Decision read:

WHEREFORE, premises considered, the appeal is partially granted. The assailed Decision is modified in that: a) complainant Adona is declared to have voluntarily resigned and is entitled only to his 13<sup>th</sup> month pay; b) the award of moral and, exemplary damages in favor of complainants Nepomuceno and Palit-Ang are deleted; and c) respondents del Castillo and Busto are held jointly and severally liable with ProHealth for the claims of complainant Malcaba.

All dispositions not affected by the modifications stay.

SO ORDERED.<sup>[26]</sup>

ProHealth moved for reconsideration<sup>[27]</sup> but was denied by the National Labor Relations Commission in its January 31, 2011 Resolution.<sup>[28]</sup> Thus, ProHealth, Del Castillo, and Busto filed a Petition for Certiorari<sup>[29]</sup> before the Court of Appeals.

On February 19, 2013, the Court of Appeals rendered its Decision<sup>[30]</sup> reversing and setting aside the National Labor Relations Commission September 29, 2010 Decision.

On the procedural issues, the Court of Appeals found that ProHealth substantially complied with the requirement of an appeal bond despite it not appearing in the records of the surety company since ProHealth believed in good faith that the bond it secured was genuine.<sup>[31]</sup>

On the substantive issues, the Court of Appeals held that there was no employer-employee relationship between Malcaba and ProHealth since he was a corporate officer. Thus, he should have filed his complaint with the Regional Trial Court, not with the Labor Arbiter, since his dismissal from service was an intra-corporate dispute.<sup>[32]</sup>

The Court of Appeals likewise concluded that ProHealth was justified in dismissing Nepomuceno and Palit-Ang since both were given opportunities to fully explain their

sides.<sup>[33]</sup> It found that Nepomuceno's failure to diligently check the true schedule of his flight abroad and his subsequent lack of effort to inform his superiors were enough for his employer to lose its trust and confidence in him.<sup>[34]</sup> It likewise found that Palit-Ang displayed "arrogance and hostility" when she defied the lawful orders of the company's highest ranking officer; thus, her insubordination was just cause to terminate her services.<sup>[35]</sup>

While the Court of Appeals ordered the return of the amounts given to Malcaba, it allowed Nepomuceno and Palit-Ang to keep the amounts given considering that even if the finding of illegal dismissal were reversed on appeal, the employer was still obliged to reinstate and pay the wages of a dismissed employee during the period of appeal.<sup>[36]</sup> The dispositive portion of the Court of Appeals February 19, 2013 Decision read:

WHEREFORE, premises considered, it is hereby ruled:

- (a) that the September 29, 2010 Decision and January 31, 2011 Resolution of the National Labor Relations Commission are REVERSED and SET ASIDE for being issued with grave abuse of discretion;
- (b) that Our Decision is without prejudice to Mr. Nicanor F. Malcaba's available recourse for relief through the appropriate remedy in the proper forum;
- (c) that all the amounts released in favor of Mr. Nicanor F. Malcaba amounting to Four Million Nine Hundred Thirty[-]Seven Thousand Four Hundred Twenty pesos and 40/100 (P4,937,420.<sup>[40]</sup>) be RETURNED to herein petitioners;
- (d) that NO REFUND will be ordered by this Court against Mr. Christian Nepomuceno and Ms. Laura Mae Fatima Palit-Ang.

SO ORDERED.<sup>[37]</sup>

Malcaba, Nepomuceno, and Palit-Ang moved for reconsideration but were denied in a Resolution<sup>[38]</sup> dated September 10, 2013. Hence, this Petition<sup>[39]</sup> was filed before this Court.

Petitioners argue that the Court of Appeals should have dismissed outright the Petition for Certiorari since respondents failed to post a genuine appeal bond before the National Labor Relations Commission. They allege that when Sheriff Ramon Nonato P. Dayao attempted to enforce the judgment award against the appeal bond, he was informed that the appeal bond procured by respondents did not appear in the records of Alpha Insurance and Surety Company, Inc. (Alpha Insurance). They also claim that respondents were notified by the National Labor Relations Commission four (4) times that their appeal bond was not genuine, showing that respondents did not comply with the requirement in good faith.<sup>[40]</sup>

Petitioners contend that petitioner Malcaba properly filed his Complaint before the Labor Arbiter since he was an employee of respondent ProHealth, albeit a high-