

ELEVENTH DIVISION

[CA-G.R. SP No. 128827, May 14, 2014]

DONNA V. ABANTO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), EXL SERVICES, INC., RESPONDENTS.

DECISION

LANTION, J.A.C., J.:

Before Us is a Petition for *Certiorari*^[1] filed by Petitioner Donna V. Abanto (hereinafter "Abanto") assailing the Decision^[2] dated 31 July 2012 rendered by the National Labor Relations Commission, First Division ("NLRC"), in NLRC NCR CASE NO. 09-12835-10 and NLRC LAC NO. 03-000775-11. The *fallo* of the assailed Decision reads:^[3]

WHEREFORE, the appeal filed by the complainant is hereby DISMISSED for lack of merit.

Accordingly, the Decision of Labor Arbiter Geobel A. Bartolabac dated December 15, 2011 is AFFIRMED.

SO ORDERED.

The Resolution^[4] dated 28 November 2012 denying Abanto's Motion for Reconsideration, is likewise assailed.

THE FACTS

Material Antecedents

Private Respondent EXL Services, Inc. ("EXL") is engaged in the business of providing various outsourcing services for its clients, which includes, among others, the management and operation of a call center.

On 07 December 2009, EXL hired Abanto as a Customer Service Associate. Under the Employment Agreement^[5] entered into by the parties, Abanto was initially placed on a probationary status to last for a period of six months or until 07 June 2010, after which she would become a regular employee if she met EXL's performance standards. Prior to the expiration of the probationary period, however, Abanto did not meet the said standards.

On 02 June 2010, Abanto received a Confidential Confirmation Appraisal Form,^[6] which contained EXL's evaluation of her work conduct and indicated that Abanto's probationary period was to be extended. As Abanto signed the said Form, EXL extended her probationary period for an additional three months or until 07 September 2010.^[7]

On 07 September 2010, EXL sent Abanto a Notice of Non-Regularization,^[8] which informed her that she would not be accorded regular employment for her failure to meet the company's performance standards. This prompted Abanto to file a complaint for illegal dismissal against EXL and its corporate officers before the NLRC, which was docketed as NLRC-NCR Case No. 09-12835-10. Since the parties could not amicably settle, they were directed to file their respective position papers.

Allegations of the Complainant (Abanto)^[9]

In her position paper, Abanto avers that EXL failed to inform her, at the time she was hired, of the performance standards that she, as a probationary employee, was expected to meet. In fact, it was only three months thereafter that EXL appraised Abanto of such standards.

Abanto further argued that she had become a regular employee as she was allowed to work after the lapse of the probationary period, which period was only to last for six months. Abanto denied having ever given her consent, written or verbal, to any extension of the said period. As a matter of fact, when Abanto signed the Confidential Confirmation Appraisal Form,^[10] her signature thereon merely indicated the fact that she underwent a performance appraisal; she did not intend to give her consent to an extension of the probationary period. Consequently, pursuant to the *Labor Code*, her continued employment beyond the six month probationary period rendered her a regular employee. As a regular employee therefore, EXL could not lawfully dismiss her based on poor performance, which is not one of the just causes for termination of employment under the law.

Allegations of the Respondent (EXL)^[11]

For its part, EXL contends that in the normal process of hiring employees they are duly informed of performance standards which must be met in order to become a regular employee. Regarding Abanto, she was assigned to the TOPAZ process and went through two training programs encompassing a total of seven weeks. The trainings covered topics such as familiarization with matters relating to clients, insurance products, and cross cultural training. Moreover, EXL explained to Abanto of certain target scores that must be met relating to the TOPAZ process, which is comprised of four (4) metrics, namely: call quality, productivity, average handling time, and transfer rate.

Unfortunately, when Abanto was endorsed to the Operations department, she was not performing up to standard. Her performance reports for the months of March, April, and May 2010 revealed that she was deficient in "call quality" and "average handling time." Specifically, "call quality" refers to the employee's substantive knowledge on the client's product and the overall manner of handling calls. Conversely, "average handling time" speaks of the efficiency of an employee in handling calls, which should not exceed the prescribed number of minutes.

EXL highlights that on or about June 2010, the last month of the probationary period, Abanto met with EXL's officers and, after discussing her unsatisfactory performance, she was offered another chance to qualify for regular employment by extending the probationary period. As a result thereof, Abanto signed a Confidential Confirmation Appraisal Form. Nonetheless, despite having been granted an extension, Abanto's output was still not satisfactory. Based therefrom, EXL ultimately decided that she would not become a regular employee.

Furthermore, EXL emphasized that Abanto's consent to the extension of the probationary period is also evidenced in the Employment Agreement,^[12] which Abanto also signed. The Agreement contains a clause that the six month probationary period may be extended in case an employee's performance does not meet the standards for regularization.

Rulings of the Labor Arbiter and the NLRC

On 15 December 2010, the Labor Arbiter issued a Decision^[13] dismissing Abanto's complaint, in this wise:^[14]

WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the instant Complaint for lack of merit. However, respondent EXL Service Philippines, Incorporated is ordered to pay complainant the sum of P3,000.00 representing complainant's attendance bonus for the period of August 2010.

All other claims are similarly dismissed for lack of merit.

SO ORDERED.

Dissatisfied, on 07 March 2011, Abanto filed a Memorandum of Appeal^[15] questioning the Labor Arbiter's Decision before the NLRC.

On 31 July 2012, the NLRC rendered the assailed Decision affirming the Labor Arbiter's Decision and dismissing Abanto's appeal.

Abanto's counsel received a copy of the assailed Decision on **28 August 2012**.^[16] Abanto filed Motion for Reconsideration^[17] of the said Decision on **10 September 2012**,^[18] which was denied by the NLRC in the assailed Resolution dated 28 November 2012.

Hence, this Petition.

ISSUES

Abanto, through counsel, raises the following assignment of errors:^[19]

I.

THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE FINDING OF THE LABOR ARBITER DISMISSING THE CASE FOR LACK OF MERIT BY RELYING ON [THE] SELF-SERVING AFFIDAVIT OF RESPONDENT COMPANY'S EMPLOYEE THAT REASONABLE STANDARDS WERE MADE KNOWN TO PETITIONER WHEN THE TRUTH IS THEY WERE NOT[.]

II.

THE NLRC GRAVELY ABUSED ITS DISCRETION IN DISPOSING AS "BARE DENIAL" PETITIONER'S ASSERTION THAT NO STANDARDS WERE MADE KNOWN TO HER AT THE TIME OF ENGAGEMENT DESPITE THE SUPPORTING AFFIDAVIT OF PETITIONER'S CO-WORKER AFFIRMING SUCH ABSENCE OF STANDARDS[.]

III.

THE NLRC GRAVELY ABUSED ITS DISCRETION IN APPRECIATING THE CONFIRMATION APPRAISAL FORM AS AN AGREEMENT FOR EXTENSION OF PROBATION WHEN THE PURPOSE OF THE FORM IS PURELY FOR APPRAISAL AND THE SIGNATURE OF PETITIONER THEREIN WAS AFFIXED AS A STANDARD PROCEDURE BEING THE APPRAISEE[.]

OUR RULING

Before delving into the substantive issues raised by Abanto, this Court deems it necessary to resolve material procedural matters.

Section 15, Rule VII of the *2011 NLRC Rules of Procedure* reads:[20]

SECTION 15. Motions for Reconsideration. - Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is filed **within ten (10) calendar days** from receipt of the decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained. (Emphasis supplied)

A perusal of the pleadings at hand shows that Abanto's Motion for Reconsideration of the assailed Decision was not timely filed. Abanto's counsel received a copy of the said Decision on 28 August 2012.[21] By virtue of Section 15, Rule VII of the *2011 NLRC Rules of Procedure*,[22] Abanto had ten calendar days from receipt of the assailed Decision or until 07 September 2012 within which to file a motion for reconsideration. Unfortunately, Abanto filed her Motion for Reconsideration only on 10 September 2012[23] or three days beyond the reglementary period.[24]

Nonetheless, the NLRC ruled on Abanto's Motion and denied the same in the challenged Resolution dated 28 November 2012, which Resolution Abanto received on 04 January 2013.[25] Since Section 4, Rule 65 of the *Rules of Court* requires that a petition for certiorari shall be filed not later than sixty days counted from the notice of the denial of the motion for reconsideration,[26] Abanto thus had sixty days from 04 January 2013 or until 05 March 2013 within which to file a petition for certiorari. Inasmuch as the present Petition was filed on 04 March 2013,[27] which date falls within the reglementary period provided in the *Rules*, We find that the same was timely filed.

Having disposed of the procedural matters, We shall proceed to resolve the substantive issues raised by Abanto.

In order for a petition for certiorari under Rule 65 of the *Rules of Court* to prosper, it is incumbent upon the petitioner, in this case Abanto, to show that the tribunal exercising quasi-judicial functions has committed grave abuse of discretion amounting to a lack or excess of jurisdiction.[28] As defined by jurisprudence, the phrase "grave abuse of discretion" means "the capricious and whimsical exercise of judgment, or the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty." [29] Jurisprudence