

## THIRD DIVISION

[ G.R. No. 217101, February 12, 2020 ]

**LBC EXPRESS-VIS, INC., PETITIONER, VS. MONICA C. PALCO,  
RESPONDENT.**

### DECISION

#### LEONEN, J.:

An employee is considered constructively dismissed if he or she was sexually harassed by her superior and her employer failed to act on his or her complaint with prompt and sensitivity.

This Court resolves the Petition for Review on Certiorari<sup>[1]</sup> assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals, which affirmed the National Labor Relations Commission's finding that the employer company, LBC Express-Vis Inc., is liable for constructive dismissal.

On January 16, 2009, Monica C. Palco (Palco) started working for LBC Express-Vis Inc. (LBC) as a customer associate in its Gaisano Danao Branch (LBC Danao). The Branch's Team Leader and Officer-in-Charge, Arturo A. Batucan (Batucan), endorsed her application for the post and acted as her immediate superior.<sup>[4]</sup>

While employed at LBC, Palco had initially noticed that Batucan would often flirt with her, which made her uncomfortable. Later, Batucan started sexually harassing her. Batucan's undisputed acts are detailed as follows:

1. As weeks passed, she noticed something in the way respondent-Arturo A. Batucan stared and smiled at her. She also sensed some meaning in the way he talked to her, though she initially ignored these and just tried to focus on her job.
2. At one time he offered to lend her money, which she refused, not wanting to be indebted to him.
3. There was likewise an instance when he secretly gave her chocolate, which she felt uncomfortable about, there being no special occasion then.
4. Respondent-Arturo A. Batucan's actions grew bolder everyday[sic]. Whenever he approached her while working, he found ways to hold her hand or put his hand on her lap, if not, on her shoulder.
5. Then, the time came when he started to kiss her on the cheek in a joking manner.

6. On certain occasions, he pulled the strap of her bra, which made her feel really uncomfortable. When she tried to rebuke him on such, he would just tell her that it was a joke.
7. There was also a time when he joked about making a baby with her. He told her that if she will get married someday, he wants to join with her husband in making the baby. She just laughed it off, but she knew there was something wrong with the joke.<sup>[5]</sup>

The final straw happened at around 8:00 a.m. on May 1, 2010. That morning, Batucan sneaked in on Palco while she was in a corner counting money. Palco was caught by surprise and exclaimed, "*Kuyawa nako nimo sir, oy!*" (You scared me, sir!). Batucan then held her on her hips and attempted to kiss her lips. However, Palco was able to shield herself.

Batucan then tried a second time and was able to kiss Palco's lips before she could react. Batucan told Palco that he was just happy that day and then proceeded to wipe her lips. Palco, however, could not stop him. Thereafter, Batucan asked her if it was okay for him to go to the LBC Camotes Branch on Monday, as though asking for her permission and treating her like a girlfriend. She told him not to repeat what he had done and threatened to tell his wife about it. Palco felt angry and afraid.<sup>[6]</sup>

On the evening of the following day, a Sunday, Batucan texted Palco asking her to report early for work the next day to prepare for the arrival of a certain Ms. Ponce. Afraid of what Batucan might do next, Palco excused herself and suggested that her co-employee take her place, explaining that she might not come in for work.<sup>[7]</sup>

The next day, despite being repulsed by Batucan, Palco still forced herself to go to work. She was relieved when Batucan left with Ms. Ponce at 11:00 a.m. to visit the LBC Camotes Branch. However, on May 4, 2010, she did not come in for work because she was sick, and was still bothered by the incident.<sup>[8]</sup>

On May 5, 2010, she reported the incident to the LBC Head Office in Lapu Lapu City. She had a resignation letter prepared in case management would not act on her complaint. Acting on her complaint, management advised her to request for a transfer to another team while they investigated the matter.<sup>[9]</sup>

On May 8, 2010, Palco returned to the LBC Head Office with her mother and submitted her formal complaint against Batucan. Later, they proceeded to the police station to report the incident.<sup>[10]</sup>

On May 14, 2010, sensing that management did not immediately act on her complaint, Palco resigned. She asserted that she was forced to quit since she no longer felt safe at work.<sup>[11]</sup>

On June 15, 2010, Batucan was served a copy of a Notice to Explain.<sup>[12]</sup>

On July 20, 2010, LBC held the administrative hearing for the incident.<sup>[13]</sup> On the same day, Palco filed a Complaint for Illegal Dismissal against the company.

On September 27, 2010, the area head of LBC Cebu sent a letter addressed to Batucan containing a suspension with last warning:

This administrative action is taken on the account of the complaint on immoral act with you [sic] teammate, Ms. Monica Palco of which you were required to submit a valid explanation why sanction should not be imposed against you. This aggravated the company by facing a case charged with illegal dismissal at NLRC Cebu.

After thorough consideration and evaluation of the case, the company finds it adequate cause to render you answerable for the aforementioned conduct. This Office hereby sites you for the following infraction categorized under our Code of Conduct as Major Offense to wit:

Against Persons:

- a. Immoral act or any form of indecency within company premises or work assignment.
- b. Any form of sexual harassment.

Accordingly, your attention is hereby called to this instance; you are directed to serve a SUSPENSION for a period of sixty (60) days without pay with LAST WARNING effective immediately.

You are further admonished against a repetition of this omission.

For your information and strict compliance.

**LEONARDO V. LIBRADILLA** (signed)<sup>[14]</sup>

On October 18, 2010, Palco filed a Complaint for sexual harassment before the Danao City Prosecutor's Office.<sup>[15]</sup>

The Labor Arbiter, in its Decision dated June 29, 2011, ruled in favor of Palco:

WHEREFORE, co-respondents LBC Express-VIS, Inc. and Arturo Batucan are hereby ORDERED solidarily to immediately pay complainant Monica C. Palco the following:

Backwages.....	Php 91,000.00
Separation pay.....	14,000.00
Moral Damages.....	200,000.00
Exemplary Damages.....	<u>50,000.00</u>
Total.....	Php 355,000.00
Attorney's fees (10%) .....	<u>35,000.00</u>
Grand Total.....	390,500.00

SO ORDERED.<sup>[16]</sup>

The National Labor Relations Commission, in its May 31, 2012 Decision<sup>[17]</sup> affirmed with modification the Labor Arbiter's decision but reduced the amount of moral damages to P50,000.00.<sup>[18]</sup>

The Court of Appeals, in its March 13, 2014 Decision<sup>[19]</sup> affirmed the National Labor Relations Commission. It denied LBC's Motion for Reconsideration.<sup>[20]</sup>

LBC thus filed this Petition<sup>[21]</sup> maintaining that: (1) "the findings are grounded entirely on speculation [;]" (2) "the inference made is manifestly mistaken [;]" (3) "the judgment is based on misapprehension of facts [;]" and (4) "the Court of Appeals manifestly overlooked certain relevant facts not disputed but the parties, which... would justify a different conclusion."<sup>[22]</sup> Furthermore, it raised that "a period of four (4) months does not even constitute an unreasonable period to resolve a case of such nature and gravity as one for sexual harassment."<sup>[23]</sup>

Subsequently, Palco filed a Comment,<sup>[24]</sup> and LBC filed its Reply.<sup>[25]</sup>

Petitioner mainly argues that it should not be held liable for constructive dismissal. It insists that it did not commit any act of discrimination, insensibility, or disdain towards respondent. Neither did it establish a harsh, hostile or unfavorable work environment for her.<sup>[26]</sup>

Citing *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*,<sup>[27]</sup> petitioner argues that it cannot be held liable for the hostile work environment that respondent experienced because it was Batucan, who committed the acts subject of her complaint. It points out that Batucan was a mere team leader, a co-employee, who had no power to dismiss, suspend, or discipline respondent.<sup>[28]</sup> Petitioner did not know of, participate, or consent to Batucan's acts and only learned of his acts after respondent reported it.<sup>[29]</sup>

Petitioner also insists that it acted with sensitivity and consideration for respondent's welfare and made efforts to address her concerns while it was investigating the incident. It points out that when respondent expressed her intention to resign, it suggested respondent's transfer to another team and did not require her to report back to the LBC Danao where Batucan was stationed. When respondent accepted the offer, LBC granted her vacation leave requests while awaiting her reassignment.<sup>[30]</sup>

Petitioner maintains that it immediately acted on the incident but still had to accord Batucan due process given the seriousness of the charge. It argues that the delay in the investigation was caused by respondent's sudden resignation. In any case, they proceeded with the investigation and suspended Batucan for 60 days with a final warning.<sup>[31]</sup> It asserts that four (4) months is not an unreasonable period to resolve a sexual harassment complaint.<sup>[32]</sup>

Petitioner contends that respondent's resignation was deliberate and voluntary, and was by way of reprisal for petitioner's failure to heed her ultimatum that Batucan be immediately removed from his post.<sup>[33]</sup>

As such, petitioner contests the awards granted to respondent, arguing those who voluntarily resigned are not entitled to backwages, and reinstatement or separation pay. It also argues that respondent is not entitled to damages since petitioner acted in good faith in all its dealings and that respondent should bear the litigation expenses for filing an unfounded and baseless case. It further asserts that there is

no basis for the award of attorney's fees because there was no unlawful withholding of wages.<sup>[34]</sup>

In her Comment,<sup>[35]</sup> respondent, maintains that she was constructively dismissed.<sup>[36]</sup> She argues that Batucan's acts towards her "created a hostile, intimidating and offensive environment, rendering her continued employment in the company impossible, unreasonable or unlikely."<sup>[37]</sup> She points out that Batucan's acts constitute sexual harassment under Section 3(a)(3) of Republic Act No. 7877. The hostile work environment could be clearly seen from her intense fear and anger and her subsequent acts after the incident: (1) she did not want to report to work; (2) she travelled four (4) hours away from her home to personally file a letter-complaint to the LBC Head Office; and (3) she reported the incident to the Danao City Police and filed a criminal case before the City Prosecutor's Office.<sup>[38]</sup>

Respondent further points out that in the administrative hearing, Batucan did not deny the kissing incident. She claims that his version did not vary much from her allegations<sup>[39]</sup> as he simply argued that his acts did not constitute sexual harassment.<sup>[40]</sup>

Respondent maintains that petitioner failed to protect its employees from sexual harassment as required under Republic Act No. 7877.<sup>[41]</sup> It did not have the required rules and regulations to investigate sexual harassment reports, any administrative sanctions for sexual harassment acts, or any committee on decorum and investigation for these cases.<sup>[42]</sup>

She contends that petitioner was insensible and acted in bad faith in failing to immediately act on her complaint.<sup>[43]</sup> She points out the following: (1) the investigation only started 78 days after she reported the incident; (2) it took 43 days for petitioner to serve Batucan a Notice to Explain; and (3) it took petitioner 78 days to call him for an administrative hearing, and only after she had already been dismissed.<sup>[44]</sup> It took management four (4) months and three (3) weeks to resolve the matter, when a constructive dismissal case had already been filed.<sup>[45]</sup>

She likewise alleges that management pointed that there were no witnesses or any showing of bruises. It even suggested that perhaps Batucan's kiss was merely a "*beso*."<sup>[46]</sup>

Respondent also posits that her resignation was not voluntary<sup>[47]</sup> but was borne out of the hostile work environment brought about by Batucan's sexual harassment, and the failure of management to accord her redress, protection, and sensitivity.<sup>[48]</sup> She thus insists she is entitled to backwages, separation pay, reinstatement, moral and exemplary damages, and attorney's fees, with petitioner solidarity liable for damages with Batucan.<sup>[49]</sup>

The issue for this Court's resolution is whether or not LBC should be held liable for constructive dismissal.

This Court rules that LBC is liable for constructive dismissal.

Constructive dismissal occurs when an employer makes an employee's continued employment impossible, unreasonable or unlikely, or has made an employee's