

## SECOND DIVISION

[ G.R. No. 202676, December 04, 2019 ]

**TELUS INTERNATIONAL PHILIPPINES, INC. AND MICHAELSY,  
PETITIONERS, VS. HARVEY DE GUZMAN, RESPONDENT.**

### DECISION

**HERNANDO, J.:**

Before Us in a Petition for Review on *Certiorari*<sup>[1]</sup> filed by petitioner Telus International Philippines, Inc. (Telus) and Michael Sy assailing the March 15, 2012 Decision<sup>[2]</sup> and the July 9, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 114574 which reversed the ruling of the National Labor Relations Commission<sup>[4]</sup> (NLRC) and reinstated the ruling of the Labor Arbiter finding respondent Harvey de Guzman constructively dismissed.<sup>[5]</sup>

#### ***Factual Antecedents***

##### *Petitioners' Version*

Telus asserted that it first hired respondent Harvey De, Guzman ( De Guzman) sometime in September 2004 as Inbound Sales Associate.<sup>[6]</sup> His last post prior to the controversy was Senior Quality Analyst for DELL After Point of Sale (DELL, APoS) .<sup>[7]</sup>

On August 2, 2008, Telus received an escalation complaint<sup>[8]</sup> from Jeanelyn Flores (Flores), Team Captain of DELL APoS, charging De Guzman of disrespect and ridicule towards a person.

The escalation complaint alleged that on July 31, 2008, Flores, while in the process of checking the work progress of all the agents to determine if coaching was required to improve their performance, sent a chat message to Quality Analysts (QA) directing them to do coaching. She messaged: "QAs there are tons of avails, do your coaching ." <sup>[9]</sup>

De Guzman who was among the QAs who received 'the message, replied: "that is good, you can now do your huddle for your team." <sup>[10]</sup> Flores was offended when the other QAs exited the conversation and by De Guzman's reply as she felt that he was implying that she has no time for her team.

Later on, she chanced upon the August 1, 2008 IP switch conversation between De Guzman and a fellow agent, Rally Boy Sy (Rally Boy), wherein De Guzman made disrespectful remarks against her,<sup>[11]</sup> thus:

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rallyboy.sy@chat.ambergris.prv [rallyboy]: guys
[rallyboy]: dami avail
[rallyboy]: do your coaching
harvey.deguzman / QAA E&A 10th Raffles QA Lab ext 3580
[harveydeguzman]: that is good
[harveydeguzman]: you can now do a huddle for your team
[harveydeguzman]: hahaha
[rallyboy]: hahaha
[rallyboy]: sabihin ko nalang avail you face
harveydeguzman:hahaha
[rallyboy]: may uploadpa kami?
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harveydeguzman: wait lang  
[rallyboy]: *tang ina ah gugulpihin ko talaga yan*  
[harveydeguzman]: *di pa maka gawa si nino*<sup>[12]</sup>

Acting on the complaint of Flores, Telus, on August 4, 2008, issued a Due Process form to De Guzman on charges of "[i]nsulting or showing discourtesy, disrespect, or arrogance towards superiors or co-team members [and a]busive behavior language which is outside the bounds of morality"<sup>[13]</sup> in violation of Section 2, Disorderly Conduct, Items 60 and 61 of Telus' Code of Conduct. At the same time, D Guzman was placed in preventive suspension and was directed to submit a written explanation to answer the charges on or before August 7, 2008. De Guzman complied and submitted his written explanation.<sup>[14]</sup>

On August 11, 2008, Telus conducted an administrative hearing on the matter. Upon termination of the investigation, Telus found De Guzman's not liable for the offenses charged and did not impose any disciplinary sanction against him. Accordingly, De Guzman's preventive suspension was lifted and he was fully compensated during the period.<sup>[15]</sup>

Telus, however, decided to remove De Guzman from his current designation and transfer him to another practice. On August 20, 2008, the Director of Contact Center Operation confirmed and requested the transfer of De Guzman citing operations reasons .<sup>[16]</sup> The day after, De Guzman applied for paid vacation leave from August 21 to September 26, 2008 or 26 days citing "Personal Reason[s]."<sup>[17]</sup>

Meanwhile, Telus scheduled De Guzman for a profile, interview on September 16, 2008 which coincided with his leave of absence. On the said date, De Guzman notified his supervisor that he will not be able to attend the interview. When asked for the reason of his inability to attend, De Guzman failed to give an answer.<sup>[18]</sup>

Telus once again tried to schedule De Guzman for a profile interview on October 13, 2008 but he again failed to show up or even acknowledge such scheduled interview.<sup>[19]</sup>

Hence, Telus sent De Guzman a Return to Work Order dated October 13, 2008 .<sup>[20]</sup> Later on, Telus found out that as early as September, 15, 2008, De Guzman already filed a complaint for constructive dismissal with monetary claims before the NLRG notwithstanding that he was still on 'paid vacation leave and was receiving all benefits during the said period .<sup>[21]</sup> Telus claimed that De Guzman was not at all dismissed from employment and was in fact scheduled for profile interviews to facilitate his transfer Considering, however, his refusal to report for the interviews, he was not given any account and was placed on "floating status" allegedly because there was yet no available account for him.<sup>[22]</sup>

#### *Respondent's Version*

De Guzman, on the other hand, averred that he was a regular employee in good standing of Telus and had been with the company for the last four years since 2004. He was hired as a call center agent and eventually rose from the ranks; he was promoted to Junior Quality Analyst and, later on, to his last post as Senior Quality Analyst (SQA) .<sup>[23]</sup>

As SQA, he supervised two teams composed of six agents. He was tasked to monitor and evaluate the calls taken by the agents and to ensure that the quality of handling the calls were met. He was required to make a report and submit the same to the Quality Analyst Supervisor, his immediate superior .<sup>[24]</sup>

On July 31, 2008, during his night shift, De Guzman received from Flores an office chat message through the intranet system that can be shared and accessed by those in the company. The message states: "QAs there are tons of avails, do your coaching." De Guzman thus replied " That's good, you can do a huddle for your team. "<sup>[25]</sup>

"QA" in call center parlance translates to Quality Analyst and "avails" means a decrease in the volume of calls received by agents and they may be coached and rated on a specific call for their improvement. Meanwhile, "Coaching/Huddle" means informing the agents on the quality of their performance during a telephone conversation and teaching them how to rectify their errors .<sup>[26]</sup>

Notably, Flores, as Team Captain, cannot order QAs to do coaching as her authority was limited only to her specific team. Hence, De Guzman excused himself by adding: "Got to go." No further messages were exchanged between the two of them .<sup>[27]</sup>

The following day, August 1, 2008, Rally Boy, a Junior Quality Analyst and a friend, initiated an exchange of messages via the same office intranet messaging. Since Rally Boy and De Guzman utilized the office intranet messaging system, Flores chanced upon the conversation which became the subject of her escalation complaint. She thus sent De Guzman. an excerpt of the conversation and added "NICE!!!!!!".De Guzman no longer replied to the message .<sup>[28]</sup> The excerpt reads:

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rallyboy.sy@chat.ambergris.prv [rallyboy]: guys
[rallyboy]: dami avail
[rallyboy]: do your coaching
harvey.deguzman I QAA E&A 10th Raffles QA Lab ext 3580 [harveydeguzman]: that
is good
[harveydeguzman]: you can now do huddle for your team
[harveydeguzman]: hahaha
[rallyboy]: hahaha
[rallyboy]: sabihin ko nalang avail you face
harveydeguzman:hahaha
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**NICE!!!!!!!!!!!!!!!!!!!!!!!**<sup>[29]</sup>

On August 5, 2008, De Guzman received a call from his immediate QA Supervisor, Alfelyn "Joey" Caspellan (Joey), asking him to report to Michael Sy (Sy), Telus' Quality Analyst Manager. When he went to Sy's office, Sy gave him a copy of the Incident Report for the alleged issue that transpired on August 1, 2008. He was directed to give an answer on or before August 7, 2008. He was also informed right then and there that he was placed on indefinite preventive suspension effective immediately.<sup>[30]</sup>

De Guzman was shocked that he was being penalized for the exchange of messages he shared with Rally Boy without first affording him any opportunity to give his side of the story. To him, there was nothing wrong with his actions. It did not constitute any company violation to even merit an immediate preventive suspension.<sup>[31]</sup>

On August 7, 2008, De Guzman submitted his Reply<sup>[32]</sup> insisting that he did not in any way refer to Flores and his remark "you can now do your huddle for your team" was directed towards Rally's team's accountability. He also questioned his preventive suspension since based on the policies set in the company handbook, the action taken by the company was uncalled for. The relevant portion of his reply reads:

On the employee handbook, Sec (2) 60-61 both states that the disciplinary action are "Written Warning and may lead to Termination". Furthermore, on page 2 of the said document, it states that the rationale for imposing preventive suspension is that, "the continued service of the team member poses an imminent threat to the lives and properties of the Company, his family and representatives as well as the offender's co-team members". For this reason may we ask for a written explanation why we are put in preventive suspension. As a Telus employee we believe that we also deserve fair due process. We can't see any reason why our stay in the company will bring any threat to our team members, co-workers nor the company because we don't have

anything against any person in the company. Again the accusation is based on their assumptions.<sup>[33]</sup>

Feeling aggrieved, De Guzman filed a complaint before the Department of Labor and Employment (DOLE) for illegal suspension.<sup>[34]</sup> DOLE summoned Telus and De Guzman to come up with an amicable settlement, but the same failed. On August 17, 2008, after the termination of the proceedings in the DOLE, De Guzman received a text message from Joey telling him to report to Sy to know the status of his preventive suspension .<sup>[35]</sup>

On the evening of August 20, 2008, De Guzman, together with Rally Boy, went to Sy's office. Thereat, they were told that their suspension was lifted and that they were not liable for the incident that transpired on August 1, 2008. Nonetheless, they will be transferred to a different account and they were to report the next day in Market Market, BGC Branch.<sup>[36]</sup>

Thinking that everything was in order, they eagerly reported to their night shift schedule in Market Market. They waited, as per advise of Sy, for Director Charlene Briones. However, at around one o'clock in the morning they received a text message from Joey asking them to report ito the Ortigas

office instead. Despite the inconvenience, they left Market Market and went to the Ortigas office. Thereat, they were told by Joey that Sy made a mistake in instructing them to report for work and that Sy would still need to find an account for them. Hence, they did not have any work yet despite the lifting of their suspension.<sup>[37]</sup>

De Guzman was then forced to apply for a vacation leave, while Sy was still looking for an account for them. In his desire to keep his job and to receive his salary, he exhausted his earned vacation leaves and used up 26 days from August 22 to September 26, 2008 .<sup>[38]</sup>

On September 28, 2008, after all his vacation leaves were spent and a month after his preventive suspension, De Guzman inquired from Sy when he can report for work. He was told that he would still report to him but since there was no endorsement yet for another program, he was not yet required to return to work. As it is, he was considered as a "floater" and he will not get paid unless his floating status has been lifted. De Guzman was devastated and was surprised that he was suddenly considered as a "floater. "<sup>[39]</sup>

On October 10, 2008, De Guzman received a message from Sy that there was a temporary endorsement in the Quality Analyst Core and he should report on October 11, 2008 for a profiling interview and that it was necessary to pass the same in order for him to get the position. De Guzman asked Sy why he needed to undergo such interview considering that he was not a new hire or a job applicant. Sy responded that passing the interview is a must as he was already considered a "floater." He was told that during his "floating" status he will not be compensated.<sup>[40]</sup>

Believing that he need not undergo such process and that he must be reinstated to his former position immediately, De Guzman did not report for the interviews. He alleged that he was already considered a regular employee having been with the company for for years with an impeccable record and even promoted several times prior to such incident .<sup>[41]</sup>

The foregoing series of events led to De Guzman's filing of a complaint before the NLRC for constructive dismissal, money claims and damages against petitioners.<sup>[42]</sup>

### ***The Ruling of the Labor Arbiter***

The Labor Arbiter, in his Decision<sup>[43]</sup> dated June 30, 2009, adjudged Telus guilty of constructively dismissing De Guzman. The dispositive portion of the Decision reads:

**WHEREFORE**, the foregoing premises considered, judgment is hereby rendered finding the respondents liable for illegally ( constructively ) dismissing the complainant. They are hereby ORDERED to pay, jointly and severally, the complainant his *separation pay, full backwages, moral and exemplary damages, and attorney's fees*.

A detailed computation of the monetary awards, as of the date of this **Decision**, is embodied in Annex "A" which is hereby made an integral part hereof.

All other claims of the parties are DENIED for lack of factual and legal bases.

**SO ORDERED.**<sup>[44]</sup> (Emphasis and italics in the original. )

The Labor Arbiter held that since De Guzman was not immediately reinstated to his former position after his preventive suspension despite a finding that he was not guilty of the offense charged, coupled with the fact that he was transferred and had to undergo and pass the profile interview before he may be given a new account , conclusively supported the finding of constructive dismissal on the part of Telus .<sup>[45]</sup>

Since there was already strained relations between the parties foreclosing the possibility of reinstatement, De Guzman was adjudged entitled to separation pay in lieu of reinstatement.<sup>[46]</sup>

Aggrieved by the Decision of the Labor Arbiter, Telus filed its

Memorandum of Appeal before the NLRC .<sup>[47]</sup>

### ***The Ruling of the NLRC***

Upon review, the NLRC overturned the ruling of the Labor Arbiter.<sup>[48]</sup>

The NLRC found that De Guzman failed to prove by substantial evidence that he was constructively dismissed. As borne out by the records, there was no termination that transpired. Telus was planning to reinstate De Guzman to his former position as QA Analyst after his preventive suspension. Hence, for all intents and purposes, De Guzman was still connected to Telus after the lifting of the suspension order.<sup>[49]</sup>

Contrary to the findings of the Labor Arbiter, it was De Guzman who ceased working with Telus after he opted not to report after the expiration of his vacation leave and because of his refusal to undergo the profiling interview for his new *account/practice*. Telus' decision to transfer him to another account and to require him to undergo profile interviews were valid exercises of management prerogative.

Considering too that the transfer was not for a lower rank, it was indeed a transfer in good faith. Moreover, Telus' justification of "operations purposes" in order to avoid any untoward incident between De Guzman and

Flores was acceptable. The fact that such move to transfer resulted in De Guzman being a "floater" or on "floating status" was not a form of discrimination on the part of Telus.<sup>[50]</sup>

The NLRC noted that in Telus' line of business, the availability of assignment of personnel depends on contracts entered by it with its client-third parties. Hence, some agents, like De Guzman, may be sidelined temporarily until such time that he is assigned to a new account .The same can be compared to being "off-detail" or "waiting to be posted" which are allowed by labor laws. All in all, there was no finding of constructive dismissal but a mere exercise of management prerogative.<sup>[51]</sup>

Thus, the dispositive portion of the January 22, 2010 Decision of the NLRC states: