

SECOND DIVISION

[G.R. No. 202090, September 09, 2015]

ICT MAJRKETING SERVICES, INC. (NOW KNOWN AS SYKES MARKETING SERVICES, INC.), PETITIONER, VS. MARIPHIL L. SALES, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*^[1] assails: 1) the January 10, 2012 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 109860 nullifying and setting aside the February 16, 2009^[3] and May 20, 2009^[4] Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC CN. 07-002404-08(7)/(8) and reinstating with modification the April 30, 2008 Decision^[5] of the Labor Arbiter in NLRC-NCR Case No. 10-11004-07; and 2) the CA's May 28, 2012 Resolution^[6] denying petitioner's Motion for Reconsideration^[7] of the herein assailed Decision.

Factual Antecedents

Petitioner ICT Marketing Services, Inc. (ICT) - now known as Sykes Marketing Services, Inc. - is a duly registered domestic corporation engaged in the business of providing outsourced customer relations management and business process outsourcing solutions to various clients in government and in the financial services, insurance, telecommunications, health care, information technology, media, energy, and hospitality industries.

On February 22, 2006, petitioner hired respondent Mariphil L. Sales as its Customer Service Representative (CSR) or Telephone Service Representative (TSR), and assigned her to its Capital One account. On August 21, 2006, respondent became a regular employee, and her monthly base salary was increased to P16,350.00 and she was given monthly transportation and meal allowances.

On February 21, 2007, respondent was assigned to the Washington Mutual account, where she was awarded with a certificate for being the "Top Converter/Seller (Second Place)" for the month of April 2007.^[8]

On July 3, 2007, respondent wrote to Glen Odom (Odom) - petitioner's Vice President - complaining about supposed irregularities in the handling of funds entrusted to petitioner by Washington Mutual which were intended for distribution to outstanding Washington Mutual CSRs and TSRs as prizes and incentives. However, no action appears to have been taken on her complaint.

Respondent was then transferred to the Bank of America account on July 30, 2007. Without prior notice to respondent, petitioner scheduled her for training from July 30

to August 6, 2007 on the very same day of her transfer. On the third day of training (August 1), respondent was unable to attend. When she reported for training the next day, respondent was informed that she could not be certified to handle calls for Bank of America due to her failure to complete the training. From then on, respondent was placed on "floating status" and was not given any work assignment.

In a September 28, 2007 letter^[9] to petitioner's Human Resource (HR) Manager, respondent tendered her resignation from work, effective upon receipt of the letter. Respondent wrote:

I was forced to resign due to the reason that my employment was made on "floating status" effective August 4, 2007 and up to present (almost two months)

I haven't receive [sic] any notice from you or the HR department to report for work despite my repeated follow-up [with] your office thru telephone and mobile phone text messages. Hence, I consider your inaction to my follow-up as an indirect termination of my work with ICT.

The reason I was placed [on] floating status is that, I was absent during the third day of my training with Bank of America, the account to which I was transferred from Washington Mutual (WaMu). However, my absence during such period was justified by the fact that I was sick and I need [sic] to undergo a medical check-up on that date.

Furthermore, I see my transfer from WaMu Account to Bank of America and the continued floating status of my work was prompted by the fact that I lodged a complaint against managers/supervisors assigned in WaMu account regarding irregularities in the handling of funds given by ICT clients which were supposed to be distributed as prizes to TSR's assigned with WaMu. After the filing of the said complaint, through your office, I was transferred to another account (Bank of America) for no apparent reason. I was not even included in the original list of those who were supposed to be transferred because my performance record with WaMu is satisfactory as proven by the fact that I was even awarded with a certificate as "top converter (seller)" for the month of April and was supposed to be included again in the top three highest converters] for the month of May, but unfortunately irregularities were committed, that is why I filed the aforementioned complaint [with] your office.

On August 1, 2007, a few days after my transfer [to] Bank of America, my coach, angelo [sic], informed me that I will be having a training on that same day with Bank of America which is really unexpected. I was not given a notice in advance about the training. My coach informed me only three hours before the said training. Later on during my training with Bank of America I was [placed on floating status] indefinitely due to a single absence even though I am a regular employee having worked in ICT for almost two years. Another instance [of] discrimination [sic] and bad faith on the part of ICT management is that, all my fellow agents who were [placed on floating status] for the same reason were all ordered to return to work except me [sic]. Moreover, ICT is continuously

hiring TSR's which only shows that there are still accounts open or work available in ICT. However despite the availability of work, I was still on floating status.

Based on the aforementioned facts and circumstance[s], it is very clear that the harassment, pressure, and indefinite floating of my employment with ICT are retaliatory acts perpetrated by the company because of my complaint/ request for investigation on the irregularities being committed by certain company officials.

Thus, I can no longer bear the above-mentioned abuses and discrimination committed against me by ICT management. Therefore, I have no option but to sever my relationship with the company, as my continued floating status had already prejudiced me emotionally and financially.^[10]

Riding of the Labor Arbiter

On October 2, 2007, respondent filed a complaint for constructive dismissal against petitioner and Odom before the NLRC NCR, Quezon City, docketed as NLRC-NCR Case No. 10-11004-07.

In her Position Paper,^[11] Reply,^[12] Rejoinder,^[13] and Surrejoinder,^[14] respondent claimed that for complaining about the supposed irregularities in the Washington Mutual account, petitioner discriminated against her and unduly punished her. Although she was not included in the original list of CSRs/TSRs for program transfer, she was transferred to another account, and then placed on "floating status," which is tantamount to suspending her indefinitely without due process, despite her satisfactory performance. Respondent averred that petitioner's claim of multiple absences is not true, because not once was she penalized therefor, assuming such charge is true. Respondent also alleged that her one-day absence during the training for the Bank of America program cannot justify her being placed on a "floating status" because the "no-absence during training" requirement cited by petitioner - using her employment contract^[15] and the "New Hire Training Bay"^[16] as bases - applies only to new hires on probationary status, and not to regularized employees. In any case, the "New Hire Training Bay" used by petitioner was for the Capital One program. She also pointed out that during her indefinite suspension or "floating status," petitioner continued to hire new CSRs, as shown by its newspaper advertisements during the period.^[17] Finally, she asserted that her resignation was not voluntary, but was forced upon her by petitioner as a result of its unlawful acts. Thus, respondent prayed for the recovery of backwages, separation pay, P100,000.00 combined moral and exemplary damages, and attorney's fees equivalent to 10 per cent (10%) of the total award.

In its Position Paper,^[18] Reply,^[19] Rejoinder,^[20] and Surrejoinder,^[21] petitioner prayed for the dismissal of the complaint, arguing that respondent was transferred from the Washington Mutual account as an exercise of management initiative or prerogative, and due to infractions^[22] committed by her, as well as attendance and punctuality issues that arose. It claimed that respondent could not be certified for the Bank of America account for failing to complete the training. It maintained that

respondent was placed on standby status only, and not suspended or constructively dismissed. In fact, she was directed to report to its HR department, but she did not do so. It also insisted that respondent resigned voluntarily. It denied committing any act of discrimination or any other act which rendered respondent's employment impossible, unreasonable or unlikely. Finally, it claimed that prior notice of her transfer to the Bank of America account was made through an electronic mail message sent to her; and that respondent has no cause of action since she resigned voluntarily, and thus could not have been illegally dismissed.

On April 30, 2008, the Labor Arbiter rendered a Decision^[23] finding complainant to have been constructively dismissed and awarding separation pay, moral and exemplary damages, and attorney's fees to respondent. The Labor Arbiter held:

xxx Complainant was indeed constructively dismissed from her employment and she quitted [sic] because her continued employment thereat is rendered impossible, unreasonable or unlikely.

Complainant's resignation was sparked by her transfer of assignment and eventual placing her [sic] by the respondent company of [sic] a "on floating" status.

xxx [T]here was no x x x evidence xxx that complainant's transfer was due to the request of a client. Further, if complainant was indeed remised of [sic] her duties due to her punctuality and attendance problem of committing twelve (12) absences alone incurred in July 2007 [sic], why was there no disciplinary action taken against her like reprimand or warning[?]

xxxx

And its effect, complainant is entitled to her claim of separation pay, moral and exemplary damages of P50,000.00 pesos [sic] including an award of attorney's fees.

WHEREFORE, premises considered, judgment is rendered ordering the respondents to pay complainant of [sic] one month pay per year of service as separation pay in the total amount of P32,700.00, P50,000.00 moral and exemplary damages plus 10% of the award as attorney's fees, hereunder computed:

I	Separation Pay		
	2/21/06-8/4/07		= 2yrs.
	P16,350.00 x 2yrs.=	P32,700.00	
II	Damages		<u>P50,000.00</u>
			P82,700.00
	10% Attorney's Fees	<u>P8,270.00</u>	P90,970.00

SO ORDERED.^[24]

Petitioner appealed before the NLRC arguing that the Labor Arbiter erred in ruling that respondent was constructively dismissed. It also argued that Odom was not personally liable as he was merely acting in good faith and within his authority as corporate officer.

Respondent likewise interposed an appeal^[25] arguing that the award of backwages should be computed from the date of her dismissal until finality of the Labor Arbiter's Decision; and that the proportionate share of her 13th month pay should be paid to her as well.

On February 16, 2009, the NLRC issued a Resolution,^[26] declaring as follows:

We reverse.

Upon an examination of the pleadings on file, We find that in the past the complainant had been transferred from one program to another without any objection on her part. Insofar as the instant case is concerned, it appears that the complainant, aside from having been given a warning for wrong disposition of a call, had been absent or usually late in reporting for work, constraining the respondent ICT to transfer her to another program/account. Required of the complainant was for her to undergo Product Training for the program from July 30 to August 6, 2007, and the records indicate that she attended only two (2) days of training on July 30 and 31, 2007, did not report on August 1, 2007 and again reported for training on August 2, 2007. It was then that ICT's Operations Subject Matter Expert, Ms. Suzette Lualhati, informed the complainant that she cannot be certified for the program because she failed to complete the number of training days, and there was a need for her to report to Human Resources for further instructions. As the complainant did not report to Human Resources, and due to her derogatory record, the respondent company could not find another program where the complainant could be transferred.

From what has been narrated above, We come to the conclusion that the respondent company cannot be faulted for placing the complainant on "floating state." And there does not appear to be any ill will or bad faith that can be attributed to the respondent.

Finally, it is well to emphasize that the complainant tendered her resignation on October 1, 2007. There is no evidence that the complainant has presented that would indicate that duress or force has been exerted on her.

All told, We are of the opinion that the findings of the Labor Arbiter are in stark contrast to the evidence on record.

WHEREFORE, in view of the foregoing, the decision appealed from is hereby reversed and set aside. Accordingly [sic], a new one is entered dismissing the complaint for lack of merit.