

FIRST DIVISION

[G.R. No. 160827, June 18, 2014]

NETLINK COMPUTER INCORPORATED, PETITIONER, VS. ERIC DELMO, RESPONDENT.

DECISION

BERSAMIN, J.:

In the absence of a written agreement between the employer and the employee that sales commissions shall be paid in a foreign currency, the latter has the right to be paid in such foreign currency once the same has become an established practice of the former. The rate of exchange at the time of payment, not the rate of exchange at the time of the sales, controls.

Antecedents

On November 3, 1991, Netlink Computer, Inc. Products and Services (Netlink) hired Eric S. Delmo (Delmo) as account manager tasked to canvass and source clients and convince them to purchase the products and services of Netlink. Delmo worked in the field most of the time. He and his fellow account managers were not required to accomplish time cards to record their personal presence in the office of Netlink.^[1] He was able to generate sales worth P35,000,000.00, more or less, from which he earned commissions amounting to P993,558.89 and US\$7,588.30. He then requested payment of his commissions, but Netlink refused and only gave him partial cash advances chargeable to his commissions. Later on, Netlink began to nitpick and fault find, like stressing his supposed absences and tardiness. In order to force him to resign, Netlink issued several memoranda detailing his supposed infractions of the company's attendance policy. Despite the memoranda, Delmo continued to generate huge sales for Netlink.^[2]

On November 28, 1996, Delmo was shocked when he was refused entry into the company premises by the security guard pursuant to a memorandum to that effect. His personal belongings were still inside the company premises and he sought their return to him. This incident prompted Delmo to file a complaint for illegal dismissal.^[3]

In its answer to Delmo's complaint, Netlink countered that there were guidelines regarding company working time and its utilization and how the employees' time would be recorded. Allegedly, all personnel were required to use the bundy clock to punch in and out in the morning, and in and out in the afternoon. Excepted from the rules were the company officers, and the authorized personnel in the field project assignments. Netlink claimed that it would be losing on the business transactions closed by Delmo due to the high costs of equipment, and in fact his biggest client had not yet paid. Netlink pointed out that Delmo had become very lax in his obligations, with the other account managers eventually having outperformed him.

Netlink asserted that warning, reprimand, and suspension memoranda were given to employees who violated company rules and regulations, but such actions were considered as a necessary management tool to instill discipline.^[4]

Ruling of the Labor Arbiter

On September 23, 1998, the Labor Arbiter ruled against Netlink and in favor of Delmo, to wit:

WHEREFORE, judgment is hereby rendered declaring complainant as illegally and unjustly dismissed and respondents are ordered to reinstate complainant to his former position without loss of seniority rights with full backwages and other benefits and respondents are hereby ordered to pay complainant as follows:

P161,000.00 – Backwages, basic pay and allowances from Nov. 1996 to Sept. 1998

15,000.00 – 13th month pay for 1996 to 1998

993,558.89 – unpaid commissions

P1,169,558.89 – Total

plus US\$7,588.30 – unpaid commissions

plus 10% attorney's fees

The reinstatement aspect is immediately executory even pending appeal. In case reinstatement is no longer feasible, complainant shall be paid separation pay of one-month pay for every year of service. All other claims are hereby dismissed.

SO ORDERED.^[5]

Decision of the NLRC

On appeal, the National Labor Relations Commission (NLRC) modified the decision of the Labor Arbiter by setting aside the backwages and reinstatement decreed by the Labor Arbiter due to the existence of valid and just causes for the termination of Delmo's employment, to wit:

WHEREFORE, premises considered, the decision of the Labor Arbiter a quo is hereby **SET ASIDE** and a new one **ENTERED**, ordering the respondents-appellants to pay the following:

1. TWO THOUSAND PESOS (P2,000.00) as indemnity for failure to observe procedural due process;
2. Unpaid commission in the amount of P993,558.89;
3. US\$7,588.30 as unpaid commission;

4. P15,000.00 representing the 13th month pay for 1996, 1997, and 1998;

5. 10% attorney's fees of the total amount awarded.

SO ORDERED.^[6]

The NLRC denied the motion for reconsideration, after which Netlink filed a petition for *certiorari* in the CA.

Judgment of the CA

On May 9, 2003, the CA promulgated its assailed decision upholding the NLRC's ruling subject to modifications,^[7] viz:

In the present case, since the payment of the commission is made to depend on the future and uncertain event – which is the payment of the accounts by the persons who have transacted business with the petitioner, without payment by the former to the latter, the obligation to pay the commission has not yet arisen.

The evidence on record shows that the ALCATEL, private respondent's biggest client has not paid fully the amount it owes to the petitioner as of March 10, 1998. (*Rollo*, pp. 101, 397, 398) The obligation therefore, on the part of the petitioner to pay the private respondent for his commission for the said unpaid account has not yet arisen. Thus it is a grave abuse of discretion on the part of the public respondent to make petitioner liable to the private respondent for the payment of the said commission, when it is clear on the record, as We have discussed above, that the obligation therefor has not yet arisen.

Perusal of the records, likewise, show that petitioner failed to refute by evidence that the private respondent is not entitled to the P993, 558.89 commission. Petitioner however claimed that since the amounts out of which the commission will be taken has not yet been paid fully, petitioner must, likewise, not be made liable for the said commission. However, public respondent committed grave abuse of discretion when it disregarded the evidence on record which is not disputed by the private respondent that out of the total commissions of the private respondent, petitioner has paid the petitioner in the amount of P216,799.45 in the form of advance payment. (*Rollo*, p. 12)

In view of the foregoing discussions, therefore, the advance payment made by the petitioner in favor of the private respondent in the amount of P216, 799.45 must be deducted to the P993, 558.89 unpaid commission of the private respondent. The difference amounting to P776, 779.44 must likewise be deducted to the amount of P4, 066.19 which represents the amount which the petitioner had admitted as the net commission payable to private respondent. The difference thereof amounting to P772, 713.25 shall represent the unpaid commission which shall be payable to the private respondent by the petitioner upon payment of the accounts out of which such commission shall be taken.

We, likewise, agree with the petitioner that the private respondent is not entitled to 13th month pay in the years 1997 and 1998. The order of the public respondent making the petitioner liable to the private respondent for the 13th month pay of the latter in the years 1997 and 1998 is contrary to its findings that there are valid and just cause for the termination of the private respondent from employment, although private respondent was not given his right to due process. (*Rollo*, pp. 32-33) The rule applicable in the present case is the decision of the Supreme Court in the case of *Sebuguero vs National Labor Relations Commission* [248 SCRA 532, 547 (1995)] where it was ruled that "where the dismissal of an employee is in fact for a just and valid cause and is so proven to be but he is not accorded his right to due process, i.e., he was not furnished the twin requirements of notice and the opportunity to be heard, the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of or for failure to observe due process." Hence, petitioner should not be made to pay the 13th month pay to private respondent whose employment was terminated for cause but without due process in 1996.

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Thus, private respondent is entitled only to a 13th month pay computed pro-rata from January 1996 to November 1996 which as properly computed by the petitioner amounts to P4, 584.00. (*Rollo*, p. 11)

With respect to the other arguments of the petitioner, this Court is not persuaded.

Petitioner failed to refute by evidence that private respondent is not entitled to the commissions payable in US dollars. Neither is there any reason for us to agree with the petitioner that the computation of these commissions must be based on the value of [the] Peso in relation to a Dollar at the time of sale. As properly observed by the Labor Arbiter a quo, viz: "Likewise the devaluation of the peso cannot be used as a shield against the complainant because that should have been the lookout of the respondent company in providing for such a clause that in case of devaluation, the price agreed upon should be at the exchange rate when the contract of sale had been consummated. For the lack of foresight and inefficiency of the respondent company and as regards its contracts or agreements with its clientele, the complainant should not be made to suffer." (Labor Arbiter Ricardo Olarez' Decision, September 23, 1998, pp. 11-12, *Rollo*, pp. 328-329) In this regard therefore, We uphold the well settled rule that "the findings of facts of the NLRC, particularly where the NLRC and the Labor Arbiter are in agreement, are deemed binding and conclusive upon the Court." (*Permex, Inc. vs National Labor Relations Commission*, 323 SCRA 121, 126).

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WHEREFORE, premises considered, the ***assailed Resolutions are***