

## SECOND DIVISION

[ G.R. No. 189082, July 11, 2012 ]

**JOSEPHINE RUIZ, PETITIONER, VS. WENDEL OSAKA REALTY CORP., D.M. WENCESLAO AND ASSOCIATES, INC. AND DELFIN J. WENCESLAO, JR., RESPONDENTS.**

### D E C I S I O N

**SERENO, J.:**

This is a Petition filed under Rule 45 or the 1997 Rules of Civil Procedure, praying for the reversal of the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated 29 October 2005 and its subsequent Resolution<sup>[2]</sup> dated 10 August 2009. The CA reversed the Decision rendered by the National Labor Relations Commission (NLRC) against petitioners Wendel Osaka Realty Corp. (WORC), D.M. Wenceslao and Associates, Inc. (DMWAI), and Delfin Wenceslao (respondents) and reinstated the Decision of the Labor Arbiter, which ruled that petitioner Josephine Ruiz (petitioner) was not illegally dismissed.

Petitioner was hired on 1 February 1982 as secretary to respondent Delfin J. Wenceslao, Jr. (Delfin), the president of DMWAI.<sup>[3]</sup> After a few years, she expressed her intention to resign, because she could not get along with her co-workers. Instead of allowing her to leave, Delfin decided to transfer her.<sup>[4]</sup> Thus, on 1 November 1989, she was appointed as executive assistant to the president of respondent WORC, who happens to be respondent Delfin also.<sup>[5]</sup> She was its only employee.<sup>[6]</sup>

At that time, and even up to the present, the only undertaking of WORC has been its reclamation project in Cavite City known as the Ciudad Nuevo Project.<sup>[7]</sup>

Delfin supposedly promoted petitioner to Office Manager of DMWAI effective 1 August 2001.<sup>[8]</sup> On 21 October 2002, she was assigned to be a member of a task force formed for the implementation of the marketing campaign for the Ciudad Nuevo Project.<sup>[9]</sup>

Sometime in 2002, the BIR informed Delfin of the tax deficiency allegations against his companies. Its investigators supposedly had information that could only be verified in its business files.<sup>[10]</sup> He was further informed by the BIR that the bases for its allegations against his companies were the latter's very own records. This information prompted him to check the company files and records. On November 2002, he discovered that "various very important files"<sup>[11]</sup> of DMWAI were missing.

It must be noted that the foregoing allegations were first raised in the Comment of respondents. In the Position Paper<sup>[12]</sup> they filed with the Labor Arbiter, they claimed

that the chairperson of the board of directors of WORC had ordered a check of the company's files, because a number of them appeared to be missing.<sup>[13]</sup>

Respondents claim that they received a call from a woman, who later turned out to be the wife of a former employee—one who was close friends with petitioner. The caller supposedly wanted to report that there were records of DMWAI in her bedroom, and that it was her husband who had brought them there. He allegedly told her that these files were handed to him by another woman.<sup>[14]</sup>

The aforementioned female informant turned out to be Mrs. Miguela S. Sunico. Her husband was a former DMWAI employee, who is currently a BIR officer. She testified that the missing files were with her husband, who allegedly told her that these documents had been handed to him by petitioner.

In order to determine who was responsible for the unauthorized taking of the files, Delfin required all the employees who had access to the files to fill up a questionnaire he had drawn up. Out of the 15 employees who were asked to submit their answers, 14 complied.<sup>[15]</sup> Petitioner was the only one who failed to answer the questionnaire.

According to petitioner, she filled up the questionnaire, but wanted to talk to Delfin first before submitting it. She asked him if there was truth to the rumor that she was being suspected of stealing company records. He admitted that he had indeed received this kind of information. Petitioner thus requested that she be allowed to confront her accuser.

However, Delfin informed her that all she needed to do was submit the questionnaire. She decided not to submit it.

Delfin claims, on the other hand, that he was the one who called petitioner to ask why she did not answer the questionnaire. She allegedly said that accomplishing it would have been an acknowledgment of wrongdoing, and that it was not lawful for her to be compelled to fill it up.<sup>[16]</sup>

Thus, on 3 December 2002, Delfin sent a letter<sup>[17]</sup> to petitioner informing her that she would be placed under a 30-day preventive suspension. He explained therein that he saw no reason why she refused to fill up the questionnaire, and that her refusal was equivalent to an admission that she took the corporate files, to wit:

x x x. Only you have not filled your copy up and you told me in person that you do not wish to answer the questionnaire.

For me, there is no reason why you do not wish to accomplish the form. Your not doing so only serves to make you acknowledge that you have gotten corporate files for purposes inimical to the interest of the company. This is serious misconduct for which you should be dismissed for cause. You will accordingly face an investigation for the charge and the panel to inquire into the matter shall be convened shortly.

Petitioner refused to accept the letter when a copy was served upon her.

On 9 December 2002, petitioner, through one of the employees of DMWAI, submitted the questionnaire the former had filled up. Thereafter, specifically on 10 December 2002, petitioner filed an illegal suspension case with the Labor Arbiter against respondent corporations.

Meanwhile respondent corporations formed a panel of investigators to look into the matter.

When the 30-day preventive suspension of petitioner ended, there was still an ongoing investigation on the matter. Thus, in a 2 January 2003 letter,<sup>[18]</sup> she was informed by Andrew M. Taningco, a member of the panel of investigators, that the company had decided to put her on "vacation leave with pay for a period of fifteen (15) days." The letter also mentioned that its contents had been conveyed to petitioner on 26 December 2002, and that she did "not voice any objections."

Petitioner was furnished a copy of the Sworn Statement<sup>[19]</sup> of Mrs. Sunico and was given three days from her receipt of the statement to submit her written explanation.<sup>[20]</sup>

Petitioner denied the accusations of Mrs. Sunico through a letter dated 13 January 2003 and addressed to Andrew M. Taningco.<sup>[21]</sup> Petitioner insisted that Mr. Sunico had explicitly denied that the documents came from the former.<sup>[22]</sup> Respondents alleged, however, that "Mr. Francisco Sunico never denied that the files were found in his house. Much less did he deny that Ms. Ruiz gave them to him,"<sup>[23]</sup> to wit:

x x x. Petitioner said she wanted to confront her accuse [sic]. x x x the panel decided to accommodate her.

x x x      x x x      x x x

x x x. However, as Mrs. Sunico repeated her written statement that she saw the files in their bedroom and Mr. Sunico told her it was petitioner who gave the files to him, petitioner never, never confronted Mr. Francisco Sunico to ask him if he really gave such information to his wife. Much less did she take him to task for making such a statement to Mrs. Sunico.

And all throughout the session, Mr. Sunico never denied that he made a statement to Mrs. Sunico that it was petitioner who gave the files to him. Neither did he deny that petitioner turned them over to him.  
(Underscoring in the original)<sup>[24]</sup>

Thereafter, respondents reported the matter to the National Bureau of Investigation (NBI).<sup>[25]</sup>

Delfin then informed petitioner that her 15-day vacation leave had ended on 18 January 2003. She was further informed that she should report for work on 20 January 2003, and so she did. On that same day, though, she was given a letter<sup>[26]</sup> dated 18 January 2003 informing her that she had been assigned to WORC's Ciudad Nuevo Project in Cavite City. She was further informed that the investigation was still ongoing and was expected to be completed within 30-45 working days.

Petitioner, in a letter<sup>[27]</sup> dated 20 January 2003, wrote to Delfin reiterating her claim that she had no knowledge of how the missing files had ended up in Mr. Sunico's possession. She also requested that Delfin's decision to transfer her to Cavite City be reconsidered, considering that she lived in Bulacan.

Petitioner continued to work in Cavite until 15 April 2003. She claims that she had to quit her job because of "poor health and the humiliation she was subjected to" in her workplace. She further alleged that the transportation allowance given by respondents was simply not sufficient.

Thereafter, petitioner amended her Complaint for illegal suspension to include constructive illegal dismissal; nonpayment of proportionate 13<sup>th</sup> month pay, confidential allowance, and separation pay; moral and exemplary damages; and attorney's fees.

In a Decision<sup>[28]</sup> promulgated on 31 March 2004, the Labor Arbiter found that petitioner had not been illegally dismissed, but that she was entitled to her claim for prorata 13<sup>th</sup> month pay, to wit:

Under the circumstances, complainant was not illegally dismissed.

She was the prime suspect in a case involving the leaking of company files to the BIR, which is still pending investigation before the NBI. If found culpable, complainant may be administratively, civilly, and even criminally liable.

Complainant was preventively suspended and was reassigned to a ongoing project outside the office to protect company interests.

It was complainant who opted not to work, claiming constructive dismissal, harassments, demotion and non-payment of benefits.

Only her money claims for pro-rata 13<sup>th</sup> month pay, has factual legal basis.

WHEREFORE, premises considered, instant complaint is hereby dismissed for lack of merit.

Respondent corporations, unless they have proof of payment, are directed to pay complainant's pro-rata 13<sup>th</sup> month pay for year 2003.

SO ORDERED.<sup>[29]</sup>

Petitioner filed her Appeal<sup>[30]</sup> with the NLRC on 3 May 2004. Through its 11 July 2007 Decision,<sup>[31]</sup> it reversed the Labor Arbiter's Decision. The dispositive portion of the NLRC Decision reads:

**WHEREFORE**, the Decision, dated 31 March 2004, of Labor Arbiter Edgardo M. Madriaga is hereby SET ASIDE, and a new judgment is rendered directing respondents WENDEL OSAKA REALTY CORP., D.M. WENCESLAO AND ASSOCIATES, INC. and DELFIN J. WENCESLAO, JR., to jointly and severally pay complainant separation pay equivalent to one (1) month salary for every year of service, and full backwages, inclusive of allowances, computed from the time her compensation was withheld from her up to the finality of this Decision.

**SO ORDERED.**<sup>[32]</sup>

Respondents filed their Motion for Reconsideration (MR),<sup>[33]</sup> but it was likewise denied through the NLRC's 28 September 2007 Resolution.<sup>[34]</sup>

Respondents appealed to the CA, which granted their Petition<sup>[35]</sup> and reinstated the Labor Arbiter's Decision. According to the CA, the suspension of petitioner pending investigation and her transfer to respondents' Cavite office was justified by the gravity of her offense.<sup>[36]</sup> It held that "letting her [petitioner] stay in Quezon City did not make petitioners [respondents] secure about their files and records."<sup>[37]</sup>

Petitioner filed an MR,<sup>[38]</sup> but it was denied through a Resolution.

Hence, the present Petition for Review<sup>[39]</sup> under Rule 45.

For consideration in the present Petition is the sole issue of whether or not petitioner was constructively dismissed when she was reassigned to respondents' Cavite branch.

The NLRC ruled that petitioner's assignment to Cavite City was not for legitimate business reasons, but it was "simply because respondent believed that she was guilty, [and] that she was undesirable, unreliable, and a security risk."<sup>[40]</sup> The CA ruled, however, that the transfer of petitioner was justified, considering the gravity of the offense she was being charged with.<sup>[41]</sup>

We agree with the appellate court.

An employer has the inherent right to transfer or assign an employee in pursuance of its legitimate business interest, subject only to the condition that the move be not motivated by bad faith.<sup>[42]</sup>

Insisting that there was no valid ground for her transfer,<sup>[43]</sup> petitioner claims thus: