

SECOND DIVISION

[G.R. No. 186070, April 11, 2011]

**CLIENTLOGIC PHILIPPINES, INC. (NOW KNOWN AS SITEL),
JOSEPH VELASQUEZ, IRENE ROA AND RODNEY SPIRES,
PETITIONERS, VS. BENEDICT CASTRO, RESPONDENT.**

DECISION

NACHURA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the September 1, 2008 Decision^[1] and the January 7, 2009 Resolution^[2] of the Court of Appeals (CA), affirming with modification the November 29, 2007 resolution^[3] of the National Labor Relations Commission (NLRC), which held that respondent Benedict Castro was not illegally dismissed. The CA, however, awarded respondent's money claims, viz.:

WHEREFORE, premises considered, the instant Petition is **PARTLY GRANTED**. The Resolutions dated 29 November 2007 and 23 January 2008 of the National Labor Relations Commission (Third Division) in *NLRC CN. RAB-CAR-02-0091-07 LAC NO. 08-002207-07* are **AFFIRMED** with **MODIFICATION** in that the monetary awards of Executive Labor Arbiter Vito C. Bose in his Decision dated 29 June 2007, as computed in Annex "A" thereof, **ONLY** for holiday premiums of Php 16,913.35; service incentive leave pay of Php 8,456.65; overtime pay of Php 578,753.10; and rest day pay of Php 26,384.80 which [petitioners] shall jointly and solidarily pay to petitioner, are hereby **REINSTATED**. No pronouncement as to costs.

SO ORDERED.^[4]

The second assailed issuance of the CA denied petitioners' motion for reconsideration.

The facts:

Respondent was employed by petitioner ClientLogic Philippines, Inc. (now known as shall hereafter be referred to as SITEL on February 14, 2005 as a call center agent for its Bell South Account. After six (6) months, he was promoted to the "Mentor" position, and thereafter to the "Coach" position. A "Coach" is a team supervisor who is in charge of dealing with customer complaints which could not be resolved by call center agents. In June 2006, he was transferred to the Green Dot Account.

During respondent's stint at the Dot Green Account, respondent noticed that some of the call center agents under his helm would often make excuses to leave their work stations. Their most common excuse was that they would visit the company's medical clinic. To verify that they were not using the clinic as an alibi to cut their

work hours, respondent sent an e-mail to the clinic's personnel requesting for the details of the agents who sought medical consultation. His request was denied on the ground that medical records of employees are highly confidential and can only be disclosed in cases of health issues, and not to be used to build any disciplinary case against them.

On October 11, 2006, respondent received a notice requiring him to explain why he should not be penalized for: (1) violating Green Dot Company's Policy and Procedure for Direct Deposit Bank Info Request when he accessed a customer's online account and then gave the latter's routing and reference numbers for direct deposit; and (2) gravely abusing his discretion when he requested for the medical records of his team members. Respondent did not deny the infractions imputed against him. He, however, justified his actuations by explaining that the customer begged him to access the account because she did not have a computer or an internet access and that he merely requested for a patient tracker, not medical records.

In November 2006, a poster showing SITEL's organizational chart was posted on the company's bulletin board, but respondent's name and picture were conspicuously missing, and the name and photo of another employee appeared in the position which respondent was supposedly occupying.

On January 22, 2007, SITEL posted a notice of vacancy for respondent's position, and on February 12, 2007, he received a Notice of Termination. These events prompted him to file a complaint for illegal dismissal; non-payment of overtime pay, rest day pay, holiday pay, service incentive leave pay; full backwages; damages; and attorney's fees before the Labor Arbiter (LA) against herein petitioners SITEL and its officers, Joseph Velasquez, Irene Roa, and Rodney Spires.^[5]

In their position paper,^[6] petitioners averred that respondent was dismissed on account of valid and justifiable causes. He acted with serious misconduct which breached the trust and confidence reposed in him by the company. He was duly furnished with the twin notices required by the Labor Code and further, he is not entitled to overtime pay, rest day pay, night shift differential, holiday pay, and service incentive leave pay because he was a supervisor, hence, a member of the managerial staff.

In a decision dated June 29, 2007,^[7] the LA ruled in favor of respondent by declaring him illegally dismissed and ordering petitioners to pay his full backwages and, in lieu of reinstatement, his separation pay. The LA further awarded respondents money claims upon finding that he was not occupying a managerial position. The decretal portion of the decision reads:

WHEREFORE, all premises duly considered, [petitioners] are hereby found guilty of illegally dismissing [respondent]. As such, [petitioners] shall be jointly and solidarily liable to pay [respondent] his full backwages from the date of his dismissal to the finality of this decision, computed as of today at **One Hundred Thirty Eight Thousand Seven Hundred Fifty Nine Pesos and 80/100 (P138,759.80)** plus, Seven Hundred Sixty Three Thousand Two Hundred Forty Eight Pesos and 67/100 (P763,248.67) representing his separation pay at one month pay for every year of service, holiday pay and service incentive leave pay for the three years prior to the filing of this case, overtime pay for six(6) hours daily, rest day pay and ten percent (10%) as attorney's fees.

All other claims are hereby dismissed for lack of evidence.

The computation of the foregoing monetary claims is hereto attached and made an integral part hereof as Annex "A."

SO ORDERED.^[8]

Aggrieved, petitioners appealed to the NLRC which, in its November 29, 2007 resolution,^[9] reversed and set aside the decision of the LA by dismissing the complaint for lack of merit on the ground that respondent's employment was terminated for a just cause. The NLRC failed to discuss the money claims.

On September 1, 2008, the CA affirmed the NLRC's finding that there was no illegal dismissal. Anent the money claims, the CA concurred with the LA's ruling.^[10]

Petitioners and respondent respectively moved for partial reconsideration, but their motions were denied in the CA Resolution dated January 7, 2009.^[11] From the said denial, only petitioners resorted to this Court through the petition at bar. Respondent's failure to partially appeal the CA's Decision finding him not illegally dismissed has now rendered the same final and executory; hence, the instant petition shall traverse only the issue on money claims.

Petitioners argue in the main^[12] that, as a team supervisor, respondent was a member of the managerial staff; hence, he is not entitled to overtime pay, rest day pay, holiday pay, and service incentive leave pay.

We deny the petition.

The petition hinges on the question of whether the duties and responsibilities performed by respondent qualify him as a member of petitioners' managerial staff. This is clearly a question of fact, the determination of which entails an evaluation of the evidence on record.

The alleged errors of the CA lengthily enumerated in the petition^[13] are essentially factual in nature and, therefore, outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. The Court does not try facts since such statutory duty is devolved upon the labor. It is not for this Court to weigh and calibrate pieces of evidence otherwise adequately passed upon by the labor tribunals especially when affirmed by the appellate court.^[14]

Petitioners claim exception to the foregoing rule and assert that the factual findings of the LA and the NLRC were conflicting. This is not true. The labor tribunals' decisions were at odds only with respect to the issue of illegal dismissal. Anent, the money claims issue, it cannot be said that their rulings were contradictory because the NLRC, disappointingly, did not make any finding thereon and it erroneously construed that the resolution of the money claims was intertwined with the determination of the legality of respondent's dismissal. Nonetheless, the CA has already rectified such lapse when it made a definitive review of the LA's factual findings on respondent's money claims. Agreeing with the LA, the CA held:

Article 82 of the Labor Code states that the provisions of the Labor Code on working conditions and rest periods shall not apply to managerial

employees. Generally, managerial employees are not entitled to overtime pay for services rendered in excess of eight hours a day.

Article 212(m) of the Labor Code defines a managerial employee as "one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions."

In his Position Paper, [respondent] states that he worked from 8:00 p.m. to 10:00 a.m. or 4 p.m. to 12:00 p.m. of the following day; he was also required to work during his restdays and during holidays but he was not paid; he was also not paid overtime pay, night shift differentials, and service incentive leave. He was employed as call center agent on 14 February 2005, then promoted as "Mentor" in August 2005, and again promoted to "Coach" position in September 2005, which was the position he had when he was terminated. A "coach" is a team supervisor who is in charge of dealing with customer complaints which could not be dealt with by call center agents, and if a call center agent could not meet the needs of a customer, he passes the customer's call to the "coach." Clearly, [respondent] is not a managerial employee as defined by law. Thus, he is entitled to [his] money claims.

As correctly found by Executive Labor Arbiter Bose: "Employees are considered occupying managerial positions if they meet all of the following conditions, namely:

"1) Their primary duty consists of management of the establishment in which they are employed or of a department or subdivision thereof;

"2) They customarily and regularly direct the work of two or more employees therein;

"3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

"They are considered as officers or members of a managerial staff if they perform the following duties and responsibilities:

"1) The primary duty consists of the performance of work directly related to management policies of their employer;

"2) Customarily and regularly exercise discretion and independent judgment;

"3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special