

THIRD DIVISION

[G.R. No. 187887, September 07, 2011]

PAMELA FLORENTINA P. JUMUAD, PETITIONER, VS. HI-FLYER FOOD, INC. AND/OR JESUS R. MONTEMAYOR, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for review on certiorari assailing the April 20, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 03346, which reversed the August 10, 2006 Decision^[2] and the November 29, 2007 Resolution^[3] of the National Labor Relations Commission, 4th Division (NLRC), in NLRC Case No. V-000813-06. The NLRC Decision and Resolution affirmed *in toto* the Decision^[4] of the Labor Arbiter Julie C. Ronduque (LA) in RAB Case No. VII-10-2269-05 favoring the petitioner.

The Facts:

On May 22, 1995, petitioner Pamela Florentina P. Jumoad (*Jumoad*) began her employment with respondent Hi-Flyer Food, Inc. (*Hi-Flyer*), as management trainee. Hi-Flyer is a corporation licensed to operate Kentucky Fried Chicken (*KFC*) restaurants in the Philippines. Based on her performance through the years, Jumoad received several promotions until she became the area manager for the entire Visayas-Mindanao 1 region, comprising the provinces of Cebu, Bacolod, Iloilo and Bohol.^[5]

Aside from being responsible in monitoring her subordinates, Jumoad was tasked to: 1) be highly visible in the restaurants under her jurisdiction; 2) monitor and support day-to-day operations; and 3) ensure that all the facilities and equipment at the restaurant were properly maintained and serviced.^[6] Among the branches under her supervision were the KFC branches in Gaisano Mall, Cebu City (*KFC-Gaisano*); in Cocomall, Cebu City (*KFC-Cocomall*); and in Island City Mall, Bohol (*KFC-Bohol*).

As area manager, Jumoad was allowed to avail of Hi-Flyer's car loan program,^[7] wherein forty (40%) percent of the total loanable amount would be subsidized by Hi-Flyer and the remaining sixty (60%) percent would be deducted from her salary. It was also agreed that in the event that she would resign or would be terminated prior to the payment in full of the said car loan, she could opt to surrender the car to Hi-Flyer or to pay the full balance of the loan.^[8]

In just her first year as Area Manager, Jumoad gained distinction and was awarded the 3rd top area manager nationwide. She was rewarded with a trip to Singapore for her excellent performance.^[9]

On October 4, 2004, Hi Flyer conducted a food safety, service and sanitation audit at KFC-Gaisano. The audit, denominated as CHAMPS Excellence Review (CER), revealed several sanitation violations, such as the presence of rodents and the use of a defective chiller for the storage of food.^[10] When asked to explain, Jumud first pointed out that she had already taken steps to prevent the further infestation of the branch. As to why the branch became infested with rodents, Jumud faulted management's decision to terminate the services of the branch's pest control program and to rely solely on the pest control program of the mall. As for the defective chiller, she explained that it was under repair at the time of the CER.^[11] Soon thereafter, Hi-Flyer ordered the KFC-Gaisano branch closed.

Then, sometime in June of 2005, Hi-Flyer audited the accounts of KFC-Bohol amid reports that certain employees were covering up cash shortages. As a result, the following irregularities were discovered: 1) cash shortage amounting to ₱62,290.85; 2) delay in the deposits of cash sales by an average of three days; 3) the presence of two sealed cash-for-deposit envelopes containing paper cut-outs instead of cash; 4) falsified entries in the deposit logbook; 5) lapses in inventory control; and 6) material product spoilage.^[12] In her report regarding the incident, Jumud disclaimed any fault in the incident by pointing out that she was the one responsible for the discovery of this irregularity.^[13]

On August 7, 2005, Hi-Flyer conducted another CER, this time at its KFC-Cocomall branch. Grout and leaks at the branch's kitchen wall, dried up spills from the marinador, as well as a live rat under postmix, and signs of rodent gnawing/infestation were found.^[14] This time, Jumud explained to management that she had been busy conducting management team meetings at the other KFC branches and that, at the date the CER was conducted, she had no scheduled visit at the KFC-Cocomall branch.^[15]

Seeking to hold Jumud accountable for the irregularities uncovered in the branches under her supervision, Hi-Flyer sent Jumud an Irregularities Report^[16] and Notice of Charges^[17] which she received on September 5, 2005. On September 7, 2005 Jumud submitted her written explanation.^[18] On September 28, 2005, Hi-Flyer held an administrative hearing where Jumud appeared with counsel. Apparently not satisfied with her explanations, Hi-Flyer served her a Notice of Dismissal^[19] dated October 14, 2005, effecting her termination on October 17, 2005.

This prompted Jumud to file a complaint against Hi-Flyer and/or Jesus R. Montemayor (*Montemayor*) for illegal dismissal before the NLRC on October 17, 2005, praying for reinstatement and payment of separation pay, 13th month pay, service incentive leave, moral and exemplary damages, and attorney's fees. Jumud also sought the reimbursement of the amount equivalent to her forty percent (40%) contribution to Hi-Flyer's subsidized car loan program.

While the LA found that Jumud was not completely blameless for the anomalies discovered, she was of the view that the employer's prerogative to dismiss or layoff an employee "must be exercised without abuse of discretion" and "should be tempered with compassion and understanding."^[20] Thus, the dismissal was too harsh considering the circumstances. After finding that no serious cause for

termination existed, the LA ruled that Jumoad was illegally dismissed. The LA disposed:

WHEREFORE, VIEWED FROM THE FOREGOING PREMISES, judgment is hereby rendered declaring complainant's dismissal as ILLEGAL. Consequently, reinstatement not being feasible, respondents HI-FLYER FOOD, INC. AND OR JESUS R. MONTEMAYOR are hereby ordered to pay, jointly and severally, complainant PAMELA FLORENTINA P. JUMUAD, the total amount of THREE HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED PESOS (P336,400.00), Philippine currency, representing Separation Pay, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.

Further, same respondents are ordered to reimburse complainant an amount equivalent to 40% of the value of her car loaned pursuant to the car loan entitlement memorandum.

Other claims are DISMISSED for lack of merit.^[21]

Both Jumoad and Hi-Flyer appealed to the NLRC. Jumoad faulted the LA for not awarding backwages and damages despite its finding that she was illegally dismissed. Hi-Flyer and Montemayor, on the other hand, assailed the finding that Jumoad was illegally dismissed and that they were solidarily liable therefor. They also questioned the orders of the LA that they pay separation pay and reimburse the forty percent (40%) of the loan Jumoad paid pursuant to Hi-Flyer's car entitlement program.

Echoing the finding of the LA that the dismissal of Jumoad was too harsh, the NLRC affirmed *in toto* the LA decision dated August 10, 2006. In addition, the NLRC noted that even before the Irregularities Report and Notice of Charges were given to Jumoad on September 5, 2005, two (2) electronic mails (*e-mails*) between Montemayor and officers of Hi-Flyer showed that Hi-Flyer was already determined to terminate Jumoad. The first e-mail^[22] read:

From: Jess R. Montemayor
Sent: Tuesday, August 16, 2005 5:59 PM
To: bebe chaves; Maria Judith N. Marcelo; Jennifer Coloma Ravela; Bernard Joseph A. Velasco
Cc: Odjie Belarmino; Jesse D. Cruz
Subject: RE: 049 KFC Cocomall - Food Safety Risk/Product Quality Violation

I agree if the sanctions are light we should change them. In the case of Pamela however, the fact that Cebu Colon store had these violations is not the first time this incident has happened in her area. The Bohol case was also in her area and maybe these two incidents is enough grounds already for her to be terminated or maybe asked to resign instead of being terminated.

I know if any Ops person serves expired product this is ground for termination. I think serving off specs products such as this lumpy gravy in the case of Coco Mall should be grounds for termination. How many customers have we lost due to this lumpy clearly out of specs gravy? 20 customers maybe.

Jess.

The second e-mail,^[23] sent by one Bebe Chaves of Hi-Flyer to Montemayor and other officers of Hi-Flyer, reads:

From: bebe chaves

Sent: Sat 9/3/2005 3:45 AM

To: Maria Judith N. Marcelo

CC: Jennifer Coloma Ravela; Goodwin Belarmino; Jess R. Montemayor

Subject: RE: 049 KFC Cocomall - Food Safety Risk/Product Quality Violation

Jojo,

Just an update of our meeting yesterday with Jennifer. After having reviewed the case and all existing documents, we have decided that there is enough ground to terminate her services. IR/Jennifer are working hand in hand to service due notice and close the case.

According to the NLRC, these e-mails were proof that Jumoad was denied due process considering that no matter how she would refute the charges hurled against her, the decision of Hi-Flyer to terminate her would not change.^[24]

Sustaining the order of the LA to reimburse Jumoad the amount equivalent to 40% of the value of the car loan, the NLRC explained that Jumoad enjoyed this benefit during her period of employment as Area Manager and could have still enjoyed the same if not for her illegal dismissal.^[25]

Finally, the NLRC held that the active participation of Montemayor in the illegal dismissal of Jumoad justified his solidary liability with Hi-Flyer.

Both Jumoad and Hi-Flyer sought reconsideration of the NLRC Decision but their respective motions were denied on November 29, 2007.^[26]

Alleging grave abuse of discretion on the part of the NLRC, Hi-Flyer appealed the case before the CA in Cebu City.

On April 20, 2009, the CA rendered the subject decision reversing the decision of the labor tribunal. The appellate court disposed:

WHEREFORE, in view of the foregoing, the Petition is GRANTED. The Decision of the National Labor Relations Commission (4th Division) dated 28 September 2007 in NLRC Case No. V-000813-06 (RAB Case No. VII-10-2269-05, as well as the Decision dated 10 August 2006 of the Honorable Labor Arbiter Julie C. Ronduque, and the 29 November 2006 Resolution of the NLRC denying petitioner's Motion for Reconsideration dated 08 November 2007, are hereby REVERSED and SET ASIDE.

No pronouncement as to costs.

SO ORDERED.^[27]

Contrary to the findings of the LA and the NLRC, the CA was of the opinion that the requirements of substantive and procedural due process were complied with affording Jumoad an opportunity to be heard first, when she submitted her written explanation and then, when she was informed of the decision and the basis of her termination.^[28] As for the e-mail exchanges between Montemayor and the officers of Hi-Flyer, the CA opined that they did not equate to a predetermination of Jumoad's termination. It was of the view that the e-mail exchanges were mere discussions between Montemayor and other officers of Hi-Flyer on whether grounds for disciplinary action or termination existed. To the mind of the CA, the e-mails just showed that Hi-Flyer extensively deliberated the nature and cause of the charges against Jumoad.^[29]

On the issue of loss of trust and confidence, the CA considered the deplorable sanitary conditions and the cash shortages uncovered at three of the seven KFC branches supervised by Jumoad as enough bases for Hi-Flyer to lose its trust and confidence in her.^[30]

With regard to the reimbursement of the 40% of the car loan as awarded by the labor tribunal, the CA opined that the terms of the car loan program did not provide for reimbursement in case an employee was terminated for just cause and they, in fact, required that the employee should stay with the company for at least three (3) years from the date of the loan to obtain the full 40% subsidy. The CA further stated that the rights and obligations of the parties should be litigated in a separate civil action before the regular courts.^[31]

The CA also exculpated Montemayor from any liability since it considered Jumoad's dismissal with a just cause and it found no evidence that he acted with malice and bad faith.^[32]

Hence, this petition on the following

GROUND:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLD[ING] AS VALID THE TERMINATION OF PETITIONER'S SERVICES BY RESPONDENTS.