

FIRST DIVISION

[G.R. No. 153517, June 27, 2008]

**AMBEE FOOD SERVICES, INC. AND LAURO M. AMANTE,
PETITIONERS, VS. COURT OF APPEALS AND MYRTHLE B.
MARZAN, RESPONDENTS,**

D E C I S I O N

AZCUNA, J.:

Assailed in this petition for review under Rule 45 of the Rules of Court are the November 29, 2001 Decision^[1] and May 7, 2002 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 63377 reversing the September 29, 2000 Decision^[3] of the National Labor Relations Commission (NLRC) which affirmed the May 15, 2000 Decision^[4] of the Labor Arbiter. The CA found that private respondent was illegally dismissed.

On December 6, 1999, private respondent Myrthle B. Marzan (Marzan) filed before the NLRC a complaint for illegal suspension and illegal dismissal with prayer for damages against petitioners Ambee Food Services, Inc. (Ambee) and its officers, Lauro M. Amante, Mackey Dimaculangan and Lea P. Evasco.^[5] The surrounding factual circumstances of Marzan's employment with Ambee as well as her dismissal therefrom were narrated in the affidavit attached to her Position Paper^[6], thus:

1. I was employed in Ambee Foods Services, Inc. (hereafter referred to as Ambee)[,] a franchise of JOLLIBEE operating in San Pedro, Laguna, from June 5, 1995 until I was unceremoniously dismissed therefrom last October 28, 1999[.]
2. Initially, I worked at Ambee as management trainee for six months, and thereafter, as shift/counter manager until I was dismissed. My latest salary was P13,500.00 per month. Moreover, in addition to the 13th month pay, I was also receiving mid-year bonus of P8,000.00, and a year-end bonus of P10,000.00, on the average.
3. As a counter manager, the counter crew members were under my supervision. On the other hand, those who were responsible or in control of the releasing of the food products such as rice and chicken joy were under the supervision of the Kitchen Manager and Products Comptroller.
4. On October 12, 1999, at about 8:00 p.m. to 8:30 p.m.[,] counter crew members obtained orders from customers for rice and chicken joy on a waiting condition, that is, that they had to wait for about ten minutes. It was because the counter crew members asked

those in the kitchen and production [sections] the availability of rice and chicken joy, and they were assured that these food products would become available about ten minutes more. Unfortunately, ten minutes passed but the kitchen and production sections were able to prepare only the chicken joy, not the rice.

5. Consequently, the crew members, upon instruction, offered the customers bread/roll in lieu of rice. Many of them agreed, and some complained. Of those who complained, one opted for the refund.
6. Meanwhile, one customer uttered some unsavory words before accepting our offer for bread/roll in place of rice. Still another customer inquired from me in a loud voice about his order. His loud voice instantaneously instilled a feeling of fear in me, and in response, I told him in a fearful and somewhat louder voice to just wait if I could have rice served on him. Such customer turned out later to be Rodolfo "Rudy" Garon. A copy of my report about such incident is attached hereto as Annexes "A" and "A-1."
7. The following day, Mackey Dimaculangan, the Area Manager, called me by phone, and told me that there was a customer complaining against me in the name of Melba Olivares, and Ms. Dimaculangan read to me the alleged letter-complaint of the alleged Melba Olivares. I replied that there was really a customer who complained, but not the way the letter-complaint [narrated], and the complainant was a man, not a woman.
8. After a week, the Manager/Director[,] Mr. Larry Amante (hereinafter referred to as Mr. Amante)[,] talked to me, and asked me [a] question about the complaint-letter. I was asked if there was indeed a complaint, and I said yes. While I was asked the said alleged letter-complaint, I was not actually given the chance to explain my side because I was practically made to give an answer "yes" or "no" only.
9. Thereafter, Ms. Dimaculangan and Mr. Amante talked to me again, and Mr. Amante told me that they had gathered information about the incident of October 12, 1999. He told me that because I anyway admitted such incident to have transpired already from my employment.
10. I [protested], and told him that there was no complainant in the name of Melba Olivares, so why should I be terminated. They admitted that there is really Melba Olivares, but they argued that I did [not] [deal] well with the [customer] because I did not allegedly entertain personally the latter.
11. Thereafter, I was informed that I would be suspended indefinitely. The following day, or on October 29, 1999, I still reported for work and therein I received the letter suspending me indefinitely, asking me then to explain my side. Copy of the alleged incident report of alleged Melba Olivares is hereto attached as Annexes "B" and "B-1,"

and copy of the letter of indefinite suspension is hereto attached as Annex "B-2."

12. Accordingly, through my lawyer, I explained my side, copy of such written explanation submitted to Ambee is hereto attached as Annex "C."
13. On October 31, 1999, I learned from one of the crew members that one of them in the name of Jenny was spreading words that I should be terminated because, allegedly, I became discourteous to the customers. I confronted her, and told her that she could not hear what was happening in the counter. But as of the moment, I told her that the case at hand was mine, and should she want, I would include her in my case.
14. On November 10, 1999, I was summoned to the office, and was confronted by Mr. Amante, Ms. Dimaculangan and Lea Evasco, Assistant Manager. They showed and read to me the report of Lea Evasco on the incident of October 12, 1999 regarding the alleged complaint of Rodolfo "Rudy" Garon, copy of such report of Lea Evasco is hereto attached as Annexes "D" and "D-1." After that, I was informed that the penalty on me should have been suspension, but because I allegedly intimidated Jenny on October 31, 1999, my penalty then is termination.
15. Mr. Amante told me thereafter to go out of the room, and told me to go to Mr. Rodolfo Garon and [give] an apology; he told me to go to Shierra Armada, [accountant] of the Corporation, to get from her the address of Mr. Rodolfo Garon. He clarified to me, however, that he was not making any promise that my dismissal would be recalled. He told me that I would anyway be summoned again on the following day.
16. Accordingly, I went to Mr. Rodolfo Garon and after explaining my side, he made a letter addressed to the Managing Director of Ambee refuting the allegations of Lea Evasco, and explaining the latter's visit [to] him, copy of which is hereto attached as Annexes "E" and "E-1."
17. On November 12, 1999, after securing Mr. Amante's consent, I faxed to his residence the letter-complaint of Mr. Garon (Annex "E" hereto). Since then to date, no word came from Mr. Amante [and] neither from any of his top officers. I made follow-ups with Ms. Shierra Armada about the management's final decision after the explanation of Mr. Garon, but Ms. Shierra Armada's consistent reply was that the management had no decision yet on my case.
18. It appears from the facts above narrated, and the [evidence] hereto attached, particularly from the letter of Mr. Rodolfo Garon, that my termination was effected in bad faith. It was evident from such letter of Mr. Garon that the management of Ambee was really bent on securing all [evidence] it could muster in its attempt to find a

justification against me, even to the extent of bribing Mr. Garon to side with it. The accusation against me that there was complaint in the name Melba Olivares, is not true, for such person is fictitious[.] The Brgy. Captain where the alleged Melba Olivares allegedly resides certifies to that effect. Copy of such certification is hereto attached as Annex "F".^[7]

As expected, petitioners presented a contrasting account of facts, averring that:

1. Complainant started working with the respondent food store on June 5, 1995 as Shift Manager;
2. In the course [of] her said employment, she was not in good terms with her co-employees specially her subordinates who have various complaints, comments and unsavory remarks about her attitude in dealing with them, to wit:

ANNEX "1" Complaint, comment, remarks of crew member Mc-Dowell Cartaño saying that Ms. Marzan often shouted at him even for no valid reason in front of customers. He said she is unreasonable.

ANNEX "2" Complaint, comment, remarks of Jennie Vieve Odonon saying that Ms. Marzan was always shouting at them at the counter in front of customers, cursing them even if no valid reasons. She described her as "sobrang higpit".

ANNEX "3" Complaint, comment, remarks of Jasmin B. Patricio saying that Ms. Marzan was rude. One time she was asking [for] a ketchup from Ms. Marzan[,] who[,] in turn[,] [threw] it [to] her - "Pahagis ang bigay niya kaya nagtalsikan at tinamaan po ako sa mukha at balikat" - in front of the customers. She described Ms. Marzan as always hot headed [and] ready to explode any moment even without cause.

ANNEX "4" Complaint, comment, remarks of Marivic Anonuevo saying that Ms. Marzan would always shout and curse them even in front of customers and threatened [them] that for such violation they could be terminated. With that, they were often put to shame when she could have talked to them in private. And because Ms. Marzan was too strict all other employees were afraid of her

ANNEX "5" Complaint, comment, remarks of Aileen

- describing Ms. Marzan as too strict and all of them were afraid of her because [on] every little things done she would curse and shout at them[;]

3. On October 12, 1999 at about 7:30 [P.M.], a customer by the name of Mr. Rudy Garon, together with his wife, went to respondent food store and ordered "Chicken Joy with Rice" and they were told to wait for 15 minutes because the rice was still being cooked. However, said period [elapsed] and still there was no rice The customer got angry and was complaining at the counter. Ms. Marzan refused to talk to him and she was hiding in the kitchen. When the customer came to know that Ms. Marzan was the manager at that time, the customer [called] her outside to talk to him but Ms. Marzan refused to come out and face him. The more the customer got angry. This incident was witnessed by many employees and some of them are as follows:

ANNEX "6" Report of Lea Evasco, the Manager,
- narrating the following:

"... at first the chicken joy was served after 10 minutes without rice, so he (the customer) went to the counter area to ask for it, and he was told that no rice was available so he was offered a roll (bread) and he agreed because he and his wife were already hungry. After 20 minutes of waiting for the roll he again went to the counter and asked for the manager on duty (Ms. Marzan). But the Manager did not want to go out, instead she [answered] the customer from the kitchen area. Their verbal exchange was loud because they were far from each other. As the customer got angry and [ashamed] because all [others] were looking at him, he asked for the refund...."

ANNEX "7" Statement of Maureen Mangubos saying
- that the customer wanted to talk to Ms. Marzan but she refused to talk to him. The customer was angry why he was earlier offered a roll instead of a rice but still no roll came despite [the long wait]. The incident ended when [the money was refunded to the customer] despite the objection of Ms. Marzan.

ANNEX "8" Statement of Michael A. Roque (Mikee) who
- said that the customer got angry at first when, after payment for one piece chicken joy with rice and after being told to wait for