563 Phil. 804

THIRD DIVISION

[G.R. No. 167345, November 23, 2007]

E PACIFIC GLOBAL CONTACT CENTER, INC. AND/OR JOSE VICTOR SISON, PETITIONERS, VS. MA. LOURDES CABANSAY, RESPONDENT.

D E C I S I O N

NACHURA, J.:

Established in our labor law jurisprudence is the principle that while compassion and human consideration should guide the disposition of cases involving termination of employment, since it affects one's means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer.[1]

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 10, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83248, and the March 7, 2005 Resolution[3] denying the motion for reconsideration thereof.

The facts are undisputed. Respondent Ma. Lourdes Cabansay (Cabansay) was hired as Senior Traning Manager of ePacific Global Contact Center, Inc. with a monthly salary of P38,000.00 on April 18, 2001[4] and became a regular employee on August 1, 2001. In March 2002, respondent was tasked to prepare a new training process for the company's Telesales Trainees.[5]

After reviewing the training module prepared by respondent, Mr. Rosendo S. Ballesteros (Ballesteros), the company's Senior Vice President-Business Development Group, found that the same did not contain any changes and that they were not ready to present it.[6] He thus instructed respondent through an electronic mail (e-mail) to postpone the presentation and the implementation of the new training process.[7] Ballesteros further emphasized that the Department needed more time to teach the trainees on how to get leads, focus on developing their telemarketing skills and acquire proper motivation.[8]

In response to Ballesteros's e-mail instructions, Cabansay wrote, also via e-mail, as follows:

> From: Miami Cabansay
> Sent: Friday, April 05, 2002 7:58 AM
> To: Ro Ballesteros; Lorna Garcia – ePacific
> Cc: 'Butch Nievera' Subject:
> RE: dlp.new training process presentation.04042002

Importance: High
Sensitivity: Confidential

Ro, the presentation is going to be discussed in detail. As we discussed yesterday i (*sic*) SPECIFICALLY told you that I WILL DISCUSS the new training process and explain it to them in detail. Didn't you see the last past (*sic*) of the 5-day classroom training, (*sic*) the last day includes PROSPECTING, that's where the CCA trainees will be taught how to get leads both local and abroad.

The criteria for the evaluation? It's already done by Richie, we're going to distribute the hard copies and discuss it in DETAIL in this afternoon's briefing.

This is a very simple presentation and I WILL NOT POSTPONE it today, it's very easy to comprehend and as per YOUR INSTRUCTION we will be implementing it next week, so when should we present this to the TLs?

Let's not make SIMPLE THINGS COMPLICATED.

I will go on with the presentation this afternoon.[9]

Adversely reacting to respondent's attitude, Ballesteros sent Cabansay a memo on April 6, 2002, informing the latter that he found her message to be a clear act of insubordination, causing him to lose his trust and confidence in her as Manager of the Training Department.[10] He then asked respondent to explain in writing why she should not be terminated as a consequence of her acts.[11]

Meanwhile, no presentation of the training module was made on April 5, 2002 because the Senior Manager for Telesales, Ms. Lorna Garcia, on instruction of Ballesteros, informed all the participants that the same was postponed because Management was not yet ready to present the module.[12]

Clarifying that this was merely a case of miscommunication and that she had no intention to disregard the order to postpone the implementation of the new training process, Cabansay submitted two memoranda dated April 8 and 11, 2002.[13]

However, on April 11, 2002, the same day she submitted her second explanation, Cabansay received a memorandum from the HR Department/Office of the President notifying her that she had been terminated from the service effective immediately for having committed an act of insubordination resulting in the management's loss of trust and confidence in her.[14]

Respondent, thus, filed a case for illegal dismissal docketed as NLRC-NCR-04-02441-02 with the Labor Arbitration Branch of the National Labor Relations Commission (NLRC). In her position paper,[15] she sought, among others, payment of full backwages, separation pay, actual, moral and exemplary damages, cash equivalent of vacation and sick leave, 13th month pay, and attorney's fees.[16]

On September 2, 2002, Labor Arbiter (LA) Madjayran H. Ajan rendered his

Decision[17] dismissing the complaint. The Labor Arbiter ruled that reading Cabansay's e-mail message between the lines would clearly show that she willfully disobeyed the order of Ballesteros.[18] The company, thus, was justified in dismissing her on the ground of insubordination resulting in loss of trust and confidence. As to her claim for 13th month pay, as well as for the cash equivalent of her sick and vacation leave, the LA ruled that she impliedly agreed, when she did not object, to the company's submission that the pro-rated equivalent of her 13th month pay was already paid to her and that she did not meet the company's conditions for conversion to cash of her leave credits.[19] The dispositive portion of the LA's Decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered DISMISSING the complaint for lack of merit. Finding the termination of the complainant valid and legal. (*sic*)
>
> All other claims are Dismissed for lack of merit.
>
> SO ORDERED.[20]

On appeal, the NLRC, in its August 29, 2003 Resolution in NLRC NCR CA No. 033624-02,[21] affirmed the decision of the LA. The Commission ruled that Ballesteros's order to postpone the implementation of the training module was reasonable, lawful, made known to Cabansay and pertained to the duties which she had been engaged to discharge.[22] However, her reply—"xxx I WILL NOT POSTPONE it today xxx Let's not make SIMPLE THINGS COMPLICATED"—was a willful defiance of the lawful order of her superior.[23] Since her position as Senior Training Manager carries with it the highest degree of responsibility in upholding the interest of her employer and in setting a standard of discipline among officers and employees, the company had a valid cause to dismiss Cabansay when she deliberately disobeyed the order of Ballesteros resulting in the latter's loss of trust and confidence in her.[24] The NLRC further ruled that the company sufficiently afforded her due process prior to her dismissal.[25] Consequently, she should not be reinstated to her job or be paid separation pay, backwages, moral and exemplary damages and attorney's fees.[26] The NLRC disposed of the case as follows:

> WHEREFORE, premises considered, Complainant's appeal is DISMISSED for lack of merit. The Labor Arbiter's assailed Decision in the above-entitled case is hereby AFFIRMED en toto.
>
> SO ORDERED.[27]

When her motion for reconsideration was denied by the NLRC,[28] Cabansay filed a petition for *certiorari* under Rule 65 before the CA docketed as CA-G.R. SP No. 83248.[29]

On January 10, 2005, the appellate court rendered its Decision[30] granting the petition. The CA ruled that Cabansay's termination could be justified neither by insubordination nor loss of trust and confidence. A perusal of the e-mail instructions sent by Ballesteros to her would show that, although the alleged order to postpone the presentation of the training module was reasonable and lawful, it was not clearly

made known to her. The phrase "*I don't think [we are ready to present this to all TL]*" could not be deemed an order as it merely suggested an opinion.[31] Moreover, the e-mail reply of Cabansay cannot be considered an act of willful defiance or insubordination. The language used was not harsh and no rude remarks or demeaning statements were made. She was only explaining her view on the matter, which could not be considered unlawful considering that she was also a managerial employee clothed with discretionary powers. Clearly, her acts did not constitute the "wrongful and perverse attitude" that otherwise would sanction dismissal. And even if she were guilty of insubordination, such minor infraction should not merit the ultimate and supreme penalty of dismissal.[32] The *fallo* of the CA Decision reads:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench must be, as it hereby is, GRANTED. The challenged resolutions of the NLRC dated August 29, 2003 and January 19, 2004 are hereby NULLIFIED and SET ASIDE. Petitioner is declared to have been illegally dismissed by private respondent company. Private respondent is hereby ordered to pay petitioner full backwages, separation pay and attorney's fees. To this end, this case is REMANDED to the Labor Arbiter for the computation of the separation pay, backwages and other monetary awards to petitioner. Without special pronouncement as to costs.
>
> SO ORDERED.[33]

Petitioner ePacific duly filed a motion for reconsideration[34] but this was denied by the appellate court in the March 7, 2005 Resolution.[35]

The said denial prompted petitioners to come to us raising the following grounds:

> x x x (T)hat there is a prima facie evidence of grave abuse of discretion on the part of the Hon. Court of Appeals in finding that the complainant was illegally dismissed on the bases of the evidence presented.
>
> That the Hon. Court of Appeals erred in applying the pertinent laws in the instant case.
>
> The Hon. Court of Appeals had decided a question of substance in the instant case, not theretofore determined by the Hon. Supreme Court and that the Court of Appeals had decided in a way not in accord with law or with applicable decisions of the Supreme Court.
>
> The Hon. Court of Appeals has so far departed from the accepted usual course of judicial proceedings.[36]

The main issue to be resolved in this case is whether or not respondent Cabansay was illegally dismissed.

We have consistently ruled in a plethora of cases that, in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised, [37] except if the factual findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin.[38] As the findings and

conclusions of the LA and the NLRC, in this case, starkly conflict with those of the CA, we are constrained to delve into the records and examine the questioned findings.

After a careful review of the records and considering the arguments of the parties, the Court finds the petition impressed with merit.

Both the Labor Arbiter and the NLRC were unanimous in their findings that respondent was validly dismissed. In arriving at this conclusion, the LA and the NLRC examined the e-mail correspondence of Ballesteros and the respondent. They found that Ballesteros made a lawful order to postpone the implementation of the new training process, yet respondent incorrigibly refused to heed his instructions and sent an e-mail to him stating that she would go on with its presentation. Such an act of insubordination resulted in the management's loss of trust and confidence in her. This is a finding which the Court does not wish to disturb.

Oft-repeated is the rule that appellate courts accord the factual finding of the labor tribunal not only respect but also finality when supported by substantial evidence, [39] unless there is showing that the labor tribunal arbitrarily disregarded evidence before them or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[40] Substantial evidence has been defined to be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and its absence is shown not by stressing that there is contrary evidence on record, direct or circumstantial, for the appellate court cannot substitute its own judgment or criterion for that of the labor tribunal in determining wherein lies the weight of evidence or what evidence is entitled to belief.[41]

In the instant case, we find that the labor tribunal did not arbitrarily disregard or misapprehend the evidence. Its finding that respondent was validly dismissed is likewise warranted by substantial evidence. Thus, we agree with petitioner's stance that the findings of the LA, as affirmed by the NLRC, should not have been set aside by the appellate court. Deference to the expertise acquired by the labor tribunal and the limited scope granted in the exercise of *certiorari* jurisdiction restrain any probe into the correctness of the LA's and the NLRC's evaluation of evidence.[42]

The petitioners anchor their termination of respondent's services on Article 282, paragraphs (a) and (c), of the Labor Code, as amended, which provides:

ARTICLE 282. TERMINATION BY EMPLOYER

> An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or *willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work*;
>
> x x x x
>
> (c) Fraud or *willful breach by the employee of the trust*