

NINETEENTH DIVISION

[CA-G.R. SP No. 06972, January 30, 2015]

**RANDEL ROBILLO, RENAN GUDES AND RYAN RAY ONATE,
PETITIONERS, VS. SYKES ASIA INC., AND CHUCK SYKES,*
RESPONDENTS.**

D E C I S I O N

LAGURA-YAP, J.:

Assailed in this *Petition for Certiorari*^[1] under Rule 65 of the 1997 Rules of Civil Procedure are the *Decision*^[2] dated February 29, 2012 and *Resolution*^[3] dated April 30, 2012 issued by the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-11-000866-2011.

Briefly, the facts of the case are as follows:

Petitioners Randel Robillo (Robillo), Renan Gudes (Gudes) and Ryan Onate (Onate) were hired as call center agents by Sykes Asia Inc., (private respondent) on October 2004, March 2008 and April 2008, respectively. They worked 8 hours per day, 5 days a week and were assigned at the Palm Account handled by private respondent. On August 3, 2010, petitioners filed a *Complaint*^[4] for Illegal Dismissal, non-payment of 13th Month Pay, Service Incentive Leave, Separation Pay and Backwages before the Labor Arbiter. The case was docketed as RAB Case No. VII-08-1638-10. Several mandatory conferences were conducted but no settlement was reached. Accordingly, the parties were directed to submit their respective position papers.

In their *Position Paper*,^[5] petitioner Robillo alleged that he was hired by private respondent as technical support representative in October of 2004 until his dismissal in February 2010. On February 25, 2010, petitioner was called and put on hold by his Senior Account Manager, Ms. Irene Elumba, and account managers, David de Madrazo and Al Ryan Santiago. He was told that a few agents, including him, will be transferred to another account or department.^[6] At around 4 A.M. of the same day, he was informed that he will be transferred to the Loan Account Department. However, it turned out that out of twenty (20) agents in the list, only seven (7) agents, including petitioner Robillo, had their accounts cancelled. After the scheduled interview, Robillo was told that he would be called after an assessment of his performance and attendance is made.

On February 26, 2010, petitioner Robillo went to the Human Resource Office (HRO) and complained about his case, whereupon he was again told to wait for another call. Unfortunately, no such call was ever made, prompting petitioner Robillo to use up 8 days of his accumulated vacation leaves. A week later, Robillo received a phone call from the HRO telling him that he would no longer be transferred to another

account because of issues regarding his attendance. On May 28, 2010, Robillo, together with co-petitioners Gudes and Onate, went back to work for proper assessment but they were told to go back to their old account. Upon checking the files in the company's system, petitioners discovered that their individual records have been deleted.^[7] Petitioners were forced to use their vacation leaves. Thereafter, they were placed on forced vacation leave without pay. On June 8, 2010, petitioners underwent another assessment and they were again told to wait for a phone call from their account manager, Al Ryan Santiago. Nonetheless, petitioners did not receive any call nor any information regarding their current status.^[8]

As to petitioners Gudes and Onate, they received an email on May 24, 2010 from their senior account manager informing them that they will be having a focused group discussion on account downsizing, wherein some agents would be transferred to another account. On May 26, 2010, they were informed by account managers Madrazo and Santiago of their supposed transfer to another department effective May 31, 2010, after an assessment is conducted on them.^[9]

On May 28, 2010, petitioners Gudes and Onate went to the Southeast Department for their scheduled assessment, but to their dismay, they were told by their account manager to go back to the Palm Department. On the same date, they discovered that their individual records have been deleted. On May 31, 2010, they reported back for work and per instruction, they proceeded to another department for an assessment but it did not push through as their papers were not yet reviewed by the HRO. Thereafter, they were forced to use their vacation leave and were ultimately placed on vacation leave without pay.^[10]

In its *Position Paper*,^[11] private respondents Sykes Asia Inc., and Chuck Sykes presented their own version of the facts. On October 18, 2004, they hired petitioner Robillo as a probationary technical support representative for its client account, the Palm Department. Robillo became a regular employee on April 15, 2005. On June 21, 2010, or at the time he was dismissed, Robillo was receiving a monthly salary of P16,721.46.

Like the rest of the employees, petitioner Robillo's performance was constantly monitored and evaluated by the company to ensure that all its employees observe and adhere to the private respondent's *Code*^[12] and comply with the performance targets and metrics set by the clients of the company.

Based on his annual performance evaluations, Robillo obtained ratings which indicated areas that need improvement. In relation to his performance appraisal for the year 2009, Robillo violated provisions of the Code and was accordingly charged and served with several notices to explain such violations, especially with respect to the provision on absences and tardiness. In several *written explanations*^[13] to the company, Robillo admitted his infractions and promised to be punctual or conform to the attendance policy in the future.

In February 2010, Robillo was re-profiled and transferred to another account due to the rightsizing implemented by the current client account.

By rightsizing, the current client account directs the Company to reduce the number

of agents assigned to service its account to meet the client's business demands, i.e., the number of agents assigned to the client account is deemed to be the right number of personnel who can efficiently service, support and handle the volume of calls from the client's customers.^[14]

In the case of complainant Robillo, he was included in the February 2010 rightsizing of the client account because of his low performance rating for the year 2009 and his issues on attendance and schedule adherence. Thereafter, Robillo was scheduled for an assessment by another client. He, however, failed in his assessment.^[15] On March 17, 2010, Robillo was informed of his assessment results and was advised to get in touch with the account manager of his account for further instructions. Since February 25, 2010 and during the process of the assessment and re-profiling, Robillo was placed on leave. After using up his vacation leave with pay, he was temporarily placed on leave without pay. Upon deliberation, and despite his poor performance, the HRO and the account management of the client decided to take him back to his client account.^[16] Private respondents contacted Robillo and informed him to go to his account manager for further instructions, but Robillo refused to heed the instruction. Finally, in a letter dated May 22, 2010, private respondents directed Robillo to report for work with a warning that his failure to comply with the said directive will constrain the company to consider him to have severed his employment. Despite the notice and several attempts to call him by phone, Robillo still failed to report back for work. Accordingly, on June 21, 2010, Robillo was effectively terminated.^[17]

With respect to petitioners Gudes and Onate, private respondents maintained that they were not dismissed but were still due for re-profiling and assessment when they filed a complaint against the company.

Gudes was hired as a probationary technical support representative on November 19, 2007. On December 21, 2007, he was terminated due to his failure to meet the standards of performance required during the period of his probationary employment. However, he was rehired on January 28, 2008 as a TSR for another client account and was consequently regularized on July 14, 2008. At the time of the filing of the complaint, Gudes had a monthly salary of P13,500.00.^[18]

Like Robillo, Gudes committed several infractions against the company, notably with respect to provisions regarding attendance and punctuality. Then, in May 2010, Gudes was re-profiled for transfer to other client accounts due to his low performance rating for the year 2009 and attendance issues. However, Gudes failed the assessment of the new account's hiring standards. In the meantime, Gudes was temporarily placed on leave without pay while awaiting transfer to another account. In July 2010, private respondent contacted Gudes for another assessment but the latter refused. It was around this time when Gudes filed a complaint for illegal dismissal.^[19]

Petitioner Onate, on the other hand, was hired as a probationary TSR on March 10, 2008 and became a regular employee on September 6, 2008. At the time of the filing of the complainant, he was paid a monthly salary of P13,500.00.

During the course of his employment, Onate was also served several notices^[20]

charging him with violations of the attendance and punctuality provision of the company's Code. For the said infractions, Onate was either meted a penalty of written reprimand or suspension from work.

Like his co-petitioners, Onate was re-profiled and assessed for transfer to other client accounts. However, he failed in his first assessment. In the meantime, Onate was temporarily placed on leave without pay while waiting for further assessments. In July 2010, Onate was contacted by private respondent for language assessment but he did not heed. At the time of filing of the complaint, Onate was still due for re-profiling and further assessment.^[21]

On April 18, 2011, the Labor Arbiter rendered a *Decision*^[22] declaring petitioners to have been illegally dismissed, the dispositive portion whereof states:

"WHEREFORE, judgment is hereby rendered declaring that complainant Randel Robillo was not legally dismissed. We do not find complainant Robillo to have abandoned his work and liable to pay respondents of an over used sick leave/vacation leave in the amount of P11,480.37. Accordingly, respondent Sykes Asia, Inc./Chuck Sykes is directed to reinstate complainant to his former position without loss of seniority rights and privileges but without backwages.

Complainants Rey Ryan Onate and Renan Gudes are hereby declared to have been illegally dismissed. As such, respondent Sykes Asia, Inc./Chuck Sykes is directed to pay them the following:

	Separation Pay	Backwages	Total
Rey Ryan Onate	P27,000.00	P141,750.00	P168,750.00
Renan Gudes	P27,000.00	P141,750.00	<u>P168,750.00</u>
Total:			P337,500.00
	Add: 10% Attorney's Fees		<u>P33,750.00</u>
	Grand Total:		P371,250.00

or the total amount of three hundred seventy one thousand two hundred fifty pesos (P371,250.00)

SO ORDERED."

Dissatisfied, private respondents *appealed*^[23] the Decision of the Labor Arbiter to the NLRC. In its February 29, 2010 *Decision*,^[24] the NLRC reversed the findings of the Labor Arbiter, the dispositive portion whereof reads:

"WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby REVERSED and SET ASIDE and a new decision entered:

- i. finding complainant Robillo to have been validly dismissed due to abandonment;

- ii. finding complainants Onate and Gudes not to have been illegally dismissed and ordering the respondents to reinstate them to their former position without loss of seniority rights but without backwages.

SO ORDERED."

Petitioners filed a *Motion for Reconsideration*^[25] thereto but it was denied in the *Resolution*^[26] dated April 30, 2012.

Aggrieved, Petitioners now come before Us raising the lone assignment of error:

"THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERRORS IN DECLARING COMPLAINANT'S SITUATION AS AKIN TO A BONA FIDE SUSPENSION OF BUSINESS, THE LATTER BEING A NECESSARY REQUIREMENT FOR THEIR TRANSFER TO OTHER CLIENTS."

In their four-page long *petition*,^[27] petitioners argue that public respondent committed grave abuse of discretion and serious errors in declaring that their situation is akin to a *bona fide* suspension of business operations. *First*, private respondent failed to comply with the notice requirement to the DOLE. Article 283^[28] of the Labor Code expressly provides that a written notice to the employee and the Ministry of Labor shall be given before the retrenchment. *Second*, private respondent's contention that it was the petitioners who refused to be contacted for their assessment schedule raises a doubt on what actually transpired. And such doubt, according to petitioners, must be resolved in their favor.^[29]

In their *Comment*^[30] to the Petition, private respondents counter with the following arguments. First, the petition must be denied outright because petitioners failed to state their full names and actual addresses in the petition. Petitioners also failed to implead the NLRC as respondent in the case. Petitioners failed to furnish a copy of the petition to the Office of the Solicitor General. Furthermore, certiorari is confined to issues of want or excess of jurisdiction or grave abuse of discretion, it does not include an inquiry as to the correctness of the evaluation of evidence.^[31]

Second, notwithstanding the foregoing infirmities, the petition still lacks merit as public respondent NLRC did not commit grave abuse of discretion in issuing the assailed Decision and Resolution. Public respondent correctly found that petitioners were not dismissed from their employment, and that consequently, they are not entitled to payment of separation pay and backwages.^[32]

By signing their employment contracts, petitioners agreed to abide by all the company rules and policies during the course of their employment. Thus, they were sufficiently notified that their "continued satisfactory performance is expected, as evaluated under the annual Staff Performance Management System" of the Company.

OUR RULING