

## THIRD DIVISION

[ CA-G.R. SP NO. 131812, March 30, 2015 ]

**FELICIANO B. DUQUE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MANILA WATER COMPANY, INC. AND GERARDO C. ABLAZA, JR., RESPONDENTS.**

### **DECISION**

**BARZA, J.:**

Before the Court is a petition for certiorari assailing the NLRC resolution<sup>[1]</sup> dated May 31, 2013 and the subsequent resolution<sup>[2]</sup> dated July 29, 2013, in **NLRC NCR 09-13238-12 (LAC No. 04-001177-13)**. The instant petition emanates from a case for illegal dismissal filed by petitioner Feliciano B. Duque against private respondents Manila Water Company, Inc. and Gerardo Ablaza, Jr.

Private respondent Manila Water Company, Inc. (Manila Water for brevity) is a water service utility company which services the East Zone of Metro Manila by virtue of a 25-year concession agreement it entered into with Metropolitan Waterworks and Sewerage System (MWSS) on February 21, 1997. Part of the said agreement was for Manila Water to absorb the regular employees of MWSS effective August 1, 1997. One of these employees was petitioner Feliciano B. Duque, who was absorbed as Customer Contact Manager. On February 14, 2012, he was promoted to Asset Management Section Manager, earning a monthly salary and allowance of Php76,000.00 and Php25,500.00, respectively. As Asset Management Section Manager, petitioner was responsible for "ensuring that the department's capital expenditure plans, asset repair and maintenance plans and databasing plans are implemented on time, within acceptable budgetary costs and complies with standards set by the company."

As culled from the assailed NLRC resolution, the antecedent facts leading to the controversy are, as follows:

"As concessionaire for MWSS, Manila Water undertook a Demand Management Systems (DMS) Project for the procurement, installation, operation and maintenance of 550 units of data loggers for the purpose of monitoring water demand requirements in its franchise area. These data loggers will be installed on designated bulk metering points and the data will be gathered, such as flow and pressure, then transmitted via GPRS communication to workstations in facilities and business offices, and thereafter analyzed with the objective of improving operational efficiency and optimizing consumption of service connections.

While not officially a part of the technical evaluation team, complainant was allowed to participate in the technical evaluation in order to enable him to anticipate future maintenance issues of the assets or equipment

that will be installed as part of the project.

Sometime in April 2012, the initial technical evaluation on the products offered by the bidders were presented before the panel, one of the members being complainant himself. Mr. Garie L. Garcia who was then the Instrumentation, Control and Automation Manager of Manila Water and allegedly a close friend of the complainant was the presenter and proponent of the project.

On 27 June 2012, the Notice of Award for the supply and installation of 550 data loggers in connection with the DMS project was issued to East Asia Solution Technologies Corporation (East Asia for brevity). However, as to what transpired during the conduct of the entire process for bid selection, the parties presented conflicting versions.

Complainant alleged:

'x x x. The initial technical evaluation on the products offered by the bidders were presented before the panel composed of Mr. Madueño, Mr. Marvin General of NTCD, Mr. Jay Gatchalian from ITCD, Mr. Kenneth Solomon of NTCD, Mr. Bernard Regandola of CVMD and complainant. The presenter was Mr. Gary Garcia, a proponent of the project and subordinate of Mr. Madueño. No actual test was conducted. Instead, the evaluation was by mere comparison between the specifications of the data loggers appearing on the documents submitted by each of the bidder as against the specifications laid down in the Term of Reference. After deliberation, the conclusions reached by the Technical Evaluation Panel were as follows: 1) Tradepoint's data logger has 10 items that are non-compliant; EESI's and East Asia's each had 2; while Water Consult's has only one. The following day, however, Mr. Madueño manifested that the issue concerning Water Consult's data logger, based on research he himself conducted, has been clarified. Thus, only Water Consult's data logger complied with all the technical requirements. A report to that effect was signed by Mr. Garcia, Mr. Madueño, Mr. Joemar Emboltorio and complainant.

Parenthetically, Mr. Emboltorio is the Water Supply Department Manager. The Production Planning Section headed by Mr. Madueño and the Asset Management Section then headed by complainant are both under the Water Supply Department.

A couple of days thereafter, complainant was told that a re-evaluation will have to be conducted because Fast (sic) Asia was contesting the evaluation result. A meeting was held in the morning of April 27, 2012 by concerned employees of Manila Water only, and it was ascertained that among the specifications on which East Asia's data logger had issues were the following:

1. GPRS/GSM capability;
2. Direct data sending to MWC SCADA
3. Three (3) analog inputs to adequately communicate with the PRV controller, Turbidity Meter; PH Analyzer and Residual Chlorine Analyzer.

To clarify the issues, an actual test of East Asia's data logger was decided to be held in the afternoon of that same day.

During the actual test, Mr. Cordova confronted complainant, asking for the purpose of the test. And when complainant responded that East Asia's data logger was being tested if it has three (3) analog inputs, Mr. Cordova retorted that his equipment has only one. Notwithstanding said answer, Mr. Jojo Gamboa of Manila Water's Contracts and Vendor Management Department still queried for the number of analog inputs East Asia's equipment is capable of handling, apparently because he failed to assimilate Mr. Cordova's statement. This irked Mr. Cordova further, who yelled: "IISA NGA LANG ANG INPUT NG DATA LOGGER KO. KUNG ANO WALA KAMI, YUN AND HINAHANAP NYO." Immediately thereafter, Mr. Cordova ordered his personnel to pull out East Asia's data logger without completing the test.

Distressed by Mr. Cordova's reprehensible conduct, complainant went that same afternoon to Manila Water's Legal Department to seek advice. He was told to consult instead Ms. Cristina Estandarte, Contracts and Vendor Management Department Manager. Upon suggestion of Ms. Estandarte, complainant prepared an Incident Report and submitted it on May 2, 2012 not only to Mr. Emboltorio and Ms. Estandarte, but to respondent Mr. Ding Carpio, Manila Water's Director for Operation (sic), and Atty. Jhoel Raquedan of Manila Water's Legal Department as well. Another copy of the incident report is attached hereto as Annex "A."

Thereafter, complainant had no more involvement in the bidding process."

Respondents, for their part, averred:

'x x x.

8. On June 28, 2012, Manila Water received a duly notarized affidavit executed by Mr. Ariel Alcantara and Mr. Gregg Cordova, who are the Account Manager and President of East Asia Solutions Technologies Corporation ("East Asia"), respectively. East Asia was one of the bidders for the supply and installation of 550 data loggers in connection with the DMS Project.

9. In their affidavits, Mr. Alcantara and Mr. Cordova accused Complainant and Mr. Garie L. Garcia, who was then the Instrumentation, Control and Automation Manager of Manila Water, and a close friend of Complainant, of demanding from them a sum of money to be able to land the award for the supply of data loggers. Attached as Exhibit 1 is a copy of the affidavit executed by Mr. Alcantara and Mr. Cordova.

10. Because of the serious allegations in the affidavits of Mr. Alcantara and Mr. Cordova, Manila Water issued a Notice to Explain and Notice of Forced Leave with Pay to both Complainant and Mr. Garcia on June 29, 2012. A copy of the Notice to Explain issued to Complainant is attached as Exhibit 2.

11. In the Notice to Explain dated June 29, 2012, Complainant was informed that the accusations against him, if proven, constitute a violation of the Company's Code of Conduct on (i) soliciting or receiving fees, commissions or "kickbacks" from clients, suppliers, collectors, etc. in consideration of patronizing their products/services or for services rendered in connection with any transaction, and (ii) use of an officer's/employee's position in the Company for personal gain or advantage or to promote action that may run counter to the Company's ethical standards. A copy of the Manila Water's Code of Business Conduct and Ethics is attached as Exhibit 3.

12. On July 4, 2012, Complainant submitted his written response to the Notice of Explain. In his response, Complainant denied the allegations of Mr. Alcantara and Mr. Cordova, and claimed that he had nothing to do with Mr. Garcia's acts. A copy of Complainant's response is attached as Exhibit 4.

13. On July 12, 2012, Manila Water issued a Notice of Extension of Forced Leave and Notice of Administrative Hearing/Conference. A copy of the notice is attached as Exhibit 5.

14. On July 18, 2012, the Administrative Conference/Hearing went on as scheduled. Complainant, together with his counsel, Atty. Glenn G. Hao, were among those who attended. Attached as Exhibit 6 is a copy of the attendance sheet for the July 18, 2012 hearing.

15. On August 6, 2012, the Legal and Corporate Department concluded its investigation on the administrative cases against Complainant and Mr. Garcia. By way of summary, the Legal and Corporate Governance Department reported that there was substantial evidence of Complainant's complicity in the commission of the following acts:

- a. Material misrepresentation in the nature and extent of his participation in the technical evaluation of the bidders participating in the DMS Project including East Asia;
- b. Predetermined intent to submit only one technically compliant bidder for the DMS Project;
- c. Soliciting fees from East Asia; and
- d. Use of his position as member of the technical evaluation panel and of the technical evaluation process specifically exclude East Asia as a technically compliant bidder.

xxx xxx xxx.'"

According to private respondents, petitioner's acts of soliciting fees and using his position to influence the results of the technical evaluation process runs counter to Manila Water's Code of Conduct. Furthermore, petitioner actively misrepresented the nature and extent of his participation in the technical evaluation of the bidders participating in the DMS project. The administrative investigation conducted by Manila Water's Legal and Corporate Governance Department revealed that contrary to petitioner's assertion, he was never invited by Mr. Madueño to the technical evaluation meeting, and while petitioner insisted that he was passive all throughout the evaluation process, the recordings of the meetings showed that he actively participated therein, with the course of action taken by the team actually having been heavily influenced by him. He also stated that he was not present during the transmission testing for East Asia's equipment held on April 16, 2012, but several personnel confirmed his presence there.

Thus, on account of loss of trust and confidence, Manila Water terminated the services of petitioner effective immediately upon receipt of notice at the close of business hours on August 31, 2012.<sup>[3]</sup> Aggrieved by his dismissal, petitioner lodged the instant complaint with the Regional Arbitration Branch of the NLRC. On December 28, 2012, the Labor Arbiter dismissed petitioner's complaint for lack of merit.<sup>[4]</sup> He then filed an appeal with the NLRC which was dismissed in the assailed NLRC resolution dated May 31, 2013. His motion for reconsideration on the dismissal of his appeal met the same fate in the challenged resolution dated July 29, 2013. Petitioner now comes before the Court via the instant petition for certiorari questioning the two issued resolutions of the NLRC on the ground:

That the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in the following:

1. Departing from jurisprudence by giving weight to a memorandum/investigation report that is not verified by an oath, unsigned and unsubstantiated by affidavits of those who have firsthand knowledge of the facts alleged therein;
2. Shifting the burden of proof from the employer to the employee;
3. Ignoring the supplementation made by private respondents to the Sworn Statement of Mr. Cordova and Mr. Alcantara;