

## TWELFTH DIVISION

[ CA-G.R. SP. No. 128459, January 14, 2014 ]

**RAMIL L. CARCAMO AND BASIL SILVA, PETITIONERS, V. NATIONAL LABOR RELATIONS COMMISSION, SYKES ASIA, INC./ROMINA ALCRUZ, ELANE [\*] CABARON, MARICEL GONZALES, AND MIKE HENDERSON, RESPONDENTS.**

### D E C I S I O N

**ELBINIAS, J.:**

For disposition is a Petition for Certiorari<sup>[1]</sup> filed under Rule 65 of the Rules of Court. The Petition assails the Decision<sup>[2]</sup> dated September 20, 2012 of the National Labor Relations Commission ("public respondent NLRC" or "NLRC" for brevity), which affirmed the Decision<sup>[3]</sup> dated May 31, 2012 of the Labor Arbiter in NLRC-NCR NO. 06-09011-11. The Petition also questions the Resolution<sup>[4]</sup> dated November 26, 2012 of public respondent NLRC, which denied petitioners' eventual Motion for Reconsideration<sup>[5]</sup>.

Among the salient facts are those as stated in public respondent NLRC's Decision<sup>[6]</sup> of September 20, 2012, which are as follows:

**"Complainants Carcamo and Silva (*petitioners here*) allege that they were hired as regular non-coterminous agents on May 4, 2000 and July 25, 2000, respectively. As Team Leaders, they were entitled to a) no salary ceiling, b) payment of half of dependents' Medicaid premiums, and c) hazard pay. They directly reported to the Account Manager.**

**In May 2011, complainants (*petitioners*) were informed that the Microsoft would terminate its service agreement in June 2011, and all employees assigned to the account would be put on 'Temporary Reserved Status' without pay until further notice. xxx**

xxx

On November 2, 2011, **Silva was recalled and instructed to report back to work** at the Marikina Area SMSI. **Carcamo was also directed to report on November 14, 2011** at the 43rd Floor One San Miguel Bldg. in Pasig City to which they complied. Silva was assigned to Sykes Marketing Services, Inc.'s Ecount which was not an account of respondent company. Silva was made to report to an Operations Supervisor, and not to an Account Manager. Their benefits were also reduced. They claim that they were constructively dismissed.

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**Respondents (*private respondents here*), on the other hand, admit the complainants' (*petitioners*) employment as Customer Service Representatives and/or Team Leaders, and were assigned to People.Net account.**

**On April 13, 2011, Microsoft informed the respondent company of the termination of the account with them. Thus, a total of 323 employees and those assigned to the People.Net account would be displaced. They decided to put the affected employees under a 'Temporary Reserved Status' in tranches. Complainants (*petitioners*) were notified of the effectivity of their reserved status on June 10, 2011. In contemplation of possible re-assignment to another account, the company conducted interviews and assessments, and required them to attend.**

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**On October 13, 2011, Recall Notices were sent to complainants (*petitioners*), and scheduled them for training on November 7, 2011. They contend that there was no constructive dismissal when they were placed under 'Temporary Reserved Status'. **The 6-month allowable period had not yet lapsed.** They even recalled them back to work, hence, **their 'Temporary Reserved Status' had not ripened into constructive dismissal.**"<sup>[7]</sup> (*Emphasis supplied*)**

On June 10, 2011<sup>[8]</sup>, petitioners Ramil L. Carcamo and Basil Silva ("petitioners" for brevity) filed a Complaint for Constructive Illegal Dismissal against private respondents Sykes Asia, Inc. ("private respondents Sykes" for brevity), which is "engaged in the business of operating a multi-lingual, multi-call center"<sup>[9]</sup>, and against Romina Alacruz, Elane Cabaron, Maricel Gonzales, Mike Henderson ("private respondents" for brevity), who were sued in their capacities as officers<sup>[10]</sup> ("private respondents" for brevity). On November 21, 2011, petitioners filed their Amended Complaint for "constructive illegal dismissal, non-payment of salaries/wages, moral and exemplary damages and attorney's fees"<sup>[11]</sup>.

On May 31, 2012, the Labor Arbiter rendered a Decision<sup>[12]</sup> which dismissed petitioners' Complaint for lack of merit<sup>[13]</sup>.

Upon petitioners' appeal, public respondent NLRC rendered its assailed Decision<sup>[14]</sup> of September 20, 2012 which affirmed the Labor Arbiter's Decision.

After petitioners' Motion for Reconsideration<sup>[15]</sup> was denied by public respondent NLRC in its assailed Resolution<sup>[16]</sup> of November 26, 2012, petitioners filed the Petition<sup>[17]</sup> at bench, praying as follows:

"WHEREFORE, it is respectfully prayed that 20 September 2012 Decision and the 26 November 2012 Resolution rendered by the National Labor Relations Commission in NLRC NCR Case No. 06-09011-11/LAC No. 07-002174-12 entitled '*Ramil Carcamo, Basil Basil James Silva, Alwyn Joy Rosel vs. Sykes Asia, Inc. &/or Romina Alacruz, Elaine Cabaron, Maricel Gonzales & Mike Henderson*' be ANNULLED and SET ASIDE. In lieu thereof, it is prayed that a decision be rendered declaring petitioners illegally

dismissed and ordering private respondents to REINSTATE Carcamo and Silva to their former positions without loss of seniority rights with full backwages and pay each petitioner:

1. Five Hundred Thousand Pesos (Php 500,000.00) as moral damages or such amount as may be deemed just and equitable under the premises.
2. Three Hundred Thousand Pesos (Php 300,000.00) as exemplary damages or such amount as may be deemed just and equitable under the premises.
3. Five Hundred Thousand Pesos (Php 500,000.00) as attorney's fees and other litigation expenses.

Other relief[s] just and equitable are likewise prayed for.”<sup>[18]</sup> (*Italics was made in the original*)

Petitioners raised the following grounds:

### **“ARGUMENTS**

#### **I**

**THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION BY COMPLETELY IGNORING THE ESTABLISHED FACTS AND IRREFUTABLE EVIDENCE SHOWING THAT PETITIONERS CARCAMO AND SILVA WERE DEMOTED**

#### **II**

**THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THERE WAS NO CONSTRUCTIVE DISMISSAL WHEN PETITIONERS CARCAMO AND SILVA WERE PLACED ON TEMPORARY RESERVED STATUS WITHOUT PAY AND BENEFITS CONSIDERING THAT PRIVATE RESPONDENT COMPANY'S POLICY ITSELF PROVIDES THAT AS REGULAR NON-COTERMINOUS EMPLOYEES, PETITIONERS ARE ENTITLED TO THE CONTINUOUS PAYMENT OF THEIR SALARIES, WAGES AND BENEFITS NOTWITHSTANDING THE WITHDRAWAL OF A CLIENT**

#### **III**

**THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION BY FAILING TO AWARD DAMAGES CONSIDERING THAT PRIVATE RESPONDENTS ACTED IN BAD FAITH AND WANTON DISREGARD OF CARCAMO'S AND SILVA'S RIGHTS”<sup>[19]</sup> (*Emphasis and underscoring were made in the original*)**

Contrary to petitioners' arguments in their *assigned grounds I and II*, petitioners were not constructively dismissed.

Petitioners had argued as follows:

“It is glaringly obvious that the NLRC turned a blind eye to the following facts:

- 1) **SAI's (private respondent Sykes Asia, Inc.) policy that non-coterminous agents hold and retain their respective employment status with SAI regardless of the termination of the account or client to which they are assigned. Accordingly, the salaries, wages, and other benefits received by non-coterminous agents should not be interrupted in case of withdrawal or termination of clients or accounts,**
- 2) **Petitioners' status as regular non-coterminous employees,**
- 3) **SAI's 12 May 2011 letter informing petitioners that they were being placed on temporary reserved status without pay until further notice,**
- 4) SAI unilaterally issued new guidelines in contravention of petitioners' vested rights under SAI's policy,
- 5) **SAI's advertisements which negate private respondents' claim that they were 'constrained' to place petitioners under temporary reserved status,**
- 6) **Private respondents never presented proof of the supposed necessity to place petitioners under temporary reserved status,**
- 7) **Petitioner Silva was reinstated and directed to work for Sykes Marketing Services, Inc., a corporation separate and distinct from his employer-Sykes Asia, Inc.;**
- 8) **Petitioner Carcamo was informed by his superior, Rennie Santos that though the former's position was still Team Leader, he would no longer be handling agents and would merely assist one of the account managers in doing reports.**
- 9) **While all the other Team Leaders had their own elevated workstation, Carcamo was singled out and directed to sit and work on an agent's workstation;**
- 10) Carcamo's and Silva's **benefits were reduced upon their reinstatement.**
- 11) Private respondents' indifference and refusal to reply or respond to petitioners' letters.

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xxx when petitioners Carcamo and Silva were directed to report for work, they were made to report directly to a Supervisor as their new immediate superior xxx. **In other words, they became subordinates of the Supervisor who was formerly of equal rank with them. This is clearly a demotion** xxx

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The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position