

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04138-MIN, February 26, 2014]

**CENTURY APPLIANCE CENTER, INC., AND/OR PAUL K. YAP-
PRESIDENT, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSION, FIFTH DIVISION AND JOSEPH BRYAN A.
MIPHNUM, RESPONDENTS.**

D E C I S I O N

LOPEZ, J.:

Before this Court is a petition for *certiorari*^[1] under Rule 65 of the Revised Rules of Court filed by petitioner Century Appliance Center Inc., assailing the resolution^[2] dated September 30, 2010 issued by public respondent, 8th division of the National Labor Relations Commission Cagayan de Oro City. The said resolution reversed the findings of the labor arbiter who dismissed the private respondent's complaint for lack of merit.

The facts as borne by the records are as follows:

In November of 2007, private respondent, Joseph Bryan A. Miphnum was hired by petitioner company, Century Appliance Center Inc., to be its marketing manager. On November 28 of the following year, Century Appliance thru one of its senior officers Catherine Cafe, issued a memorandum (MEMO BS 08-11-1936)^[3] addressed to Miphnum as marketing manager and to Miphnum's key accounts officers Mr. Noel Sanoy and Ms. Sophia San. The memo issued guidelines in the submission of weekly reports, itinerary reports, sales and collection reports as well as procedures for requisition and replenishment. Included in the memo was a note specifically addressed to Miphnum which read:

"Should stay always in the Office, however if there are certain instances that need to be attended very importantly outside the Office, you must inform first the Head Office regarding the matter."

On March 20, 2009, Century Appliance thru its operations manager, Venice Portugaliza, sent a memo (MEMO EMP 09-03-141014)^[4] to Miphnum directing him to explain why no disciplinary action should be imposed upon him for failing to notify his superiors of his absence, during the period of January 15-17, 2009. The company also noted that he filed his leave only after he incurred the said absence. Further, he was also reproached for having left the office on several occasions, without permission, during office hours to attend to personal matters.

In a letter^[5] dated March 25, 2009, Miphnum explained that he had always informed his superiors of his absences by sending them text messages on the day of his absence or even the day before. He recalled that on previous occasions he sent

his text messages to his superior, Mrs. Figuracion, who would almost always reply to his text messages. After she was replaced, he then sent notice by text message to Ms. Jennifer Eno and/or Ms. Catherine Cafe. However, he rarely received a reply from them but he presumed that the messages were received. With regard to the filing of leave of absences, Miphranum claimed that it was common practice for the employee to file his leave of absence upon returning to work and that such practice was never prohibited. Finally, on the matter of leaving his assigned work without permission, Miphranum denied the same noting that no specific dates and circumstances were given and as such he could not sufficiently explain the said charges.

On March 27, 2009, Portugaliza, sent a second memo (MEMO EMP 09-03-141069)^[6] to Miphranum warning him that he had committed: a serious offense by failing to inform his supervisor of his absence, defined and penalized under pages 18 and 20 of the House Rules and Regulations, and; a grave offense when he left his assigned work without proper permission, defined and penalized under pages 16 and 20 of the same rules. He was reminded that the rules require that employees must advise and inform their supervisors or department heads, in case they will be unable to report for work, at least one day before or on the day itself, otherwise the absence shall be deemed unauthorized. He was further advised that sending text messages is not a reliable method of informing his superiors as the messages might not be received or read in a timely manner. Lastly, Miphranum was directed to inform or call his supervisors directly in case of future instances wherein he would be unable to report for work or when he needed to leave the office. Miphranum filed a reconsideration letter^[7] reiterating that he had substantially complied with the rules by informing his superiors thru text messages.

On March 30, 2009 another memo (MEMO EMP 09-03-141073)^[8] was sent to Miphranum directing him to explain why no disciplinary action should be imposed upon him for failing to notify his superiors of his absence when he failed to report for work on March 14, 2009. In his April 4, 2009 reply^[9], again Miphranum proffered the same explanation: that he informed his supervisors thru text messages and that he presumed that the messages were received.

A fourth memo (MEMO EMP 09-04-141224)^[10] was sent to Miphranum on April 7, 2009, this time suspending him for a period of three (3) days. Century Appliance stated that Miphranum had committed the offense of "*incurring unauthorized absence*", as defined and penalized under pages 18 and 20 of the House Rules and Regulations, for his failing to notify his superiors of his absence on March 14, 2009. It was explained that he had already been previously directed to inform or call his supervisors directly instead of merely sending them text messages in case of future instances wherein he would be unable to report for work. Considering that this was a repeated offense, the same warranted a suspension.

On April 17, 2009, a memo (MEMO EMP 09-04-141277)^[11] was again sent to Miphranum directing him to explain why no disciplinary action should be imposed upon him for failing to ask permission from his superiors when he left work early last March 19, 2009. Further, he was directed to explain his insufficiency in performing his work as enumerated below:

1. Failure to hit the target on furniture sales during the period from August 2008 to March of 2009. Failure to hit the target on billboard sales during the period

from February to March of 2009.

2. Failure in pulling out units from Citi Appliance and Wilkris dealers who have outstanding accounts.
3. Failure to monitor and collect from the hanging account of Wilkris Appliance.

In his answer^[12] dated April 22, 2009, Miphranum denied the first allegation and stated that before he left the office on March 19, 2009 he had sought permission from Ms. Germelyn Cuyos who was his direct supervisor. On the charges of inefficiency, he said that, aside from external factors beyond his control, his failure to effectively perform his functions was due to the instructions contained in the guidelines issued on November 28, 2008, wherein he was directed that he "*Should stay always in the Office*". He claims that the order had "*confined and restricted*" him from performing his job functions. Regarding the pull-out of stocks from Citi Appliance and Wilkris Appliance, Miphranum countered that he proposed the pull-out of stocks in both companies as early as October of 2008, unfortunately the company only acted on the proposal in March of the following year. As to the collection of outstanding accounts, Miphranum claimed that he, along with his key account officers had repeatedly tried to collect the said accounts but unfortunately the companies were still delinquent in their payments.

The sixth memo (MEMO EMP 09-05-141541)^[13] which contained the subject matter: "FIRST NOTICE, MEMO TO EXPLAIN WITH NOTICE OF HEARING", came on May 5, 2009. Said memo stated that per company records and reports, Miphranum was negligent of his duties and responsibilities to the company. His acts and omissions inimical to the interests of the company were enumerated as follows:

1. For the Zero sales in Funiture in the month of April (2009);
2. For the Zero client in LS Ads in the month of April (2009);
3. Failure to monitor or take immediate action on the overdue account of Citi Appliance dealer for the month of March, which is Php 8,940.00, overdue for 43 days;
4. Also for the overdue account of Sugni amounting to Php 62,625.00, Consigned for six (6) months and yet only one (1) unit was sold out and you failed to take action on this.
5. Failure to attend the meeting last May 4, 2009, when you know that every Monday is our meeting unless you were advised that no meeting should be held.
6. You were even late in reporting for duty on the same day and failed to inform the Head Office immediately about your being late, it was only during the call of Germelyn Cuyos when she had known that you were late through Lourdes Mansuguin. When you called the head office, you said that you were already in Samal Island accompanying your kids, and that you could no longer attend the meeting. It was recalled that you have filed for leave last April 30, 2009 that you will be absent on May 2, 2009 since as you said you will accompany your children in travel and you were granted. However on May 2, 2009, you sent an

e-mail and you eventually called Germelyn Cuyos to disregard your leave since you reported for duty that time. But it was known that you were already at Samal on May 4, 2009.

7. Failed to go over or check the reports submitted by your subordinates, when these were submitted to you for perusal before forwarding in the Head Office and you knew that you have to sign these reports before submission. It was found out that the reports contained errors and mistakes. This was revealed during the meeting dated May 5, 2009 at 10:30 in the morning. It seems that you have no knowledge at all with these reports submitted. When you were asked to explain about the report, you were not sure with your answers through your phrases such as "I think", "siguro", which merely implied your hesitations,
8. As similar to your misdeeds in the past, you have consistently and repeatedly shown your disrespect to the undersigned and your co-employees much worse, the blatant disregard of the company rules and regulations, which you yourself should repose being an employee entrusted with the company's confidence.

Miphranum was directed to explain in writing, within five (5) days from receipt, why no disciplinary action should be imposed upon him in connection with the foregoing acts of misconduct. The memo also notified him of an investigative hearing to be held on May 16, 2009 at 1:30 in the afternoon at the Davao Central Warehouse Club Inc. Miphranum filed his answer^[14] on May 9, 2009. In reply to the first and second charges, Miphranum again attributed the fact of his inefficiency to the "*Should stay always in the Office*" order issued to him in November of 2008. For the third and fourth charges, he said that the Citi Appliance account had an approved payment term of 90 days and as such the account was still in current status and therefore not overdue. As for the Sugni account, Miphranum claimed that he had always requested for a budget to travel to be able to monitor and collect overdue payments from Sugni Appliance but unfortunately the company denied all requests for travel. In answering the next two charges, Miphranum explained that he was already late coming to work on May 4, 2009, and since per company policy tardiness will be considered absence, he decide to take a leave of absence. However before leaving he claimed that he inquired from Mr. Sanoy if there was a meeting on that day, to which the latter replied that there was none. He insisted that he had no intention of being absent from the regular meeting. As for the seventh charge, Miphranum denied that he did not check the reports before forwarding them to the head office. Finally, Miphranum argued that he had never shown any disrespect for his superiors.

On May 18, 2009, Century Appliance sent a revised memo (MEMO EMP 09-05-141689)^[15] which contained the exact contents of the previous memo except that the hearing was rescheduled on May 19, 2009 at 9:30 in the morning. The investigation and hearing were conducted as scheduled on May 19, 2009. On May 25, 2009, Century Appliance issued its Final Notice of Dismissal^[16], the text of which is quoted as follows:

"FINAL NOTICE OF DISMISSAL

After a thorough investigation and examination of all the evidence, evaluations and reports submitted on hand, including your letters/replies of explanation, you are found guilty of committing the following acts:

1. For incurring an unauthorized absence on March 14, 2009 (defined and penalized in pages 18 and 20 of the House Rules and regulations;
2. For taking under-time last March 19, 2009 without asking permission or informing the Head Office ahead of time thereby leaving the assigned task/work unaccomplished (as defined and penalized in pages 16 and 20 of the House Rules and Regulations)
3. Failure to reach the sales quota of Furniture and Billboard clients for the following months:

FURNITUREBILLBOARD

- | | |
|-------------------------|---------------------|
| 1. August
2008 | 1. February
2009 |
| 2.
September
2008 | 2. March
2009 |
| 3. October
2008 | |
| 4.
November
2008 | |
| 5.
December
2008 | |
| 6. January
2009 | |
| 7. February
2009 | |
| 8. March
2009 | |

4. Failure to facilitate the pulling out of units from Citi Appliance and Wilkris dealers who still have huge hanging accounts;
5. Failure to monitor the account of Wilkris Appliance and failure to solve and collect his account;
6. For zero sales in Furniture in the month of April 2009;
7. For zero sales in LS Ads in the month of April 2009;
8. Failure to monitor and take immediate action on the overdue account of Citi Appliance dealer in the amount of Php 8,940.00 for the month of March which has been overdue for a period of 43 days;
9. Failure to attend the meeting last May 4, 2009 despite knowledge thereof and taking time off instead in going to Samal Island;
10. Failure to check and ensure the accuracy of the reports submitted by your subordinates which were subsequently exposed during the meeting held on