

## **SPECIAL TWENTY-SECOND DIVISION**

**[ CA-G.R. SP NO. 04589-MIN, July 31, 2014 ]**

**ONE NETWORK BANK, INC./ALEX BUENAVENTURA, PRESIDENT;  
MYRNA S. VIADO, HR HEAD, PETITIONERS, VS. CATHERINE DELA  
CRUZ-CAGAMPAN, THE NATIONAL LABOR RELATIONS  
COMMISSION (NLRC) 8TH DIVISION AND LABOR ARBITER  
RAMMEX C. TIGLAO OF THE NLRC-RAB X, CAGAYAN DE ORO  
CITY, RESPONDENTS.**

### **D E C I S I O N**

**INTING, J.:**

This a Petition for Certiorari with application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction<sup>[1]</sup> filed under Rule 65 of the Rules of Civil Procedure assailing the Resolution<sup>[2]</sup> dated June 30, 2011 of the National Labor Relations Commission (NLRC), Eighth Division, Cagayan de Oro City in NLRC MAC- 02-011915-2011 (RAB-X-04-00198-2010) and the Resolution<sup>[3]</sup> dated August 24, 2011 denying herein petitioners' Motion for Reconsideration.

The facts of the case are as follows:

Private respondent Catherine Dela Cruz-Cagampan is a regular employee of petitioner One Network Bank (ONB for brevity) and occupying the position of "accounting specialist". She was employed on June 11, 2004.

On May 1, 2006, ONB started to implement its "Exogamy Policy" which provides, *viz*:

"Effective May 1, 2006, when two employees working for One Network Bank are subsequently married through Church or Civil Court rites, one must terminate employment immediately after marriage. This policy shall not affect co-employees of the bank who are already married to each other as of the end of April 2006."

On October 31, 2009, private respondent married<sup>[4]</sup> her co-employee, Audie Angelo A. Cagampan, a "loan specialist" in the same bank.

On November 4, 2009, private respondent and her husband wrote ONB President, Alex Buenaventura, requesting special consideration as regards the implementation of the Exogamy Policy just like the other personnel in other offices/branches who have been allowed to continue working even after their marriage. Her husband expressed his willingness to be transferred to other nearby ONB branches.<sup>[5]</sup> On November 10, 2009, ONB, through its HR Head Myrna Viado, denied the request of

private respondent and her husband. In applying the bank policy, ONB decided to terminate private respondent's employment and retain her husband as loan specialist in the Don Carlos Branch.<sup>[6]</sup>

On February 1, 2010, private respondent requested for reconsideration from ONB, this time questioning the applicability and legality of the policy.<sup>[7]</sup> She claimed that the policy is not applicable to her case having been employed with ONB on June 11, 2004, hence, prior to the passage and effectivity of the policy on May 1, 2006. She also argued that the bank's policy contradicts Article 136 of the Labor Code which expressly prohibit policies which are discriminatory against marriage. On February 15, 2010, ONB did not find merit in private respondent's request for reconsideration.<sup>[8]</sup> The private respondent received the bank's letter of denial on February 17, 2010.

Consequently, on April 13, 2010, private respondent filed a complaint<sup>[9]</sup> for illegal dismissal against ONB. In its position paper<sup>[10]</sup>, ONB argued that complainant was validly dismissed in accordance with the bank's exogamy policy which prohibits marriages between or among its employees; and that the policy was implemented by ONB to protect its rural banking business in pursuit of the confidentiality of the accounts and loan transactions of its clients that should be maintained in utmost secrecy.

On October 29, 2010, the Labor Arbiter rendered its Decision<sup>[11]</sup> finding private respondent to have been illegally dismissed, the dispositive portion of which provides:

WHEREFORE, premises considered, complainant Catherine Dela Cruz-Cagampan is hereby declared illegally dismissed. Accordingly, respondent One Network Bank, Inc. is hereby ordered (1) to immediately reinstate complainant to her former position, without loss of seniority rights and privileges, within ten (10) calendar days from receipt of this Decision, and to submit a report of compliance within the same period; and (2) to pay her full backwages, inclusive of allowances, and to her other benefits or their monetary equivalent; reckoned from the date of her dismissal on 17 February 2010 up to her actual reinstatement, the aggregate amount of which as of the date of this Decision is tentatively computed in the amount of P100,690.85 (P12,009.00 x 8 months and 10 days).

Respondent One Network Bank, Inc. is further ordered to pay complainant her proportionate 13th month pay for the year 2010 in the amount of P1,501.13.

The reinstatement aspect of this Decision is immediately executory, even pending appeal, pursuant to the clear mandate of Article 223 of the Labor Code, as amended. The posting of a bond by the employer shall not stay the execution for reinstatement as directed in this Decision. The rest of the money claims are dismissed for lack of merit.

SO ORDERED.

Aggrieved, ONB filed an appeal to the NLRC. On June 30, 2011, the NLRC issued a Resolution affirming the decision of the labor arbiter, the *fallo* of which reads:

WHEREFORE, the appeal is hereby ordered DISMISSED. Accordingly, the assailed Decision dated October 29, 2010 is AFFIRMED.

SO ORDERED.

The NLRC ratiocinated:

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Just like in the Star Paper Corp. case, respondent ONB failed to show how complainant's marriage could be detrimental to its business operations. The mere fear of the possibility that the spouses may divulge to each other information with respect to client's accounts is speculative, unfounded and imaginary. Xxx The fear entertained by respondent ONB was never translated into crystal clear circumstance or scenario which would convince us and see the light on the wisdom of the said policy. Xxx

xxx

The contention of respondent ONB that complainant's violation of the Exogamy Policy is a ground for termination of her employment, is faulty and a misjudgment. Xxx In order that willful disobedience by an employee of the orders, regulations or instructions of the employer may constitute a just cause for termination his employment, the said orders, regulations or instructions must be xxx. In the case at bar, the elements of lawful and reasonable have not been established. Absent any of the foregoing elements would make the refusal of the employee to comply with the rules justified and not constitutive of "willful disobedience" as would warrant the imposition of the penalty for such refusal.

Petitioner ONB filed a motion for reconsideration<sup>[12]</sup> but the NLRC denied it in its Resolution<sup>[13]</sup> dated August 24, 2011.

Petitioner now comes before Us raising the following assignment of errors<sup>[14]</sup>:

WHETHER OR NOT THE PUBLIC RESPONDENTS HAVE COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION -

A) IN SUBSTITUTING THEIR OWN OPINION AND THEIR FAILURE TO CONSIDER THAT THE SUBJECT "EXOGRAMY POLICY" OF PETITIONER ONB WAS NOT WRITTEN ON A HARD STONE SO AS TO BE

INCONSIDERABLY INSENSITIVE TO A POLICY-ABIDING EMPLOYEE;

B) IN THEIR FAILURE TO RECONSIDER THE UNDISPUTED FACT THAT PRIVATE-RESPONDENT AND HER HUSBAND FIRST WILLFULLY VIOLATED THE SUBJECT POLICY BEFORE THEY QUESTIONED THE SAME AS AN AFTERTHOUGHT;

C) IN SUBSTITUTING THEIR OWN OPINION AND BASELESSLY OR MISLEADINGLY DESCRIBED THAT THE SUBJECT 'EXOGAMY POLICY' OF THE PETITIONER ONB IS GENDER RELATED AND, THUS, DISCRIMINATING AGAINST WOMEN EMPLOYEES; AND

D) IN HOLDNG THAT THERE WAS ILLEGAL DISMISSAL MAKING PETITIONERS LIABLE FOR THE REINSTATEMENT OF PRIVATE-RESPONDENT AND THE PAYMENT OF FULL BACKWAGES, DESPITE THE ADMITTED AND UNDISPUTED FACT THAT PRIVATE RESPONDENT, TOGETHER WITH HER HUSBAND, HAD COMMITTED A VIOLATION OF AN EXISTING POLICY WHICH FORBIDS THE DOING OF A CERTAIN ACT IN THE ESTABLISHMENT AND WHICH POLICY HAD BEEN ADMITTEDLY KNOWN LONG BEFOREHAND BY THE PRIVATE RESPONDENT AND HER HUSBAND.

On May 2, 2012, this Court issued a Resolution<sup>[15]</sup> denying herein petitioner's application for the issuance of a temporary restraining order.

### **Our Ruling**

The petition is meritorious.

At the outset, We quote the Supreme Court's elucidation on the no-spouse policy of an employer in the case of *Star Paper Corp. v. Simbol*<sup>[16]</sup>:

We note that since the finding of a bona fide occupational qualification justifies an employer's no-spouse rule, the exception is interpreted strictly and narrowly by these state courts. There must be a compelling business necessity for which no alternative exists other than the discriminatory practice. To justify a bona fide occupational qualification, the employer must prove two factors: (1) that the employment qualification is reasonably related to the essential operation of the job involved; and, (2) that there is a factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job.

The concept of a bona fide occupational qualification is not foreign in our jurisdiction. We employ the standard of reasonableness of the company

policy which is parallel to the bona fide occupational qualification requirement. In the recent case of *Duncan Association of Detailman-PTGWO and Pedro Tecson v. Glaxo Wellcome Philippines, Inc.*, we passed on the validity of the policy of a pharmaceutical company prohibiting its employees from marrying employees of any competitor company. We held that Glaxo has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information from competitors. We considered the prohibition against personal or marital relationships with employees of competitor companies upon Glaxo's employees reasonable under the circumstances because relationships of that nature might compromise the interests of Glaxo. In laying down the assailed company policy, we recognized that Glaxo only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures.

The requirement that a company policy must be reasonable under the circumstances to qualify as a valid exercise of management prerogative was also at issue in the 1997 case of *Philippine Telegraph and Telephone Company v. NLRC*.<sup>[36]</sup> In said case, the employee was dismissed in violation of petitioner's policy of disqualifying from work any woman worker who contracts marriage. We held that the company policy violates the right against discrimination afforded all women workers under Article 136 of the Labor Code, but established a permissible exception, viz.:

[A] requirement that a woman employee must remain unmarried could be justified as a "bona fide occupational qualification," or BFOQ, where the particular requirements of the job would justify the same, but not on the ground of a general principle, such as the desirability of spreading work in the workplace. A requirement of that nature would be valid provided it reflects an inherent quality reasonably necessary for satisfactory job performance.

In the instant petition, petitioner argues that the exogamy policy of ONB should not be viewed as a harsh, insensitive, and callous position against its employees as it is the management's wisdom for the legitimate protection of its rural banking business. It alleges how in the past, prior to the implementation of the subject policy, ONB was constrained to transfer certain confidential employees who got married with each other, if only to forestall the breakdown of confidentiality being maintained among the respective functions of the employees concerned.

Petitioner also argues that ONB is never anti-marriage in its treatment over its unmarried employees especially those assigned in the same branch or elsewhere. The business pursuits of ONB only demand that the confidentiality of the accounts and loan transactions, including the financial information about its clients, should be exclusive and in utmost secrecy and not even between spouses the information be shared and discussed.

In the case of *The Coca-Cola Export Corp. v. Gacayan*<sup>[17]</sup>, the Supreme Court ruled that the employer's right to conduct the affairs of its business, according to its own