

## THIRD DIVISION

[ CA-G.R. SP NO. 128296, November 28, 2014 ]

**STREAM INTERNATIONAL GLOBAL SERVICES PHILIPPINES, INC.  
AND MARIEN GELIDO, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION (FOURTH DIVISION), CARLOS PAOLO  
H. TAÑEDO AND IRENE C. ENRIQUEZ, RESPONDENTS.**

### DECISION

**DE GUIA-SALVADOR, R., J.:**

Assailed in this *Petition for Certiorari* filed pursuant to Rule 65 of the *1997 Rules of Civil Procedure* are two issuances of the public respondent National Labor Relations Commission ("**NLRC**") in NLRC LAC No. 01-000106-12, viz: (a) the Decision<sup>[1]</sup> dated June 22, 2012, which affirmed the Decision<sup>[2]</sup> dated September 26, 2011 rendered by the Labor Arbiter finding petitioners liable for the illegal dismissal of private respondents; and (b) the Resolution<sup>[3]</sup> dated November 13, 2012 denying the motion for reconsideration of the June 22, 2012 Decision.

#### *The Facts*

Petitioner Stream International Global Services Philippines, Inc. ("**Stream**") is engaged in business process outsourcing while petitioner Marien Gelido ("**Gelido**") is its Senior Team Manager.<sup>[4]</sup>

*Private Respondent Carlo Paolo H. Tañedo*

On June 30, 2009, private respondent Carlo Paolo H. Tañedo ("**Tañedo**") was hired by Stream as a Senior Customer Support Professional on probation status until December 30, 2009.<sup>[5]</sup> Having attended the New Employees Orientation, Tañedo was familiar with Stream's policy on attendance and its importance due to the nature of the call center industry.<sup>[6]</sup> He was later assigned to wave 12 and then promoted as Team Manager on February 1, 2010. Tañedo's immediate supervisor was Gelido.<sup>[7]</sup>

On April 16, 2010, Tañedo failed to report for work and to respond to calls and short messaging services (SMS) sent to him by management. Stream considered him to have committed a "No Call/No Show" (NCNS) infraction.<sup>[8]</sup> In Stream's *Employees' Handbook*, an NCNS violation is described, thus:

#### **"No Call/No Show: Job Abandonment**

'No call/no show' occurs when an employee is absent and fails to notify the appropriate contact (i.e., Stream Contact Line and/or supervisor).

The employee is responsible for notifying the appropriate contact prior to the scheduled start time. Leaving a message with a co-worker is not acceptable. Two consecutive days of no call/no show is considered job abandonment resulting in immediate termination of employment. Any episode of no call/no show will be subject to a final written corrective action. Subsequent no call/no shows will result in further corrective action, up to and including termination of employment."<sup>[9]</sup>

Under Stream's *Attendance Notification Guidelines* for "unscheduled absences, undertime and the like,"<sup>[10]</sup> specific sanctions would be imposed in case an employee commits an NCNS violation:

**Specific Offense: NCNS – Non Consecutive Occurrence / Failure to call CCL**<sup>[11]</sup>

<b>Offense Count</b>	<b>Sanction</b>	<b>Prescriptive Period</b>
First Offense	Final Warning	6 months
Second Offense	Termination	Not applicable

Tañedo was also absent the next day or on April 17, 2010, claiming that he had a stomach ache. On April 21, 2010, he also skipped work for the same reason. On April 22, 2010, he failed to report for work again without notice, so Stream declared that he committed an NCNS for the second time.<sup>[12]</sup> When he went back to work on April 23, 2010, he was served with a CITE form (Communicating an Infraction allegedly actuated by an Employee) which apprised him of the NCNS infractions he had committed and required him to explain his side within 48 hours. The CITE form included a warning that his failure to submit a written explanation would be deemed a waiver of his rights.<sup>[13]</sup> In lieu of a written explanation, Tañedo admitted to his violation and was given a final warning by petitioners through a Corrective Action Report (CARE) form issued on April 27, 2010.<sup>[14]</sup>

On April 28, 2010, Tañedo missed work again and did not respond to petitioners' calls or messages so he was considered to have incurred his third NCNS violation. Stream prepared a Notice<sup>[15]</sup> dated April 28, 2010 directing Tañedo to report to the company as regards his infractions. Before the notice was sent out, Tañedo reported to the office and informed Gelido that he was contemplating on whether to resign or to go through an administrative hearing. Nonetheless, the said notice was issued to him, together with another CITE form<sup>[16]</sup> pertaining to his latest NCNS infraction, to explain his side within 48 hours upon receipt thereof. The notice indicated that his failure to submit a written explanation would be construed as a waiver of his rights.<sup>[17]</sup>

On April 30, 2010, waiving the submission of a written explanation, Tañedo took part in an administrative hearing conducted by Gelido with respect to his NCNS infractions. During the hearing, Tañedo acknowledged his awareness of the company's policy with regard to attendance. He confirmed that upon committing his second NCNS infraction, he knew that he could be dismissed from work. Tañedo signed the minutes of the meeting and even asked for another chance. Still, he was

found guilty and was recommended to be terminated from work by Gelido.<sup>[18]</sup>

In view of the NCNS infractions Tañedo committed in violation of the company attendance policy, Stream issued another CARE form<sup>[19]</sup> dated May 6, 2010 informing him of the company's decision to terminate his employment. Tañedo refused to sign it and insisted that he "resigned" on May 8, 2010, which was noted by Gelido on the top part of the same form. Petitioners maintained, however, that even if Tañedo never furnished them with a copy of his resignation letter, he was still considered dismissed by virtue of the last CARE form.<sup>[20]</sup>

Tañedo admitted that he incurred absences, but asserted that his absences were caused by his being constructively dismissed. He said that Gelido assigned him a mixed team of wave 12 and 15 even if he was just assigned wave 12 barely two weeks before that. After a few weeks, he was again moved to wave 21 then to wave 23, making it unmanageable for him to make performance evaluations and properly coach his team members.<sup>[21]</sup>

According to Tañedo, despite the fact that the team was just assigned to him, Gelido scolded him every time the latter changed his team because of his team's poor attendance and performance. There were also numerous backlogs with regard to his previous teams, with which Gelido would constantly hound him to finish by the end of the day. Tañedo further claimed that he had to deal with more agents compared to other team managers which gave him little choice but to work for fourteen (14) to fifteen (15) hours a day for a period of around three (3) months. He had to accomplish one (1) evaluation per agent per month and one (1) bi-weekly performance per agent every two (2) weeks, as well as a tracker within the day, in addition to his coaching and serving sanctions duties to agents.<sup>[22]</sup> Tañedo added that his unfair working conditions caused him to get sick for the first two (2) weeks, during which he experienced high fever while at the operations floor but petitioners merely gave him medicine to alleviate it. He insisted that his absences were, in fact, connected to his sickness and the pressure he was getting from all the work Gelido expected him to do.

On April 30, 2010, the day of his administrative hearing, Tañedo contended that petitioners were determined to finally dismiss him from employment. He was given an option to resign by Gelido and a certain Astro Telmo from Human Resources (HR) which he was forced to accept since he did not want to be terminated and risk not getting his back pay and not getting a clean record. Apparently, Telmo agreed to let him resign provided that he would not sour-grape against Stream. Thereafter, Gelido allegedly said that she was feeling guilty and asked if there was still a way to save Tañedo. Fearing that he could not speak out and claim that his superiors were being unfair, Tañedo said that he was taking responsibility for his actions. Gelido then asked Tañedo to accomplish a clearance form and to explain call logs for the National QA Evaluations.<sup>[23]</sup>

*Private Respondent Irene C. Enriquez*

Private respondent Irene C. Enriquez ("**Enriquez**") was hired as a Team Manager for Operations on probation as provided in a Probationary Agreement<sup>[24]</sup> from February 19, 2010 to August 18, 2010.<sup>[25]</sup> From April 14 to 22, 2010 or during her

probationary period, Enriquez missed work purportedly without the proper notice. Stream sent a Notice<sup>[26]</sup> dated April 22, 2010 via registered mail directing her to report to the company on April 24, 2010 to explain her side. It likewise informed her that her failure to comply would constitute as a waiver of her rights. The said notice however, was allegedly sent to her only on April 28, 2010, days after the scheduled request (April 24, 2010) for her to report to work.<sup>[27]</sup>

Petitioners claimed that while they were waiting for a response from Enriquez, they received a Summons dated May 28, 2010 from the Labor Arbiter for a mandatory conference. On June 28, 2010, Stream sent a Notice of Termination<sup>[28]</sup> to Enriquez for going on absence without official leave. There was no indication that Enriquez signed the Notice.<sup>[29]</sup>

For her part, Enriquez argued that her cousin called to inform her that her father was in the Intensive Care Unit (ICU) of the Philippine Heart Center and that she needed to attend to him. Enriquez asked Gelido if she could go to the hospital and she was permitted to do so. The next day, Enriquez told Gelido that she could not yet go back to work as she had to be with her father in the hospital. Gelido asked her why she was the only one attending to her father and directed her to go back to work.<sup>[30]</sup>

Two days later, since Enriquez could not get in touch with Gelido, she opted to talk to another manager, Ricci Delos Reyes, who in turn promised that he would apprise the management about her father's condition. The next day, she requested for a Leave of Absence (LOA) from Gelido who allegedly did not respond. Enriquez found out that Gelido questioned one of the agents, Estrella Villaflor, as to why Enriquez did not send Gelido a message and that a Return to Work Order (RTWO) would be issued.<sup>[31]</sup> Stream then issued a RTWO to her via registered mail. Upon her return to Stream to explain the reason for her absence, Enriquez was barred from working because she was told that Gelido already sent a termination notice to the HR. Enriquez wanted to verify her employment status but Gelido did not respond to her calls or messages.<sup>[32]</sup>

When the parties failed to reach at an amicable settlement, the Labor Arbiter directed them to file the appropriate pleadings for its consideration.

### ***The Decision of the Labor Arbiter***

In the Decision dated September 26, 2011, the Labor Arbiter found that private respondents were illegally dismissed. The dispositive portion of the Decision reads:

**"WHEREFORE,** premises considered, respondent Stream Global Services, Inc. is hereby found guilty of illegal dismissal and is hereby ordered to pay complainants:

1. Separation Pay equivalent to one month's wages for every year of service computed up to finality of this decision. It is understood that a fraction of six months service is considered one whole year;

2. Backwages computed from the time of their illegal dismissal up to finality of this decision; and
3. Attorney's fees equivalent to ten (10%) percent of the total monetary award.

xxx

**SO ORDERED.**"<sup>[33]</sup>

Aggrieved, Stream filed an appeal with the NLRC.<sup>[34]</sup>

### ***The Decision of the NLRC***

In the Decision dated June 22, 2012, the NLRC affirmed the Decision of the Labor Arbiter, but deleted the award of attorney's fees.<sup>35</sup> The dispositive portion of the NLRC Decision states:

**"WHEREFORE,** the instant appeal is hereby **DENIED** for lack of merit and the appealed Decision of the Labor Arbiter is hereby **MODIFIED** by deleting the award of attorney's fees. Both complainants are entitled to full backwages from the time they were dismissed until the finality of this Decision; and separation pay equivalent to one month for every year of their service to respondent company, a fraction of six (6) months or more to be considered one year.

xxx

**SO ORDERED.**"<sup>[36]</sup>

Stream filed a motion for reconsideration but the NLRC denied it for lack of merit.

Hence, Stream filed this petition.

### ***The Issue***

In seeking the reversal of the assailed NLRC Decision and Resolution, petitioners raised a lone issue, viz:

**"THE PUBLIC RESPONDENT GROSSLY ERRED AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED CONTRARY TO THE ACTS AND EVIDENCE ON RECORD."**<sup>[37]</sup>

### ***The Court's Ruling***

The Court finds the petition devoid of merit.