

NERRISA TESORO Y BATO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ZEN ZEST ASIA LIFESTYLE PRODUCTS, INC./MS. MICHELE ASENCE FONTELERA, RESPONDENTS.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Nerrisa Tesoro y Bato (petitioner) is now before the Court via a Petition for Certiorari filed under Rule 65 of the Rules of Court assailing the Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 03-04705-13, NLRC LAC No. 01-000132-14.

Petitioner was hired by Zen Zest Asia Lifestyle Products, Inc. (respondent company) on May 23, 2011 as Group Sales Manager. On March 25, 2013, she filed a complaint before the NLRC for constructive dismissal, underpayment of salary, non-payment of service incentive leave, separation pay, retirement benefits, service charges, illegal suspension, damages and attorney's fees. (Rollo, p. 26).

She claimed that she was illegally suspended for 5 days, which took effect on March 14-20, 2013 for violating the company's rule on "Attendance and Punctuality" which she said was penalized only by a warning. She alleged that she was also humiliated in a meeting on February 2, 2013 when Michelle Fontelera (Fontelera) called Rosario Asence (Asence) over a Samsung Tablet, and in the hearing of the other managers Fontelera said, "Ano ba yang si Ayie [petitioner] pag resignin mo na yan." In another meeting with Area Managers which took place on February 13, 2013, Asence shouted "O ayan pinag puyatan ko yan to prove to you negative kayo versus last year" while glancing at petitioner who was surprised as their sales actually grew for the said period. On February 20, 2013, in the presence of Area Managers, Asence threw petitioner's report one by one and yelled "ulitin mo yan!...Why can't you accept na mali ka?". On March 4, 2013 at around 6 pm, Asence was about to leave the office when she shouted at petitioner while throwing the latter's report on top of the tray "ano ba yan! Your reports on outlet category mali! Ang gawa ng probinsya 90% tama" while pointing to the newly promoted sales manager Dulce Lorenzo. When Lorenzo later examined the report, she found that petitioner's report was the same as hers. Then on March 6, 2013, after a power point presentation, Asence took out a paper and uttered in a loud voice at her "you have the guts to submit this? Nakakahiya!" while waving it around the other managers who were present. Petitioner replied that it was not hers but Asence insisted. Many people witnessed the incident as it was nearly lunch break and most workers were coming out of their rooms. Petitioner no longer joined the meeting after lunch out of humiliation. On March 13, 2013, Asence took over the sales department headed by petitioner and told the Area Managers to occupy petitioner's table at the meeting. Asence then ordered petitioner to do clerical work by preparing the list of outlets for Area Managers. During lunch, Fontelera stood by petitioner's side and started to smirk at and bully her. (Rollo, pp. 144-145).

Petitioner also averred that several benefits that were promised were not given to her, specifically sick and vacation leaves, P10,000.00 monthly performance bonus, annual salary increase and 100 liters of gasoline allowance. (Rollo, p. 146).

Respondents for their part asserted that petitioner's suspension was valid as she abandoned her work by leaving the meeting on March 6, 2013 without permission from or notice to her immediate supervisor. They also averred that on March 22, 2013, they issued a return to work order to petitioner but the latter refused. Another notice was sent to petitioner on April 11, 2013 directing her to report to work with warning that failure to report will be construed as abandonment. Petitioner however still failed to report for work. The respondents also claimed that the alleged incidents which constituted constructive dismissal were "baseless and pure lies". As for the money claims, respondents explained that what is controlling is the employment contract signed by petitioner and not the Job Offer. Petitioner was neither unpaid nor underpaid her benefits under the contract. She was also provided gasoline allowance. As for the annual salary increase, it was conditioned on performance appraisal and was discretionary on the part of the company. (Rollo, pp. 146-149).

On November 15, 2013, Labor Arbiter Fatima Jambaro-Franco rendered her Decision dismissing petitioner's complaint for lack of merit. (Rollo, p. 120).

LA Franco held that the suspension imposed on petitioner was valid as it resulted from her own act of misbehavior during the managers' meeting held on March 6, 2013. Her position as general sales manager is one imbued with responsibility and trust. Yet she abandoned her work without consent from her superior which she even admitted in her explanation letter. There was also no illegal dismissal as there was no evidence, apart from petitioner's allegations, to substantiate her claims of constructive dismissal. (Rollo, pp. 112- 116).

Petitioner appealed the case to the NLRC which rendered its Decision on January 30, 2014:

"PREMISES CONSIDERED, complainant's appeal from the Decision of the Executive Labor Arbiter dated November 15, 2013 is hereby DISMISSED for lack of merit." (Rollo, p. 156).

It held that petitioner's five day suspension was valid as petitioner violated not just one but two rules when she left the meeting without notice or permission from her immediate supervisor. These are under "Attendance and Punctuality" and "Work Responsibility". There is also no constructive dismissal as petitioner failed to substantiate her charges. Even assuming that the Regional Sales Manager did make loud utterances during their meetings, such cannot be considered as acts constitutive of constructive dismissal, as the same were made in connection with petitioner's reports during the meetings or in her performance. This, the NLRC held, is a valid exercise of management prerogative to call the attention of employees in matters affecting their performance. (Rollo, pp. 153-155).

The NLRC likewise affirmed the LA's ruling on petitioner's money claims. (Rollo, pp. 155-156).

Petitioner moved for reconsideration which was denied by the NLRC on February 28, 2014. (Rollo, p. 169).

Petitioner is now before the Court raising the issues of:

"I

WHETHER PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING THAT THE PETITIONER WAS NEITHER CONSTRUCTIVELY DISMISSED NOR ILLEGALLY SUSPENDED.

II

WHETHER PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT AWARDING THE PETITIONER'S MONEY CLAIMS." (Rollo, p. 10).

The Court finds NO MERIT in the petition.

Petitioner asserts that she was illegally suspended and the 5-day suspension imposed on her is not commensurate to her first time infraction of failure to complete work shift hours without permission or notice. Considering that it was her first offense, she argues that a warning should have been sufficient. (Rollo, pp. 11-12).

We disagree.

Records show that on March 8, 2013, respondent company through petitioner's immediate supervisor Rosario Asence gave petitioner an Employee Violation Report (EVR), giving her three-days to explain the charge that she violated the company's rules, particularly Rule No. 4 on "Attendance and Punctuality" - failure to complete work shift hours without permission or notice, and Rule No. 5 on "Work Responsibilities" - abandonment of position while on duty, field or project without official notice. This is for leaving the office in the afternoon of March 6, 2013 without permission or notice from her immediate supervisor. (Rollo, p. 73).

Petitioner gave her explanation dated March 11, 2013 stating that she left that day because she could "no longer contain [her] emotions from the humiliation and agitation that [she] experienced during [the] sales meeting earlier that day." She added that if there were company rules that she may have violated, she was willing to accept the consequences of her actions. (Rollo, p. 74).

On March 13, 2013, petitioner was given a Disciplinary Action (DA) where she was meted a 5-day suspension, to take effect starting March 14, 2013 without pay. (Rollo, p. 75).

There was no question therefore that petitioner violated the company's rules and regulations, particularly Rule Nos. 4 and 5, when she left the office around noon on March 6, 2013, without notice and permission.

It is basic that appropriate disciplinary action is within the purview of management imposition. Employers have the prerogative to prescribe reasonable rules and regulations necessary for the proper conduct of their business and to provide disciplinary measures in order to implement said rules to assure that the same would be complied with. (*Areno v. Skycable PCC-Bagiuio*, 611 SCRA 721, 736 [2010]).

It is the employer's right, aptly called management prerogative, to have the freedom to regulate according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. The general rule is that the management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations. (*Deles v. NLR*, 327 SCRA 540, 547-548 [2000]).

In this case, the respondent company merely acted within its rights as an employer when it decided to exercise its management prerogative to impose a 5-day suspension on petitioner.

Petitioner violated not just one but two of the company's rules and regulations. Moreover, petitioner is not just an ordinary employee but a Group Sales Manager.

As a managerial employee, petitioner was tasked to perform key and sensitive functions and thus bound by more exacting work ethics. Her position carried authority for the exercise of independent judgment and discretion characteristic of sensitive posts in corporate hierarchy where a wide latitude could be supposed in setting up stringent standards for continued employment. (*Community Rural Bank of San Isidro (N.E.), Inc v. Paez*, 508 SCRA 245, 260 [2006])

As explained by respondent company in its Return to Work Order dated March 22, 2013, petitioner, as a Group Sales Manager was "entrusted with great trust and confidence and [is expected] to set a good example to [her]

staff by following the rules and regulations set by the company and to be of proper behavior especially when performing [her] duties and responsibilities at all times.” (Rollo, p. 76).

Considering the nature of petitioner's position and the admission that she in fact violated the company's rules and regulations, the Court finds nothing improper in the respondent's exercise of its prerogative to discipline its employee.

Petitioner next claims that she was constructively dismissed by respondent company. She asserts: that she was humiliated in front of other managers in the February 2, 2013, February 20, 2013 and March 6, 2013 meetings; that she was shouted at and faulted for imaginary mistakes on February 13, 2013 and March 4, 2013 and degraded by being ordered to perform clerical work and stripped of her duties as a supervisor, and; that she was smirked at and bullied. All these, according to petitioner, rendered it impossible for her to continue her work with respondent company and entitles her to separation pay, backwages, damages and other monetary benefits. (Rollo, pp.14-19, 24)

We are not convinced.

There is constructive dismissal when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. Also called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may also exist if an act of clear discrimination, insensibility or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. (Chiang Kai Shek College v. Torres, G.R. No. 189456, April 2, 2014). The test is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. (Cosare v. Broadcom Asia, Inc., G.R. No. 201298, February 5, 2014).

In this case, the evidence presented by petitioner is wanting to support her claim of constructive dismissal.

Where the employee fails to show any demotion in rank or diminution in pay made against him or her, nor was there any act of clear discrimination, insensibility or disdain committed by the employer against the employee which would justify or force him to terminate his employment from the company, the employee cannot be deemed to have been constructively dismissed. (See Verdadero v. Barney Autolines Group of Companies Transport, Inc., 679 SCRA 545, 556 [2012]).

It is well settled that before an employer bears the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Bare allegations of constructive dismissal, when uncorroborated by evidence on record, cannot be given credence. (Gemina v. Bankwise, Inc., G.R. No. 175365, October 23, 2013). While the employer bears the burden, in illegal dismissal cases, of proving that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of his dismissal from service. (Verdadero v. Barney Autolines Group of Companies Transport, Inc., supra, p. 558).

An act to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment. In this case, the circumstances relayed by petitioner were not clear-cut indications of bad faith or some malicious design on the part of respondent company to make her working environment insufferable. (Gemina v. Bankwise, Inc., G.R. No. 175365, October 23, 2013).

It is likewise an inflexible rule that a party alleging a critical fact must support her allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process.

(Gemina v. Bankwise, Inc., G.R. No. 175365, October 23, 2013).

It cannot be said that respondent company forced petitioner to resign from work. Records actually show that the company had given her a Return to Work Order dated March 22, 2013. In the said order, respondent through Asence stated among others that petitioner's suspension has ended on March 21, 2013 and that petitioner was required to report back for work as Central Group Sales Manager effective March 22, 2013. Petitioner received the said order on April 1, 2013. (Rollo, pp. 76-77).

On April 11, 2013, the company sent petitioner another memorandum stating that it has not yet received any response from petitioner despite the latter's receipt of the Return to Work Order on April 1, 2013. The company directed petitioner to report to work within 24 hours upon receipt of the notice, otherwise it may be construed that she was abandoned her work. (Rollo, p. 78).

Jurisprudence has held that there could be no constructive where an employee was asked to report back to work. (See Verdadero v. Barney Autolines Group of Companies Transport, Inc., supra, p. 557).

Finally, petitioner claims that she is entitled to separation pay, backwages, 13[th] month pay, gas allowance, leave credits, performance bonus, annual salary increase, moral and exemplary damages, plus attorney's fees. (Rollo, pp. 16-17).

As petitioner was not constructively dismissed, she is not entitled to separation pay and other monetary benefits accorded illegally dismissed employees.

She is likewise not entitled to her other money claims for the reasons adequately explained by the NLRC:

“...Essentially, [petitioner] argues that the benefits in JOB OFFER (Annex “A”, supra) were not extended to her by respondents....Such argument of [petitioner] is devoid of merit. What controls the relationship between [petitioner] and respondents are not the terms of the JOB OFFER but the terms of Employment Contract they entered into on May 23, 2011 (Annex “B”, supra). At any rate, it appears that [petitioner] was extended gasoline allowance by respondents (Annexes “1” & “2” of Respondents' Reply, Records, pp. 74-75). With respect to [petitioner's] claim for monthly performance bonus and yearly increases, suffice it to state that entitlement to said benefits are conditioned upon [petitioner's] performance (Annex “A”, Supra), there is no showing that [petitioner] had complied with said conditions. Hence, she cannot validly claim for said benefits.” (Rollo, pp. 155-156).

Basic is the principle that factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by appellate courts, especially when they coincide with those of the Labor Arbiter. (Emeritus Security and Maintenance Systems, Inc. v. Dailig, G.R. No. 204761, April 2, 2014).

The present case is no different. The Decision and the Resolution of the NLRC affirming that of the Labor Arbiter are well supported by law and evidence. Finding no grave abuse of discretion or lack or excess of jurisdiction on the part of the NLRC, the instant petition must fail.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National Labor Relations Commission in NLRC NCR Case No. 03-04705-13, NLRC LAC No. 01-000132-14 is AFFIRMED.

SO ORDERED.

Lopez, and Inting, JJ., concur.

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