

SONIA M. BADILLA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, TRANSCOM WORLDWIDE PHILIPPINES, INC., AND ANTONIO C. GOMEZ, JR., RESPONDENTS.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari seeking to nullify and set aside the NLRC Resolutions dated July 16, 2012[1] and August 31, 2012[2] in NLRC NCR CASE NO: 06-09108-11 NLRC LAC NO. 05-001568-12.

The dispositive portion of the July 16, 2012 Resolution reads:

“WHEREFORE, premises considered, the appeal is GRANTED and the Decision dated 30 March 2012 is ordered VACATED and SET ASIDE.

A new one is issued DISMISSING the above-entitled complaint for lack of merit.

SO ORDERED.”[3]

The August 31, 2012 Resolution is the order of denial of petitioner's Motion for Reconsideration.[4]

Antecedents:

Transcom Worldwide Philippines Inc. (hereinafter Transcom) is a corporation engaged in Business Process Outsourcing (BPO). On July 27, 2009, Transcom hired the services of Sonia Badilla as customer service representative (CSR) or call center agent with a monthly salary of P16,000.00 for a five-day work from 11:30 pm to 8:30 am. Badilla became a regular employee after six months.[5]

The company provides call/phones regulatory auxiliary codes for short breaks, lunch, meeting, coaching sessions, and personal breaks (bathroom break).[6] Each CSR is allotted a six-minute break called bathroom-break or Aux 8 in addition to their regular breaks[7]. It is also a company policy that each CSR must document every call on actual call-time to determine his/her Average Handling Time (AHT) per call which means that Customer Transaction Notes must be done by the CSR while taking the call.[8] Under the Company Confidential Operations Manual (COM) there is a zero-tolerance for work-avoidance which is a pattern of behavior or recurring manipulation of work distribution including but not limited to the use of Aux 8 breaks.[9] Work avoidance is considered a serious offense.[10]

On April 20, 2011, Badilla was monitored to have used Aux 8 breaks 16 times on thirty minute intervals, to wit:[11]

Time Time average of Aux 8 breaks

Total 6:48 mins.

11:30:00 AM 12:00:00 PM . :37 secs

12:00:00 PM 12:30:00 PM :01
12:30:00 PM 01:00:00 PM :43
01:00:00 PM 01:30:00 PM :01
01:30:00 PM 02:00:00 PM :03
02:00:00 PM 02:30:00 PM :31
02:30:00 PM 03:00:00 PM :01
03:00:00 PM 03:30:00 PM :01
03:30:00 PM 04:00:00 PM :12
04:00:00 PM 04:30:00 PM :10
04:30:00 PM 05:00:00 PM 01:21'
05:00:00 PM 05:30:00 PM 1:55'
05:30:00 PM 06:00:00 PM :00
06:00:00 PM 06:30:00 PM :35
06:30:00 PM 7:00'PM :00
7:00'PM 7:30'PM :02
7:30 'PM 8:00'PM :23
8:00'PM 9:00'PM :12
9:00'PM 9:30'PM :00

On May 5, 2011, Badilla was served a Notice to Explain her use of Aux 8 on April 20, 2011 which resulted in queue jumping, putting her last in the queue of available CSRs for that day.[12]

On May 18, 2011, Badilla gave her explanation of her use of Aux 8 at short durations claiming that she used the time to throw garbage into the trash bin, getting water from the water station, making documentations for long or transferred calls.[13] She also averred that she used Aux 8 when doing notations and sign offs to avoid increasing her Average Handling Time (AHT) because using After Call Work (ACW) in the past increased her AHT.[14]

During an administrative hearing conducted on May 24, 2011, Badilla admitted that: she was aware of the company rules and regulations; she was using Aux 8 breaks since the previous year; she was aware that using Aux 8 will put her at the bottom of the queue; she used Aux 8 for mere seconds to place notes.[15]

The decision to terminate the services of Badilla effective June 10, 2011 was contained in the Notice of Decision dated June 6, 2011 for work-avoidance considered as serious misconduct where the company's policy is zero-tolerance.[16]

Badilla filed a complaint for illegal dismissal on June 13, 2011.[17]

On March 30, 2012, the Labor Arbiter rendered a decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed from the service. Accordingly, respondents are hereby ordered to immediately reinstate the

complainant to her former position and pay her full backwages computed from date of her dismissal up to her actual reinstatement and unpaid salaries during the time of her preventive suspension as follows:

BACKWAGES: P209,164.25

UNPAID SALARIES: P19,384.69

Respondents are likewise ordered to pay complainant attorneys fees equivalent to ten percent of the total awards.

For purposes of complainant's reinstatement, respondents are hereby ordered to report to the Office within ten days from receipt hereof the fact of compliance thereof.”[18]

The Labor Arbiter ratiocinated that while there is no dispute that complainant resorted to Aux 8 code break for sixteen times on 20 April 2011, said fact does not support respondents’ claim that complainant is guilty of work avoidance or serious misconduct, hence the penalty of dismissal is not commensurate to her act of availing Aux 8 breaks on 20 April 2011.[19]

On appeal, the NLRC vacated and set aside the Labor Arbiter decision in its Resolution dated March 30, 2012.[20]

The NLRC ruled that the respondents complied with the following standard of procedural due process, to wit: i) A written notice served on the employee specifying the ground or grounds for termination and giving said employee reasonable opportunity within which to explain his side; ii) a hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given the opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; iii) a written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, ground has been established to justify his termination.

In this case, the NLRC found that respondents were able to discharge the burden of proving valid ground to justify the termination of complainant.[21] The NLRC upheld the administrative finding that the short durations of Aux 8 break by Badilla for 16 times on an 8-hour duty on April 20, 2011 at intervals of 30 minutes effectively placed her at the bottom of the queuing system which is clearly an act of work-avoidance which cannot be tolerated per company policy.[22]

Moreover, Badilla used Aux 8 to reflect “a better Average Handling Time (AHT) which is also highly unprocedural as CSRs, as above averred, are mandated to do all call-related activities including documentation and transaction notes making, real time, while on live calls. Complainant reasons that said scheme is better than resorting to ACW (After Call Work) as using ACW increases a CSR’s AHT for purposes of performance evaluation.”[23]

The fact that the use of Aux 8 was evidently used every 30 minutes would mean and suggest that the behaviour shown is manipulative and abusive, thus affecting the normal flow of business. [24] (Underscoring Ours)

Complainant's motion for reconsideration was denied in the Resolution dated August 31, 2012, hence the present petition.

Issue/s:

The sole issue in this petition for certiorari is whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in setting aside and vacating the decision rendered by the Labor Arbiter finding petitioner to have been illegally dismissed.

Petitioner asserts that her dismissal was illegal as private respondents failed to prove that her termination was for a just cause.²⁵ Petitioner insists that the use of Aux 8 break with a duration of six minutes is allotted to every

customer service representative during their shift which the latter may use as they see fit provided that it does not exceed six minutes.[26] Private respondents failed to present any company rule or regulation which specifically limits the use of Aux 8 breaks, therefore, petitioner cannot be considered to have committed serious misconduct.[27] Petitioner asserts that assuming the respondents adequately proved violation of company rules, the dismissal is not commensurate to the gravity of her offense considering it was committed on a single day despite the fact that petitioner has been with the company for two years.[28]

The contention of petitioner is incorrect.

We affirm the NLRC.

In finding that petitioner was not illegally dismissed, We need not discuss the legality or illegality of her preventive suspension. The impropriety of any preventive suspension will not make the dismissal illegal if there is sufficient basis to dismiss the erring employee as in this case, where petitioner committed a serious offense of work avoidance. Besides, her preventive suspension was not raised as an issue in her Complaint.

As admitted by petitioner, on April 20, 2011, she used Aux 8 breaks 16 times for short durations of 1-3 seconds (six times), 10-12 seconds (three times) and 20-45 seconds (four times) at thirty minute intervals for such flimsy excuses as throwing of trash and retouching make-up knowing that each time, she would be placed at the bottom of the queuing system. This is clearly a violation of the company rules and regulation concerning "CALL AVOIDANCE", to wit:

- a. Work Avoidance – a pattern behaviour or recurring manipulation of work distribution including but not limited to:
- ii. Inbound – not responding to customer acknowledgment upon initial contact: inappropriately transferring the customer when the issue is within the call handling expectations; manipulation of queue position (Via use of ACW, AUX, Login, Logout, etc.)

Petitioner claimed that she used her Aux 8 break to document long calls or transferred calls, notations and sign-offs so as not to increase her Average Handling Time (AHT) per customer. However, the company policy with regard to documentation of calls is that the same should be done on actual call-time, that is, the CSR must document each call during the actual call-time. In this regard, petitioner's use of Aux 8 to reflect a better AHT is even reflective of her intent to deceive the company by making it appear that she was an efficient CSR able to handle her clients' calls at speed time, whereas in truth, she used her Aux 8 break to shorten her AHT knowing fully well that the use of Aux 8 for that purpose is improper.

There is no doubt that petitioner was aware of the company rules and procedure for she already admitted to such as declared by the NLRC, to wit:

"We further note that during the administrative investigation, complainant-appellee admitted among others that she is aware of the company rules and regulations; that she divides the use of Aux 8 (Bio break or personal) so that she will not go over six minutes which is the allowed use of Aux 8; that she is aware that using Aux 8 and going on Auto-In will place her down the queue (incoming call queue) which was never prescribed; that she uses Aux 8 to place notes in her documentation of transaction details and records which was also not prescribed (as the standard was that documentation should be done during the call itself)".[29]

Petitioner insists that Aux 8 break may be used by every employee as they see fit whether once or 16 times as long as it does not exceed 6 minutes, because there is no specific company rule limiting the use of said break.[30]

We beg to disagree.

It is not the length of time not exceeding 6 minutes allotted for each CSR which is the issue, but how the Aux 8

break is utilized which, as found by the NLRC, is at intervals of every thirty minutes for short durations of 1-3 seconds (six times), 10-12 seconds (three times) and 20-45 seconds (four times) betraying the reason for availing such short duration breaks, which is clearly to put her in the bottom of the queuing system, clearly a scheme to avoid receiving incoming calls from client.

Petitioner committed a serious offense when she used her Aux 8 breaks to avoid receiving calls. The company policy for work-avoidance is zero-tolerance, hence her dismissal is justified. Thus, the NLRC correctly ruled that petitioner was not illegally dismissed. The Labor Code recognizes the right of the employer to terminate erring employees as long as the right to due process of the employee is observed. In the present case, respondents substantially proved that due process was observed before the termination of petitioner's employment was implemented. The twin requirements of notice and hearing were complied with by private respondents before they dismissed petitioner.[31]

We find no grave abuse of discretion on the part of the public respondent.

WHEREFORE, in view of the foregoing, the assailed Resolutions of the public respondent NLRC are AFFIRMED and the instant petition is hereby DISMISSED.

SO ORDERED.

Barza, and Reyes-Carpio, JJ., concur.

[1] Rollo, at 24-35

[2] Ibid, at 37

[3] Ibid, 35

[4] Ibid, at 37

[5] Ibid, at 33-49

[6] Ibid, at 62-72

[7] Ibid

[8] Ibid

[9] Ibid

[10] Ibid

[11] Ibid, at 111

[12] Ibid, at 122-125

[13] Ibid, at 126

[14] Ibid

[15] Ibid, at 130

[16] Ibid

[17] Ibid, at 50

[18] Ibid, at 137-151

[19] Ibid

[20] Ibid, at 24-34

[21] ibid

[22] ibid

[23] ibid

[24] ibid

[25] Ibid, at 12

[26] Ibid, at 13

[27] Ibid, at 13-14

[28] Ibid, at 16

[29] NLRC Resolution dated July 16, 2012, p. 10 par. 1

[30] Rollo, at 13

[31] Anflo Management and Investment Corp. vs. Bolanin, 390 SCRA 473

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