

JANNATH LANE B. SUMIRAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), TELETECH CARE MANAGEMENT INC., LARA DIAZ-STA. MARIA, MA. TERESA G. ROMERO, CAROL R...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision[2] dated February 29, 2012 of public respondent National Labor Relations Commission (“public respondent NLRC” or “NLRC” for brevity) which affirmed the Decision[3] dated September 9, 2010 of the Labor Arbiter in NLRC CASE No. RAB-IV-08-01044-09-B.

Among the pertinent and salient facts are those as stated in public respondent NLRC's Decision[4] of February 29, 2012, which are as follows:

“Teletech Care Management, Inc. (TeleTech) is a domestic corporation in Lipa City, Batangas, engaged in the call center business. Individual respondents (private respondents here) are officers of TeleTech.

Complainant (petitioner here) started working in TeleTech on July 6, 2007 as a Technical Support Representative. She received a monthly salary of P10,000.00.

On May 19, 2009, TeleTech issued a Notice to Explain to complainant, the pertinent texts of which read:

'An incident report has been forwarded to Human Capital Delivery (HCD) regarding your alleged failure to achieve the performance goal as stated in the BSKYB Performance Management Program.

Based on the report, it was alleged that you got a failing score of 2.60 for week 44. As such, the following were issued for failure to meet the minimum score of at least 4.0 or Satisfactory rating on your weekly scorecard.

March 18, 2009 - Discussion Log

April 5, 2009 - First Written Warning

April 14, 2009 - Second Written Warning

April 19, 2009 - Final Written Warning

You are well aware that under our existing Performance Management Program, Code of Conduct and Discipline, this is a grave offense tantamount to termination of your employment.

As such, you are hereby instructed to report to TeleTech HCD Department (from 10:00 pm-7:00 am, Monday-Friday) within 5 days upon receipt of this letter and submit a written explanation as to why the company should not push through with the termination of your employment for incurring the said act.

Attached in your reply, you may likewise provide evidences (sic) to substantiate your defense on the allegations as you may deem necessary.'

Complainant submitted her explanation in her letter dated May 25, 2009, which reads:

"This is an issue regarding my metrics for the last couple of weeks. Agents were briefed about the process on how important it is to meet their metrics. I am fully aware of this and I am really concerned about it.

I was enrolled to PMP last March 28, 2009. I have failed to meet the requirements of the program. I was given 4 consecutive weeks to manage and improve my metrics. I agreed and signed my 1st Written Warning knowing that these are Company Procedures and Policies. It only indicates here that I need to perform well in order for me to stay on the program and knowing that one of the purpose[s] of this program is to prioritize those who were enrolled. It requires coaching sessions and call listening.

XXX

On my part, I know that I am responsible for all my doings. I can see other agents given the proper coaching and it shows that they can improve.'

On June 15, 2009, respondents issued its Notice of Decision terminating the services of complainant for violating TeleTech's Code of Discipline and for her failure to meet the requirements of the BSKYB Performance Management Program.”[5] (Emphasis supplied)

On August 25, 2009, petitioner Jannath Lane B. Sumiran (“petitioner” for brevity) filed before the Labor Arbiter, a Complaint[6] for Illegal Dismissal with prayer for Reinstatement without loss of seniority rights, Payment of full Backwages, Moral, Exemplary, Actual and Nominal Damages, and Attorney’s Fees against private respondent Teletech Care Management Inc. (“private respondent Teletech” for brevity), and against private respondents Lara Diaz-Sta. Maria, Ma. Teresa G. Romero, Carol Robertson, Sr., Sharon Balanhagui, Leilanie Zeta, Rey Acuna, Diana Torres, and Blessie Villena (collectively referred to here as “private respondents” for brevity), who were sued in their capacity as officers of Teletech Care Management Inc.[7]

The rest of the facts are those as stated in public respondent NLRC's Decision[8] dated February 29, 2012, which are as follows:

“Respondents countered that the employment of complainant was terminated for her continuous failure to meet the goals and standards of her job. All opportunities were repeatedly afforded to her to enable her to meet the standards of an acceptable and satisfactory work quality. She was notified, coached and repeatedly given chances to improve her performance. Her consistent failure to obtain a passing mark could only be attributed to her gross and habitual neglect of duties as Technical Service Representative.”[9] (Emphasis supplied)

On September 9, 2010, the Labor Arbiter rendered a Decision[10], which dismissed petitioner's Complaint[11] for lack of merit[12].

Petitioner then appealed from the Labor Arbiter's Decision[13] of September 9, 2010. The appeal however, was dismissed by public respondent NLRC in its assailed Resolution[14] of July 15, 2011 for Non-Perfection because the Verification and Certification of Non-Forum Shopping “was not made under oath”[15].

Upon petitioner's Motion for Reconsideration[16], public respondent NLRC rendered its assailed Decision[17] of February 29, 2012. In its assailed Decision, public respondent NLRC reconsidered its Resolution[18] of July 15, 2011 but still dismissed petitioner's appeal on the merits, and affirmed the Labor Arbiter's Decision[19].

Petitioner then filed the Petition[20] at bench praying as follows:

“WHEREFORE, it is respectfully PRAYED of that the Honorable Office render judgment:

Annul and reverse the NLRC's twin decisions and enter a new one declaring the petitioner's dismissal illegal and unjustified. Order the petitioner's reinstatement to her former position with fullbackwages (sic) without loss of seniority rights. Award attorneys fees in petitioner's favor. Other equitable remedies are likewise prayed

for.”[21] (Emphasis was made in the original)

Petitioner raised this sole ground:

“THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT PETITIONER'S DISMISSAL IS VALID ON ACCOUNT OF GROSS AND HABITUAL NEGLECT OF DUTY, AND THAT PETITIONER IS NOT ENTITLED TO THE RELIEFS PRAYED FOR”[22] (Emphasis and Capitalization were made in the original)

Contrary to petitioner's arguments in her sole assigned ground, private respondent validly dismissed petitioner because of petitioner's gross and habitual neglect of duty.

Petitioner had argued as follows:

“Bare allegation of poor performance with showing of performance logs xxx, without showing the signature of the person who allegedly evaluated petitioner and without telling us who rated petitioner, and the matrix upon which her rating was based was also not shown in evidence.

xxx

Mere showing of low ratings, does not satisfy the requirements of the law, because petitioner, as call center agent, her duty, primarily of which judicial notice maybe had, is to receive calls from the customers, but we have not seen written or verbal complaints from the customers. Therefore, there is absence of clear and convincing basis upon which the termination was anchored.

xxx

We must emphasize, it is conclusive that petitioner, after her probationary employment, had attained regular status and had passed the so-called accent neutral and product test. But, what the respondents' evidence want to project is that petitioner failed to hurdle the probationary employment standards xxx, which should not be the case, of which circumstance and evidence, the Labor Arbiter and the NLRC grossly misappreciated.

xxx

Since, the herein petitioner was shown to have been illegally dismissed, she is entitled under Article 279 of the Labor Code to reinstatement to her former position with fullbackwages (sic).

xxx

By reason of the precipitate acts of herein respondents, the petitioner was constrained to engage the services of counsel, xxx”[23] (Emphasis and Underlining were made in the original)

Negating petitioner's allegations however, is that petitioner had violated private respondents' “Teletech Code of Discipline”[24] and had failed to achieve the performance goal that was required of her under private respondent Teletech's Performance Management Program or Plan[25] (“PMP” for brevity). This, she committed, knowing that a disciplinary action may be imposed upon her by private respondent if she failed to achieve the performance goal required of her as a “Technical Service Representative”[26]. In fact, despite several opportunities granted to her, petitioner still repeatedly failed to improve her performance ratings.

As the records had revealed, petitioner got a failing average grade of 3.0, against a passing score of 4[.0][27], in private respondents' thirty-six (36) week PMP, a “remedial training”[28] provided to private respondents' employees who failed to meet private respondent Teletech's performance standards. Nevertheless, private respondents gave petitioner another four (4) consecutive weeks in the PMP as a chance “to improve her performance”[29] where she would be closely monitored and reviewed weekly, and a “necessary disciplinary

action [would] be given if she failed to achieve the [weekly] passing score of 4.[0]"[30]. To this opportunity, petitioner had promised to "exert effort to improve [her] stats for the next [four] weeks"[31].

However, petitioner again got a failing score of 2.70[32] and 2.30[33] for weeks 39 and 40, respectively, and was given a first and a second written warning[34]. As a result, petitioner was given another 4 consecutive weeks in the PMP, but she still "failed on her xxx rating[s] [and] got an average of 3.70"[35] and 2.60[36] in weeks 41 and 44, respectively. Because of all these, she was given a final written warning[37] dated April 19, 2009 and a "Notice to Explain"[38] dated May 19, 2009.

In fact, petitioner acknowledged in her reply letter[39] to private respondents' "Notice to Explain"[40] dated May 19, 2009 that she "[had] failed to meet the requirements of the program [and that she knew that she was] responsible for all [her] doings"[41].

Thus, pursuant to the conditions set forth under private respondents' PMP, which conditions were made known to and agreed upon by petitioner[42], petitioner's continuous poor performance ratings amounted to gross and habitual negligence in the performance of her duty[43].

All of these matters were as also found by public respondent NLRC in its Decision[44] of February 29, 2012, to wit:

"In fact, complainant was dismissed not because she failed to meet the standards of the company as a probationary employee, but because she violated the provisions of the Code of Conduct of the company, and for failing to achieve the performance goal as stated in the performance management program of TeleTech. In fine, complainant was dismissed for gross and habitual neglect of duties, which was a just cause for terminating employment under the Labor Code. Respondents contended that the consistent failure of complainant to pass her performance metrics amounted to gross and habitual neglect.

xxx

Respondents were able to present evidence that despite the chances given to complainant, she still continued to fail on her performance metrics. In the Coaching Log dated January 28, 2009, she and her supervisor Blessie Villena agreed on their objective that she should focus on every call and that she should follow the rules in holding the customer, among others. She was then enrolled in the Performance Management Plan (PMP) of TeleTech for thirty-six weeks where she only received a rating of 3.00, equivalent to 'needs improvement.' TeleTech gave her another four weeks within which to achieve a passing score.

On the first two weeks, complainant passed. On the third week, however, she failed to meet the requirements to graduate in the PMP in four week's time. She only received a rating of 2.70. She got a lower grade of 2.30 on the fourth week.

The consistent failure of complainant to pass the metrics – for 38 weeks, more or less – manifested her lack of diligence to perform her job despite the opportunities given to her by management. She also failed to exert more effort to improve her performance. Clearly, her poor performance ratings amounted to gross and habitual neglect."[45] (Emphasis Supplied)

Thus, private respondents' termination of petitioner's employment for gross and habitual neglect of duties was valid, pursuant to Article 282 (b) of the Labor Code, to wit:

"ART. 282. Termination by employer: – An employer may terminate an employment for any of the following causes:

xxx

(b) Gross and habitual neglect by the employee of his duties;" (Emphasis supplied)

That an employer, such as private respondents, may terminate the employment of an employee, such as petitioner, for gross and habitual neglect of duties, is in accordance with the following pronouncement of the Supreme Court in *St. Luke's Medical Center, Inc. and Robert Kuan vs. Estrelito Notario*, G.R. No. 152166, October 20, 2010:

“xxx an employer may terminate an employee for gross and habitual neglect of duties. Neglect of duty, to be a ground for dismissal, must be both gross and habitual. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time xxx” (Emphasis Supplied)

Furthermore, petitioner was accorded due process of law before her employment was terminated. Proper notice and hearing were afforded petitioner before private respondent issued the termination notice[46] dated June 15, 2009 to petitioner. This was also found by public respondent NLRC in its Decision[47] dated February 29, 2012, to wit:

“Finally, records showed that complainant was afforded the opportunity to explain her side. She was given the chance to explain her poor performance on May 19, 2009. Subsequently, she was notified of her dismissal.”[48]

Consequently, because petitioner was validly dismissed, petitioner's claims for Reinstatement without loss of seniority rights[49], payment of full Backwages[50], Damages[51] and Attorney's Fees[52] are unavailing.

No cogent reason was therefore shown to justify deviation from the following findings of public respondent NLRC, which were pursuant to the facts and the law:

“Having carefully perused the records, we sustain in approval respondent's argument that complainant's continuous failure to improve work performance as per company policy constitutes gross and habitual neglect of duty.

xxx

There is no gainsaying that respondent's imposition of monitoring program for work performance vis-à-vis its nature of business as call center or service delivery center constitutes company policy, which is valid and binding on its employees, unless shown to be grossly oppressive or contrary to law. Such company policy must be faithfully complied with until amended unilaterally or through negotiation or by competent authority. Non-compliance with said policy can compel respondent to instill discipline on its employees and impose reasonable penalties, including dismissal.

xxx

Verily, there is nothing on record to show that respondent's company policy is forged in bad faith. Neither was it shown to be unfair or unreasonable. The law presumes good faith, and there being no showing on record that bad faith was attendant in forging such company policy, even as complainant herself acquiesced to it by entering into the respondent's performance management program, the presumption of good faith stands undisturbed.

xxx

Indeed, the burden of proving just and valid cause for terminating an employee rests upon the employer xxx. All told, we are prepared to accept the postulation that the evidence adduced by respondent is substantial and the dismissal of complainant is justified.”[53]

Indeed, the rule is settled that the findings of the Labor Arbiter, when affirmed by the NLRC, are accorded due respect and finality, and are binding upon the court[54] especially when supported by substantial evidence, as in this case.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, public respondent NLRC was therefore shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[55]

IN VIEW OF ALL THESE, the Petition is DENIED.

SO ORDERED.

Didican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 3-20

[2] Rollo, pp. 147-154

[3] Rollo, pp. 114-117

[4] Rollo, pp. 147-154

[5] Rollo, pp. 148-150

[6] Rollo, pp. 49-50

[7] Rollo, pp. 4,148

[8] Rollo, pp. 147-154

[9] Rollo, p. 151

[10] Rollo, pp. 114-117

[11] Rollo, pp. 49-50

[12] Rollo, pp. 117

[13] Rollo, pp. 114-117

[14] Rollo, pp. 139-140

[15] Rollo, p. 140

[16] Rollo, pp. 142-146

[17] Rollo, pp. 147-154

[18] Rollo, pp. 139-140

[19] Rollo, pp. 114-117

[20] Rollo, pp. 3-20

[21] Rollo, p. 16

[22] Rollo, p. 3

[23] Rollo, pp. 12-16

[24] Rollo, pp. 41-48, 95 and 99

- [25] Rollo, pp. 84, 95 and 99
- [26] Rollo, pp. 151 and 166
- [27] Rollo, p. 177 and 189
- [28] Rollo, p. 189
- [29] Rollo, p. 189
- [30] Rollo, p. 189; “Employee Discussion Log” dated March 18, 2009
- [31] Rollo, p. 189; “Employee Discussion Log” dated March 18, 2009
- [32] Rollo, pp. 192-193
- [33] Rollo, pp. 195-196
- [34] Rollo, pp. 191 and 194
- [35] Rollo, pp. 197
- [36] Rollo, p. 199
- [37] Rollo, p. 196
- [38] Rollo, p. 199
- [[39]] Rollo, pp 201-202
- [40] Rollo, p. 199
- [41] Rollo, pp. 201-202
- [42] Rollo, pp. 84 and 97-98
- [43] Eastern Overseas Employment Center, Inc. vs. Cecilia Bea, G.R. No. 143023, November 29, 2005
- [44] Rollo, pp. 147-154
- [45] Rollo, pp. 152-153
- [46] Rollo, pp. 203-204
- [47] Rollo, pp. 147-154
- [48] Rollo, p. 154
- [49] Wenphil Corporation vs. National Labor Relations Commission and Roberto Mallare, G.R. No. 80587, February 8, 1989
- [50] Juvy M. Manatad vs. Philippine Telegraph and Telephone Corporation, G.R. No. 172363, March 07, 2008
- [51] New Puerto Commercial and Richard Lim vs. Rodel Lopez and Felix Gavan, G.R. No. 169999, July 26, 2010
- [52] Philasia Shipping Agency Corporation and/or Intermodal Shipping, Inc., vs. Andres G. Tomacruz, G.R. No. 181180, August 15, 2012.
- [53] Rollo, pp. 116-117

[54] Letran Calamba Faculty and Employees Association vs. National Labor Relations Commission and Commission and Colegio De San Juan De Letran Calamba, Inc., G.R. No. 156225, January 29, 2008

[55] First Women's Credit Corporation, et al. vs. Glicerio Perez, et al., G.R. No. 169026, June 15, 2006.

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