

INFOCOM TECHNOLOGIES, INC., MARY PRINCESS PUNONGBAYAN, ALTHEA SABLAN AND ANNABELLE ORDOÑA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, JONALYN B. BONA,...

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

This is a Petition[1] for Certiorari (With Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction) under Rule 65 of the Rules of Court filed by petitioners Infocom Technologies, Inc., Mary Princess Punongbayan, Althea Sablan and Annabelle Ordon[2] assailing on the ground of grave abuse of discretion amounting to lack of or in excess of jurisdiction, on the Decision[3] dated 29 February 2012 and Resolution[4] dated 24 April 2012 rendered by the public respondent National Labor and Relations Commission in NLRC LAC No. 10-002860-11 (8) NLRC NCR CN. 03-03971-11, 04-05555-11, and 04-05846-11 entitled, "Jonalyn B. Bona, Mary Ann J. Jerusalem and Mark Lester Manio, Complainants, vs. Infocom Technologies, Inc. and Mary Princess Punongbayan, Respondents," for illegal dismissal, reinstatement, payment of backwages, other monetary claims, damages and attorney's fees.

The factual antecedents of the case, as culled from the records, are as follows:

Private respondents Jonalyn B. Bona, Mary Ann J. Jerusalem and Mark Lester Manio[5] were hired as customer service and technical service representatives by petitioner Infocom Technologies, Inc.,[6] on 22 March 2010. Their respective Project Employment Contracts[7] stated their employment to commence from 22 March 2010 and to terminate on 21 March 2011, with a monthly salary of nine thousand (Php 9,000.00) pesos.

In their Position Paper[8] submitted before the Labor Arbiter, private respondents claimed that they were summarily dismissed from work without just cause and due process. Further, having performed duties usually desirable and necessary for Infocom's business, they should be deemed regular employees, and thus, their terminations were illegal, entitling them to reinstatement and the payment of backwages. Private respondents likewise claimed the payment of service incentive leave, damages and attorney's fees.

Petitioners, on the other hand, denied in their Position Paper[9] that private respondents were illegally dismissed. According to petitioners, private respondents Bona and Jerusalem were found to have committed various offenses, such as tardiness and negligence in the performance of their work. In particular, both private respondents allegedly mishandled certain calls on separate occasions in January 2011 and were required to explain their side.[10] However, as their performance ratings fell below Infocom's standards, they were sent notices of termination stating their employment to end on 01 March 2011 for private respondent Bona and 15 March 2011 for private respondent Jerusalem.

Also according to petitioners, contrary to private respondent Manio's claim, the latter was not illegally terminated. Rather, petitioners averred that private respondent Manio's contract of employment expired on 21 March 2011.

The Labor Arbiter, in his 29 July 2011 Decision,[11] ruled in favor of petitioners and dismissed the complaint for illegal dismissal filed by private respondents.

According to the Labor Arbiter, petitioners complied with the twin-notice requirement. Private respondents were notified of the offenses against them and were asked to explain the same. Further, they were also furnished of notices informing them that their employment would be terminated. In the case of private respondent Manio, his termination was based on the expiration of his employment contract.

The dispositive portion of the Labor Arbiter's Decision reads:

"X x x

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above captioned case for lack of merit.

SO ORDERED.

X x x"[12]

On appeal by the private respondents, the public respondent NLRC partially reversed the findings of the Labor Arbiter. According to the public respondent NLRC, contrary to petitioners' claim, the ratings obtained by private respondents Bona and Jerusalem on their over-all performance were within the standards set forth by Infocom itself. Private respondent Bona received a rating of 2.81, while private respondent Jerusalem obtained a rating of 2.56, both for the period of May 2010 to January 2011. These ratings, based on the performance evaluation sheets of said private respondents, stated that the ratings within 2.50 to 3.49 "Meets Standard." [13] There was also no indication that private respondents were informed or made aware that an overall rating of 3 is the minimum standard for continued employment. Thus, the dismissal of private respondents Bona and Jerusalem was deemed illegal by the NLRC.

The NLRC also ordered petitioners to pay private respondents' service incentive leave and 13[th] month pay considering that petitioners failed to show payment of the same.

The decretal portion of the NLRC's Decision[14] dated 29 February 2012 states:

"X x x

WHEREFORE, premises considered complainants appeal is PARTLY GRANTED. The Decision of Labor Arbiter dated 29 July 2011 is REVERSED and SET ASIDE. Respondent Infocom Technologies, Inc., is hereby ORDERED to pay complainants their salary for the remaining period of their Employment Contract, SILP, and 13[th] month pay, computed as follows:

I. JONALYN B. BONA

1. Salary for the remaining

Period of Contract

3/1/2011-3/21/2011

P9,000/22 days

=

P409/day

P

8,485.89

P404.09 x 21 days

2. SILP

2,020.45

P404.09 X 5/12 X 12

3. 13th Month

P9,000.00 x 12/12

9,000.00

P 19,506.34

II. MARY ANN J. JERUSALEM

1. Salary for the remaining

Period of Contract

3/15/2011-3/21/2011

P404.09 x 7 days

P

2,828.63

2. SILP

P404.09 X 5/12 X 12

2,020.45

3. 13th Month

P9,000.00 x 12/12

9,000.00

P 13,849.08

III. MARK LESTER MANIO

1. Salary for the remaining

Period of Contract

3/1/2011-3/21/2011

P9,000/22 days

=

P409/day

P404.09 x 21 days

P

8,485.89

2. 13th Month

P9,000.00 x 12/12

9,000.00

P 11,020.45

SO ORDERED.

X x x"[15]

Petitioners sought reconsideration of the NLRC's Decision but the same was denied in a Resolution[16] dated 24 April 2012:

"X x x

ACCORDINGLY, respondents' Motion for Reconsideration is hereby DISMISSED for lack of merit.

No further Motion of similar nature shall be entertained.

SO ORDERED

X x x"[17]

Feeling aggrieved, petitioners filed the instant Petition raising the following as issues, to wit:

"I

Whether the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction in reversing the Decision of the Labor Arbiter and in ruling that private respondents were illegally dismissed from employment considering that:

A. Petitioner Infocom has dutifully discharged the burden of proving that private respondents Bona and Jerusalem have exhibited an overall failure in meeting their implied undertaking to perform their work as customer service representatives with competence and in a careful manner since they were grossly negligent in the performance of their duties to the prejudice of petitioner Infocom's business operations.

As regards private respondent Manio, petitioner Infocom has substantially shown that it validly advised respondent Manio that the period of his project employment had expired and will not renewed for another term.

B. Petitioner Infocom has dutifully followed the two aspects of a valid termination, viz:

(a) with regard to private respondents Bona and Jerusalem, the legality of the act of dismissal, that is, dismissal for gross negligence in the performance of duties by failing to pass the performance standards imposed by petitioner Infocom as supported by substantial pieces of documentary and testimonial evidence;

(b) the legality of the manner of dismissal, that is, affording private respondents Bona and Jerusalem with ample opportunity to explain themselves on the allegations against them; and

(c) with regard to private respondent Manio, he was properly notified of the expiration of his contract and its non-renewal for another term.

II

Whether the NLRC gravely abused its discretion when it reversed the decision of Labor Arbiter and ruled that private respondents are entitled to their contracts, service incentive leave and 13[th] month pay contrary to the facts and pieces of evidence presented in this case."[18]

In essence, petitioners claim that the NLRC gravely abused its discretion in finding that private respondents were illegally dismissed and in awarding the payment of service incentive leave and 13[th] month pay.

Petitioners are insisting that private respondents Bona and Jerusalem failed to meet the performance standards set forth by petitioner Infocom. Said private respondents were habitually tardy and exhibited gross negligence in the performance of their duties as customer care representatives; conduct which is deemed inimical to the interests of the company. As in fact, private respondents Bona and Jerusalem were found to have been tardy on several instances resulting to the suspension[19] of private respondent Bona and to the issuance of a written warning[20] in the case of private respondent Jerusalem.

Petitioners are likewise claiming that said private respondents were grossly negligent in the performance of their duties. Apparently, private respondent Bona mishandled a call while private respondent Jerusalem exhibited a negative attitude in taking a call.

Records disclosed, however, that the mishandling of call for the first offense only merits a written warning, as clearly enunciated in the matrix provided in the memorandum issued by Infocom to private respondent Bona.[21] As in fact, private respondent Bona was imposed a written warning on 03 February 2011 as stated in the memorandum issued for the purpose.[22]

Contrary to petitioners' claim, private respondent Jerusalem was charged with simple negligence only for exhibiting a negative attitude while taking a call, a transgression which merited a written warning for the first offense. Again, these were all indicated in the memorandum issued to private respondent Jerusalem[23] on 14 January 2010.[24] And while private respondent Jerusalem was required to explain within 24 hours to 48 hours from receipt of the memorandum the charge against her, Infocom nonetheless issued another memorandum[25] on the same day notifying private respondent Jerusalem that per investigation, it was found out that she uttered the remark, "Maarte ba?" while handling a call. As a warning, she was reminded that a repetition of the same violation would merit a much heavier offense.

We are aware that the totality of infractions or the number of violations committed during the period of employment may be considered in determining the penalty to be imposed upon an erring employee.[26] And, in this case, the previous violations for tardiness and the newer violations for mishandling a call and exhibiting a

negative attitude were allegedly made the basis in pre-terminating the employment contracts of private respondents Bona and Jerusalem. However, as We have detailed above, private respondents were already imposed the appropriate penalties for their newer infractions in the form of written warnings. This only means that petitioners did not take into account the totality of infractions committed by the private respondents in the past in determining the penalty meted to said private respondents as petitioners would want Us to believe.

Further, We must emphasize that the notices of termination, issued one month after written warnings were imposed on private respondents, show that they were not dismissed due to the aforecited infractions, rather, because their performance were below the minimum standard set by Infocom:

"X x x

X x x After much deliberation, it is with regret that we inform you that you have not been able to meet the minimum performance standards, as required by the Customer Service Outsourcing Unit of Infocom Technologies.

X x x"[27]

The NLRC found out that contrary to petitioners' claim, private respondents' overall performance met the standards set forth by Infocom itself. And We agree.

It is true that in private respondents' Key Performance Indicators, or the performance rating sheet, Infocom used the rating system of 1 to 5, which indicates 1 as poor, 3 as meets standards and 5 as outstanding. However, this rating system pertains only for scoring the individual items or criteria, such as for accuracy, productivity, teamwork or communication skills, among others.[28] As for the taking into account the overall performance of private respondents based on the scores they obtained, the matrix[29] as shown below was utilized:

"QUANTITATIVE RATING

QUALITATIVE RATING

1.00 to 1.49

Poor

1.50 to 2.49

Below Standard

2.50 to 3.49

Meets Standard

3.50 to 4.49

Exceeds Standard

4.50 to 5.00

Outstanding"

In the case of private respondent Bona, her overall performance rating was computed at 2.81, thus, it is well-within the rating "Meets Standard." [30] The same is true with private respondent Jerusalem who obtained a qualitative score of 2.56.[31]

Undaunted, petitioners are now claiming that private respondents Bona and Jerusalem in fact failed, having only

scored 1.40, a failing mark, as detailed in the Competencies and Attributes sheet.[32]

We are not persuaded.

For one, the said Competencies and Attributes Sheets do not even state that the same pertain to the evaluation of private respondents Bona and Jerusalem. Neither is there any indication of the period covered for the said rating. And unlike the Key Performance Indicators, the same was not received and signed by the private respondents and their immediate superiors. For another, these Competencies and Attributes Sheets were only presented on appeal to the NLRC and were not even discussed in petitioners' Position Paper before the Labor Arbiter. These are already in existence at the time of the filing of the complaint before the Labor Arbiter and cannot be considered as newly-discovered evidence. Thus, the failure of petitioners to present these pieces of evidence at the earliest instance and to provide explanation for their belated submission cast doubt on the authenticity of the same.

Anent the payment of service incentive leave and 13[th] month pay, We find the same to be in order.

Article 95 of the Labor Code provides:

"X x x

Article 95 – Right to service incentive leave –

(a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

X x x"

There is no doubt that private respondent Manio, whose termination was correctly found by the NLRC to be due to the expiration of his project employment contract, rendered a full year of service with Infocom. As such, he is properly entitled to service incentive leave.

With regard to private respondents Bona and Jerusalem, while they were not able to complete a full year of service, they are still entitled to payment of the same. Were it not for the illegal termination of their employment before the lapse of their fixed, one (1)-year contract, said private respondents would have rendered a full year of service.

The same is true as to the payment of 13[th] month pay, private respondents not being one of those workers who are not entitled to the payment of the same pursuant to Presidential Decree No. 851 and its implementing rules and regulations.

Finally, petitioners failed to prove that the NLRC committed grave abuse of discretion in rendering its assailed issuances. After all, no abuse of discretion could be attributed to the NLRC in properly applying the pertinent laws and jurisprudence in deciding the present case.

While We uphold the findings of the NLRC, We must note that petitioners have already fully satisfied the monetary claims of private respondents. Payment for the same in favor of the private respondents was made before the NLRC and was accepted by herein private respondents.[33] A Quitclaim and Release[34] was in turn executed by the private respondents on the same day, releasing and discharging petitioners and its officers from any/all claims by way of unpaid wages, separation pay, overtime pay, differential pay, among others, subscribed and sworn to before the Labor Arbiter. However, considering that there was no motion from any of the parties herein for the dismissal of the instant Petition on the ground of the satisfaction of the illegally terminated employees' claims, this Court has proceeded to decide the case on the merits and has affirmed the findings of illegal dismissal of the NLRC in the process.

WHEREFORE, premises considered, the instant Petition is DISMISSED and the assailed Decision and Resolution of the NLRC stand.

SO ORDERED.

Bato, Jr., (Chairperson), and Sempio Diy, JJ., concur.

[1] Rollo, pages 03 to 34.

[2] "Petitioners," for brevity.

[3] Rollo, pages 39 to 45, Annex "B."

[4] Id. at 48 to 49, Annex "C."

[5] "Private respondents Bona, Jerusalem and Manio," respectively, for brevity.

[6] "Petitioner Infocom," for brevity.

[7] Rollo, pages 53 to 55, 66 to 68, and 76 to 78, Annexes "E" to "G."

[8] Id. at 153 to 161.

[9] Id. at 129 to 151.

[10] Id. at 386, Annex 3, and 400, Annex 15.

[11] Id. at 164 to 178, Annex "CC."

[12] Id. at 178.

[13] Id. at 563 to 564 and 581.

[14] Id. at 39 to 45.

[15] Id. at 44 to 45.

[16] Id. at 48 to 49.

[17] Id. at 49.

[18] Id. at 19 to 20.

[19] Id. at 571 to 574.

[20] Id. at 583.

[21] Id. at 91, Annex "J."

[22] Id. at 93, Annex "K."

[23] Id. at 115, Annex "U."

[24] The date was mistakenly stated as "January 14, 2010" in the said Memorandum.

[25] Rollo, page 580.

[26] Merin vs. NLRC, G.R. No. 171790, 17 October 2008.

[27] Id. at 98 and 122, Annexes "M" to "X."

[28] Id. at 563 to 564.

[29] Id. at 564.

[30] Id.

[31] Id. at 42.

[32] Id. at 382 and 388.

[33] Id. at 499, Minutes, dated 11 March 2013.

[34] Id. at 500.

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