

MARIA CHARMY SANTILLAN, SHERRILYN L. MELENDEZ, GRACE KELLY DADIS, JOY FERNAN CALAGUAS, ROWENA TESORO, GAIL DIANNE ORDONO, CHARITY MAY CALAYAN, AND IVAN KATE TORRIJOS, PETITIONER...

Ponente: SALANDANAN-MANAHAN, J.

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SALANDANAN-MANAHAN, J.:

This is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court seeking to reverse and set aside the following:

- 1.) The September 5, 2013 Resolution[2] of public respondent in LAC No. 08-002269-13 (NLRC NCR 10-16100-12, NLRC NCR 11-16621-12) which affirmed the Decision[3] of the Labor Arbiter;
- 2.) The October 21, 2013 Resolution[4] of public respondent which denied petitioners' Motion for Reconsideration[5].

The Undisputed Facts

Private respondent TeleTech Customer Care Management Philippines, Inc. (TeleTech) is a business process outsourcing company/call center engaged in the business of providing customer services to various multinational corporate clients.[6]

Private respondent TeleTech hired, on various dates[7], petitioners Maria Charmy Santillan, Sherrilyn Lara Melendez, Grace Kelly Dadis, Joy Fernan Calaguas, Rowena Tesoro, Gail Dianne Ordono, Charity May Calayan and Ivan Kate Torrijos (“petitioners” for brevity) as call center agents or Customer Service Representatives (“CSRs” for brevity).[8] Petitioners were assigned to work on the account of Telecom.[9]

The Evidence for the Petitioners

On or about the first week of October 2012, private respondent TeleTech cited petitioners and several other employees for violation of the company policy on the Code of Conduct.[10] Specifically, private respondent TeleTech charged petitioners with fraud.[11] According to petitioners, private respondent TeleTech claimed that petitioners used an invalid code for the processing of service orders for customers' mobile change of plan from July to September 2012.[12] The correct service order for mobile change of postpaid plan is “CS” or “M4”, while the correct service order for mobile change of responsibility or change of name is “PT”. [13] Instead of using “CS” or “M4”, petitioners used “LQ/LA” which are the service orders for disconnection and new connection of subscription for mobile services, respectively.[14]

Petitioners added that private respondent TeleTech only showed them several memos containing identical charges without giving them their copy.[15]

Petitioners explained that they were not aware that processing “LQ/LA” service orders were fraudulent because they had been doing the practice in the past without any warning from private respondent TeleTech that such was

a violation of company policy.[16]

Despite their explanation, private respondent TeleTech dismissed petitioners from employment on October 29, 2012.[17] However, some of the employees who committed the same offense were only given a warning citation as penalty.[18]

Aggrieved, petitioners filed a Complaint[19] for “actual illegal dismissal, non-payment of salaries/wages, holiday pay, service incentive leave, 13th month pay, separation pay, moral and exemplary damages, and attorney’s fees”[20] against private respondent Teletech.[21]

The Evidence for the Private Respondent

Petitioners, as CSRs, signed employment contracts wherein they expressly agreed to abide by private respondent TeleTech's rules and regulations and to familiarize themselves with private respondent TeleTech's policies, procedures and guidelines. For this purpose, petitioners were also made to undergo trainings and seminars.[22]

Petitioners were assigned to process the specific services requested by Telecom's customers in their work system.[23] Petitioners were required to follow a set of procedure such as: “LQ & LA” for changing the account from post to pre-paid or vice versa; “CS” for change of plan details; “M4” for adding, changing or removing mobile services; and “PT” for change in ownership of mobile account.[24]

Sometime in September 2012, due to a complaint made by Telecom's customer, Telecom required private respondent Teletech to conduct an audit of the processes being followed by the latter's CSRs in handling customers' requests.[25] During the audit, private respondent discovered that petitioners, together with other CSRs, used “LQ & LA”, instead of “CS”, in order to implement a mere change of plan details.[26]

Private respondent TeleTech also found out that petitioners used “LQ & LA”, instead of “CS” or “M4”, because each has corresponding points which boost their scorecards and increase their sales results. The increased points and results entitled petitioners to incentives. Petitioners had been doing the fraudulent practice from July to September 2012.[27]

Consequently, private respondent TeleTech served petitioners their respective Notices to Explain[28]. Petitioners submitted their separate written explanations[29] admitting the use of “LQ & LA” for a different service and purpose.[30] Subsequently, private respondent held administrative conferences for each of the petitioners.[31] Afterwards, private respondent TeleTech dismissed petitioners from employment because of their fraudulent acts which caused damage to private respondent TeleTech and Telecom.[32] Private respondent TeleTech gave petitioners their respective copy of the Notice of Decision.[33]

On May 31, 2013, the Labor Arbiter rendered a Decision[34] which dismissed petitioners' Complaint[35] for lack of merit[36], the dispositive portion of which reads:

“WHEREFORE, premises considered, instant consolidated cases are dismissed for lack of merit for the foregoing reasons.

Respondent corporation is directed to pay complainants their last salaries and benefits after they undergo the standard clearance process.

SO ORDERED.”[37]

The Labor Arbiter's principal reason was that petitioners were dismissed for a just and valid cause and were accorded due process of law.[38]

Petitioners interposed an appeal with public respondent which rendered the assailed Resolutions[39] now subject

of this Petition for Certiorari[40]. Petitioners raised the following issues:

- “a. Whether or not public respondent committed grave abuse of discretion for ruling that the dismissal of the petitioners was legal;
- b. Whether or not public respondent committed grave abuse of discretion for holding that petitioners were not entitled to the payment of their money claims, backwages and separation pay; and
- c. Whether or not public respondent committed grave abuse of discretion for holding that petitioners were not entitled to recover damages and attorney's fees.”[41]

Our Ruling

Petitioners contend that they were illegally dismissed[42] because the acts they committed were not fraudulent.[43] According to petitioners, using the “LQ/LA” service orders to change the customer's plan, instead of “CS” or “M4”, was an established practice. Petitioners added that they may have committed an error of judgment for using “LQ/LA” but they were not motivated by any wrongful intent.[44] Further, petitioners contend that private respondent TeleTech's decision to dismiss them was too harsh[45] and discriminatory considering that the other CSRs who committed the same offense only received a warning.[46]

We find the Petition bereft of merit.

At the outset, the only issue to be resolved in a Petition for Certiorari is whether or not there was grave abuse of discretion on the part of a tribunal, board or officer exercising judicial or quasi-judicial functions.[47] Certiorari will issue only to correct errors of jurisdiction and not to correct errors of judgment,[48] not every misstep but grave abuse of discretion.[49]

In the case at bench, public respondent did not commit grave abuse of discretion when it affirmed the Labor Arbiter's Decision and dismissed petitioners' appeal. Public respondent's finding that private respondent TeleTech validly dismissed petitioners from employment was amply supported by the evidence on record.

To constitute a valid dismissal from employment, two requisites must be met, namely: (1) it must be for a just or authorized cause, and (2) the employee must be afforded due process.[50]

Article 282 of the Labor Code enumerates the just causes, to wit:

“Article 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.”

The requirement for a just cause was satisfied in this case.

As public respondent properly found, petitioners' act of using “LQ/LA” constituted serious misconduct and fraud.

Misconduct is defined as the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For serious misconduct to justify dismissal under the law, (a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.[51]

On the other hand, fraud is defined as the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts and omissions and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. Fraud is also described as embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.[52]

Here, petitioners' act of using "LQ/LA" was clearly work-related because it pertained to matters the petitioners handled as CSRs. Moreover, it is undisputed that petitioners used "LQ/LA" for processing the service orders for customers' mobile change of plan[53] even if petitioners knew that the correct codes to use were "CS" or "M4". Furthermore, petitioners had repeatedly[54] used the invalid codes "LQ/LA" but they failed to give any satisfactory reason or justification for doing so. Thus, it can be deduced from the circumstances that petitioners' intention for using the invalid codes "LQ/LA" was to boost their scorecards and increase their sales results.[55]

In fact, such intention was even apparent in the written explanations[56] of some of the petitioners, to wit:

Gail Dianne Ordone

"xxx bottom line is... we all did an invalid s/o xxx

xxx we've noticed the said s/o is being added on our mobile sale only to find out we're the last team to know about it. xxx seems everybody is doing it & open to all, we then go w/ the flow w/o further thinking the consequence may lead us (sic). I know what was done was done there's nothing we can do about it, damage has been done & caused us all in trouble not only as agents but as a whole (sic). We, then had pledged to do the right process & work in accordance to company's policy. xxx"[57] (Emphasis Added)

Charity May Calayan

"Mobile is one of the toughest component a rep should complete every month. It's a big contributor to our monthly score card. For the past months, I've noticed that having LA service orders boost up my mobile sales which really helped a lot to pass my scorecard each month. xxx

The issue became more interesting & intriguing when I noticed that my colleagues are having high sales in mobile. Most resps are doing LQ/LA's to increase their mobile sales. I thought that it would help me as well because I am struggling to pass the mobile component. xxx"[58] (Emphasis Added)

Ivan Kate Torrijos

"This is with regard to processing an LQ/LA order. First of all I would like to apologize for considering this as part of mobile sale to hit my scorecard on mobile. xxx"[59] (Emphasis Added)

Petitioners therefore contravened private respondent TeleTech's rules, which in turn justified their dismissal from employment, as follows:

"Code of Discipline

4.18 Commission of fraud or similar activities in attending to calls, including but not limited to unauthorized recording of personal information of customers, accessing client accounts, or other acts that either cause undue benefit on the part of the person handling the call or prejudice to the client, or any act that would compromise client account details

4.50 Any acts of fraud or willful breach by the employee of the trust reposed in him by management or by its duly authorized representative

4.51 Commission of any act of dishonesty or fraud, or any act that breaches the trust and confidence conferred by the Company

4.52 Committing other acts of fraud not embraced by the foregoing provisions, regardless of whether such acts cause or tend to cause material, fiscal, financial, or monetary damage or loss to the Company

V. Code of Ethics

First Offense: Second Written Warning

1. Use of customer's account using his/her computer regardless if the customer gave his/her permission. This policy does not apply to password resets with customer permission.

First Offense: Termination

2. Inputting illegitimate or inaccurate information onto program platform to manipulate sales, customer info and agent related info to control agent related metrics or program based initiative that may warrant negative implication on personal metrics.

3. Intentional breach of customer's and company's private information

4. Unauthorized use, access or changes to customer's personal or account information”[60]

Notably, a company, such as private respondent TeleTech, has the right to dismiss its erring employees, such as petitioners, as a measure of self-protection against acts inimical to its interest.[61]

The requirement for procedural due process was likewise satisfied in this case.

Petitioners were afforded every opportunity to be heard. Private respondent TeleTech, thru the Notice to Explain[62], notified petitioners of the charges against them and the company rules that petitioners have violated. In reply, petitioners submitted their respective written explanations.[63] Afterwards, private respondent TeleTech conducted administrative conferences for each of the petitioners[64] so that they can present their defenses on the charges against them. Finally, private respondent TeleTech served a Notice of Decision[65] upon the petitioners to appraise the latter of the company's decision to dismiss them from employment on the grounds clearly discussed therein.

Moreover, as public respondent properly found, petitioners' contention that private respondent TeleTech's decision to dismiss them while retaining the other CSRs who committed the same offense was discriminatory[66] is baseless and irrelevant in this case.

Given that petitioners were validly dismissed from employment, then petitioners were also not entitled to their money claims and backwages.[67]

WHEREFORE, the Petition is DENIED. The September 5, 2013 and October 21, 2013 Resolutions of the National Labor Relations Commission in LAC No. 08-002269-13 NLRC NCR 10-16100-12 NLRC NCR 11-16621-12 are hereby AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson)[*] and Ybañez, JJ., concur.

- [1] Rollo, pp. 3-17
- [2] Rollo, pp. 18-31
- [3] Rollo, pp. 113-124
- [4] Rollo, pp. 33-36
- [5] Rollo, pp. 140-146
- [6] Rollo, p. 171
- [7] Rollo, p.5; p. 40; p. 171
- [8] Rollo, p.5; p. 40; p. 171
- [9] Rollo, p. 171
- [10] Rollo, p. 5; p. 20; p. 40
- [11] Rollo, p. 6; p. 20; p. 40
- [12] Rollo, p. 6; p. 20; p. 40
- [13] Rollo, p. 5; p. 20; p. 40
- [14] Rollo, p. 5; p. 20; p. 40
- [15] Rollo, p. 6; p. 21; p. 40
- [16] Rollo, p. 6; p. 21; p. 41
- [17] Rollo, p. 6; p. 21; p. 41
- [18] Rollo, p. 6; p. 21; p. 41
- [19] Rollo, pp. 37-38
- [20] Rollo, p. 114
- [21] Rollo, p. 114
- [22] Rollo, p. 63; pp. 171-172
- [23] Rollo, p. 21; p.64; p. 172
- [24] Rollo, p. 21; p. 64; p. 172
- [25] Rollo, p. 22; p. 64; p. 172
- [26] Rollo, p. 22; p. 64; p. 172
- [27] Rollo, p. 22; p. 65; p. 173
- [28] Rollo, pp. 248-263
- [29] Rollo, pp. 264-273
- [30] Rollo, p. 23; pp. 64-65; p. 173
- [31] Rollo, p. 23; p. 66; p. 173

- [32] Rollo, p. 23; p. 66; p. 174
- [33] Rollo, p. 23; p. 66; pp. 173-174
- [34] Rollo, pp. 113-124
- [35] Rollo, pp. 37-38
- [36] Rollo, p. 124
- [37] Rollo, p. 124
- [38] Rollo, p. 124
- [39] Rollo, pp. 18-31; pp. 33-36
- [40] Rollo, pp. 3-17
- [41] Rollo, p. 7
- [42] Rollo, p. 7; p.10
- [43] Rollo, p. 10
- [44] Rollo, p. 7
- [45] too severe, excessive and unreasonable under the circumstances; Rollo, p. 10
- [46] Rollo, pp. 9-10
- [47] Section 1, Rule 65, Rules of Court
- [48] AGG Trucking and/or Gaeid vs. Yuag, G.R. No. 195033, October 12, 2011
- [49] Aujero vs. Philippine Communications Satellite Corporation, G.R. No. 193484, January 18, 2012
- [50] Cental Pangasinan Electric Cooperative, Inc. vs. Macaraeg, G.R. No. 145800, January 22, 2003; Cañeda vs. Philippine Airlines, Inc., G.R. No. 152232, February 26, 2007
- [51] Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-Olalia-KMU) and Valenzuela vs. Keihin Philippines Corporation, G.R. No. 171115, August 9, 2010
- [52] Republic of the Philippines vs. Estate of Alfonso Lim, et. al., G.R. No. 164800, July 22, 2009
- [53] Rollo, p. 4; p. 25; p. 41
- [54] Rollo, p. 175; p. 247
- [55] Rollo, p. 27
- [56] Rollo, pp. 270-273
- [57] Rollo, pp. 270-271
- [58] Rollo, p. 272
- [59] Rollo, p. 273
- [60] Rollo, pp. 282-289

[61] Yabut vs. Manila Electric Company and Lopez, G.R. No. 190436, January 16, 2012

[62] Rollo, pp. 248-263

[63] Rollo, pp. 264-273

[64] Rollo, pp. 274-281

[65] Rollo, pp. 282-289

[66] Rollo, pp. 9-10

[67] St. Joseph Academy of Valenzuela Faculty Association (SJAVFA)-FUR Chapter-TUCP vs. St. Joseph Academy of Valenzuela and Lopez, G.R. No. 182957, June 13, 2013; Carvajal vs. Luzon Development Bank and/or Ramirez, G.R. No. 186169, August 1, 2012

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