

ADVANCED CONTACT SOLUTION INC./VICTOR ENDAYA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, 3RD DIVISION AND ROBERT IAN MADURO, RESPONDENT.

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the Petition For Certiorari[1] filed by Advanced Contact Solution, Inc. (“petitioner corporation”)/Victor Endaya (“petitioner Endaya”), imputing grave abuse of discretion on the part of the National Labor Relations Commission, Third Division (“NLRC”) for issuing the Decision dated 21 March 2012[2] (“assailed Decision”), and the Resolution dated 16 May 2012[3] (“assailed Resolution”).

The facts are as follows: Robert Ian Maduro (“respondent Maduro”) was employed as operations supervisor of petitioner corporation. The petitioner corporation dismissed respondent Maduro from employment. The respondent Maduro filed a complaint for illegal dismissal, non-payment of salary, 13th month pay, moral and exemplary damages, and attorney’s fees, against petitioner corporation and/ or Victor Endaya, before the Labor Arbiter, docketed as NLRC-NCR Case No. 07-09380-11.

Respondent Maduro filed the Complainant’s Position Paper[4] before the Labor Arbiter, and alleged: on 7 January 2010, the Assistant Program Manager Ferdinand Lagniton (“Lagniton”) instructed respondent Maduro and his shift manager, Roy Dangani (“Dangani”) to complete the hard copy of the agent feedback forms (“forms”) and team managers quality scans for December 2009 of the call center agents; respondent Maduro declined because the forms would automatically be dated by the computers as January 2010, and not December 2009 as required by Lagniton, and even if he completed the forms, he would not be able to submit them by the deadline on 8 January 2010, because some agents already went home, and others were on leave, and hence, they could not sign their respective forms; Lagniton told respondent Maduro to create printed copies of the forms and to antedate them; respondent Maduro again refused to obey the order of Lagniton; Lagniton then instructed Dangani to file a disciplinary action for negligence against respondent Maduro for refusing to create the forms; Lagniton again told respondent Maduro to submit the hard copy of the completed forms to the audit department by the deadline; fearing a disciplinary action would be filed against him, respondent Maduro printed the required forms and filled them up himself; Dangani supervised respondent Maduro in the creation of the forms to ensure that the forms would be submitted by the deadline; another employee of petitioner corporation, Armando Bernabeo also accompanied respondent Maduro in the creation of the forms; Dangani signed the forms before submitting them; after a few days, the audit team of petitioner corporation filed a dishonesty case against respondent Maduro because the forms were allegedly fictitious; Dangani told respondent Maduro that he (respondent Maduro) should not worry because he (Dangani) and Lagniton would take care of the case; on May 2010, Katrina Diaz (“Diaz”), the HR business partner of petitioner corporation interviewed respondent Maduro and respondent Maduro explained what happened; Diaz told respondent Maduro that he (respondent Maduro) would be given a final written warning as punishment for creating the forms, even if he was not at fault; on 19 June 2010, respondent Maduro was informed that petitioner corporation terminated his employment; the decision to terminate respondent

Maduro came from Gigs Patanao ("Patanao"), the HR vice president of petitioner corporation; hence, even if the other officers (i.e., Dangani, Lagniton and Diaz) recommended only a final written warning as the punishment of respondent Maduro, Patanao could dismiss respondent Maduro, and such decision was final; respondent Maduro complied with the orders of the superior officers (i.e., Dangani and Lagniton) to create the forms under pain of disciplinary action; dismissal from service was a supreme penalty on respondent Maduro and should not have been imposed when other sanctions could have been imposed, such as a final written warning, as recommended by Diaz, Lagniton and Dangani; petitioner corporation illegally dismissed respondent Maduro.

The petitioner corporation filed Position Paper[5] before the Labor Arbiter, and alleged: respondent Maduro was employed as a call center agent of petitioner corporation since March 2006; in September 2009, respondent Maduro was issued a Notice to Explain for his unauthorized use of the petitioner corporation's time, facility, and equipment, for his personal use; respondent Maduro admitted the accusation against him; petitioner corporation issued the Disciplinary Action Notice dated 18 September 2009, and imposed the penalty of a 2nd written reprimand on respondent Maduro; on 13 January 2010, respondent Maduro was given another Notice to Explain for falsifying the signatures of his agents on the forms (such act of dishonesty was a grave offense under the Code of Conduct and merits dismissal on the first offense); respondent Maduro gave his explanation, and the Case Investigation Form was prepared; on 17 June 2010, petitioner corporation issued Notice of Disposition dismissing respondent Maduro effective 21 June 2010; on 7 May 2010, respondent Maduro was issued another Notice to Explain, this time for violating the trust and confidence and the ethical standards of petitioner corporation (respondent Maduro deliberately changed his shift code to avoid deduction of his salary due to his tardiness on 11 to 25 April 2010); respondent Maduro never filed any explanation relative to this Notice of Explanation; a Case Investigation Form was made, and recommended the dismissal of respondent Maduro, hence, petitioner corporation dismissed respondent Maduro; petitioner corporation validly dismissed respondent Maduro for his dishonesty by falsifying the signatures of the call center agents in the forms and for his unauthorized use of petitioner corporation's resources; dishonesty was a grave offense and carried the extreme penalty of dismissal from service; petitioner corporation validly dismissed respondent Maduro.

Thereafter, on 26 September 2011, the Labor Arbiter issued the Decision. Its dispositive portion read:

WHEREFORE, premises considered, judgment is hereby rendered finding respondent corporation liable for illegal dismissal. Respondent Advanced Contact Solutions Inc., is ordered to pay complainant Robert Ian C. Maduro the aggregate amount of Seven Hundred Twenty Three Thousand One Hundred Nineteen Pesos and 22/100 (P723,119.22) representing separation pay, backwages, unpaid salaries and 13th month pay, plus ten percent (10%) thereof as and for attorney's fees in the amount of P72,311.92.

All other claims are dismissed for lack of merit.

SO ORDERED.

The respondent Maduro appealed to the NLRC. In the assailed Decision promulgated 21 March 2012,[6] the NLRC affirmed the ruling of the Labor Arbiter. The NLRC assailed Decision read:

WHEREFORE, premises considered, respondents' appeal from the Decision dated September 26, 2011 is hereby DISMISSED for lack of merit.

On 16 May 2012, the NLRC issued the assailed Resolution,[7] denying the motion for reconsideration filed by petitioners.

Thus, this Petition For Certiorari, which makes the following assignment of errors:

A. ERRORS OF FACTS COMMITTED

i. The public respondent gravely abused its discretion in not ruling that the duty to evaluate the agents whose signatures were found to be falsified is a function of Mr. Maduro, being the Operations Supervisor. As it turned out, he neglected and failed to conduct the evaluation in due time that he desperately resorted to preparing bogus MAK QA RCRT FORM (L3) and falsifying the signatures of the agents thereto. His explanation that he falsified the signatures due to time constraints just to put semblance of compliance to his duties is a clear abominable act of dishonesty.

ii. While the public respondent finds there was falsification of MAK QA RCRT FORM, it utterly erred in concluding that the private respondent was not completely at fault under an erroneous and unsupported allegation that the same was ordered by the private-responder's superior.

iii. The public respondent failed to consider that OIC Rosendo Dangani is the immediate Superior of the petitioner who may be held liable due to the non-evaluation of the agents in due time. There is a clear COVER-UP done by Mr. Dangani in preparing the Investigation Report that he merely recommended "Final Written Warning". This led to the subsequent replacement of OIC Dangani by Mr. John Paul Quevedo. Moreover, the liability of the private respondent cannot be dependent on the administrative liability of his superiors who allegedly ordered the accomplishment of bogus MAK OA RCRT evaluation form.

iv. Even in the assumption that the execution of the falsified MAK OA RCRT FORMS was ordered by Mr. Dangani, the private-responder cannot be exonerated as the order was utterly irregular.

v. The public respondent failed to consider the past and subsequent offense of Mr. Maduro. The latter's act of changing his shift codes just to avoid deduction of his salary is a clear indication of his unfitness to continue his employment and a just ground to support the dismissal.

B. ERRORS OF LAW

i. The public respondent committed serious errors of law when it affirmed the ruling of the Labor Arbiter awarding back wages, separation pay equivalent to one (1) month pay for every year of service in lieu of reinstatement, and attorney's fees.

The issues are: 1) whether petitioner corporation illegally dismissed respondent Maduro; and 2) whether respondent Maduro was entitled to backwages, separation pay, and attorney's fees.

PETITION FOR CERTIORARI[8]

As to the first issue, the petitioner corporation answers in the negative. Petitioner corporation did not illegally dismiss Respondent Maduro. Petitioner corporation's dismissal of respondent Maduro was valid.

The Petition for Certiorari[9] thrusts: the Supreme Court has held that the employer has latitude to determine who among its erring employees or officers should be punished, to what extent and what proper penalty to impose; petitioner corporation dismissed respondent Maduro for gross dishonesty for falsifying the signatures of the agents he supervised on the evaluation forms for December 2009; respondent Maduro admitted that he falsified the signatures of the agents, and such dishonesty is not befitting of an operations supervisor; the evaluation forms required of respondent Maduro are important to petitioner corporation in order to determine the level of service its agents are giving to its clients; the recommendation of Dangani in the Case Investigation Form dated 12 February 2010 was to issue a final written warning to respondent Maduro, because Dangani was covering-up his (Dangani's) own accountability; respondent Maduro's past offense of using the petitioner corporation's resources, and later offense of changing the shift times, show he is dishonest and not fit to work for petitioner corporation and thus petitioner corporation validly and legally dismissed respondent Maduro.

Regarding the second issue, the petitioner corporation answers in the negative. Respondent Maduro is not entitled

to backwages, separation pay, and attorney's fees.

The Petition for Certiorari^[10] thrusts: since petitioner corporation legally dismissed respondent Maduro, there is no basis to award separation pay and backwages; it is highly onerous to require employers to pay separation pay to employees who themselves have willingly resigned from their jobs or who have done acts inimical to the employer or the latter's business; giving respondent Maduro separation pay is tantamount to rewarding a dishonest employee for his acts.

Respondent Maduro did not file Comment.^[11]

THE COURT'S RULING

As to the first issue, the Court rules in the affirmative. Petitioner corporation illegally dismissed respondent Maduro.

Applicable are Articles 279 and 282 of the Labor Code of the Philippines. They read:

Article 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

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 representatives; and
- (e) Other causes analogous to the foregoing.

As above quoted, an employer can dismiss a regular employee for any of the following just 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 representatives; and (e) Other causes analogous to the foregoing. Further, an employee who is unjustly dismissed from work shall be entitled to: 1) reinstatement without loss of seniority rights and other privileges, 2) his full backwages, inclusive of allowances, and 3) to his other benefits or their monetary equivalent, computed from the time his compensation was withheld up to the time of his actual reinstatement.

In this case, petitioner corporation dismissed respondent Maduro because he falsified the signatures of the agents in their respective evaluation forms. According to petitioner corporation, such act constituted fraud or a willful breach of the trust reposed in respondent Maduro by the petitioner corporation, and hence, petitioner corporation

validly dismissed respondent Maduro for a just cause.

We do not agree.

The employer may validly dismiss an employee for loss of trust and confidence when the employee commits an act of fraud prejudicial to the interest of the employer.[12] The loss of trust and confidence, to be a valid ground for dismissal, must be based on a willful breach of trust and confidence founded on clearly established facts.[13] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer.[14]

Petitioner corporation conducted its own investigation as to the falsification charge against respondent Maduro, and found that respondent Maduro did not commit an act of fraud. The recommended penalty after the petitioner corporation's own investigation was a final written warning, and not dismissal.

The Case Investigation Form dated 12 February 2010[15] prepared by petitioner corporation's Rosendo Dangani stated:

“Findings:

XXX

TM Ian (respondent Maduro) signed the documents on (sic) behalf of the agents due to time constraints but did not commit an act of fraud.

XXX

Mitigating Factors:

1) TM Ian Maduro (respondent Maduro) just failed to submit the documents on time but has never shown any form of negligence to complete the task.

2) TM Ian Maduro's itineraries for the month of December is fully loaded which limits his time to accomplish AFF (evaluation forms) and submit them on time.

3) TM Ian Maduro was appointed with the ff. tasks last December (2009):

- a. Solidifying all Vforce process
- b. VForce Scorecard
- c. VForce Tracker
- d. VForce Process Optimization
- e. Vforce QA Process
- f. VOL L3 M&P ISO Certification Application
- g. L3 Hiring Process
- h. November and December NPS Incentive Events
- i. Held L2 refresher Training Course to Operations

Recommendation: Final Written Warning

Remarks: The case was discussed with SD Lauro Pacis and PM Ferdinand Lagniton and prior to the creation of the CIF and we ended with the decision to lower the sanction to Final Written Warning.”

The Case Investigation Form shows the petitioner corporation concluded that: respondent Maduro signed the forms due to time constraints; the respondent Maduro did not commit an act of negligence when he signed the forms in behalf of the call center agents concerned; the appropriate sanction was merely a “final written warning.”

Furthermore, the Official Statement of Rosendo Dangani[16] stated that Lagniton told respondent Maduro to find a way to submit the forms by the deadline, and respondent Maduro filled out the forms because Lagniton instructed him to do so.

The circumstances show that the acts of respondent Maduro in falsifying the signatures of the call center agents, were not done with intent. Rather, respondent Maduro performed the acts complained of in compliance with the orders of his superiors Dangani and Lagniton. There is no basis to terminate an employee for loss of trust and confidence due to commission of fraud where intent is not proved.

Absent any valid cause to dismiss respondent Maduro, petitioner corporation's termination of the employment of respondent Maduro constituted illegal dismissal.

Regarding the second issue, the Court rules in the affirmative. Respondent Maduro is entitled to backwages, separation pay, and attorney's fees.

Article 279 of the Labor Code of the Philippines[17] requires that an employee who is unjustly dismissed from work, should be paid full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time compensation was withheld up to the time of actual reinstatement.

Since petitioner corporation illegally dismissed respondent Maduro from employment, respondent Maduro is entitled to backwages from the time of his dismissal. Respondent Maduro is also entitled to the salary that was withheld by petitioner corporation during the time respondent Maduro's clearance was being processed.

Respondent Maduro is also entitled to separation pay. An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable.[18] In this case, the Labor Arbiter and the NLRC validly awarded separation pay because petitioner corporation illegally dismissed respondent Maduro and reinstatement did not seem viable.

There is basis to award attorney's fees. Attorney's fees may be awarded when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.[19] Respondent Maduro is entitled to attorney's fees because the act of petitioner corporation in unjustly dismissing him, compelled respondent Maduro to hire counsel and defend his claim in court.

We DISMISS the Petition for Certiorari filed by Advanced Contact Solution, Inc. and Victor Endaya, and AFFIRM the Decision dated 21 March 2012, and the Resolution dated 16 May 2012, both issued by the National Labor Relations Commission, Third Division.

IT IS SO ORDERED.

Veloso (Chairperson) and Lantion, JJ., concur.

[1] C.A. Rollo, p. 3.

[2] C.A. Rollo, p. 21.

[3] C.A. Rollo, p. 32.

[4] C.A. Rollo, p. 35.

[5] C.A. Rollo, p. 43.

[6] C.A. Rollo, p. 21.

- [7] C.A. Rollo, p. 32.
- [8] C.A. Rollo, p. 3.
- [9] Ibid.
- [10] Ibid.
- [11] C.A. Rollo, p. 178.
- [12] Concepcion v. Minex Import Corporation, G.R. No. 153569, 24 January 2012.
- [13] Manila Jockey Club, Inc. v. Trajano, G.R. No. 160982, 26 June 2013.
- [14] Ibid., citing AMA Computer College, Inc. v. Garay, G.R. No. 162468, 23 January 2007.
- [15] C.A. Rollo, p. 54.
- [16] C.A. Rollo, p. 80.
- [17] LABOR CODE OF THE PHILIPPINES (1974), Article 279.
- [18] Golden Ace Builders v. Talde, G.R. No. 187200, 5 May 2010.
- [19] New Civil Code (1950), Article 2208.

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