

GERONIMO C. SAN JUAN, PETITIONER, VS. MERCURY DRUG CORPORATION, MS. VIVIAN QUE AZCONA AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

Ponente: CORALES, J.

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CORALES, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the July 29, 2011 Decision[2] and October 17, 2011 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC LAC 03-000804-11. The assailed Decision set aside the January 31, 2011 Decision[4] of the Labor Arbiter and dismissed the illegal dismissal case filed by petitioner Geronimo San Juan (San Juan) against private respondent Mercury Drug Corporation (MDC). The questioned Resolution denied San Juan's subsequent motion for reconsideration.

The Antecedents

San Juan worked as a self-service attendant in MDC and was tasked to monitor stocks in the grocery section, ensure correct pricing of items, attend to the needs of the customers,[5] and oversee the activities of promo merchandisers (promodizers) who were subcontracted to promote certain products.[6] Sometime in November 2009, he requested promodizer Hazel Anne San Diego (San Diego) to display items in the grocery section but the latter did not comply. When confronted, San Diego responded in defiance telling San Juan “eh bakit ako ang magdidisplay nyan, eh di ba gawain mo ito?”. San Juan reported the matter to MDC's Branch Manager Lanie Capistrano (Capistrano) who advised San Diego to accommodate the request.[7]

On November 13, 2009, San Diego sent an email[8] to Vivian Que Azcona, the President of MDC, alleging that at one time, San Juan maliciously brushed her breast and butt and there were instances when his orders were made in a disdainful manner. She also complained Capistrano's failure to act when she approached her for redress. Thereafter, San Diego did not report to work and resigned on November 17, 2009.[9]

Acting on San Diego's complaint, MDC's District Manager Lota D. Ileto (Ileto) conducted a branch level investigation[10] and interviewed the parties involved. According to San Diego, at the start of her employment, San Juan asked her for a date and told her he would court her. Afterwards, she would feel San Juan hands touching her breast, butt and legs every time she passes near him. Sometime in late September or early October 2009, she was about to wear her I.D. when San Juan passed his arms through her raised arms touching her breasts. In another occasion, she was getting her bag in the men's rest room, when San Juan kicked her butt. San Juan also uttered malicious and vulgar words to San Diego such as “hubad,” and “tuwad, tirahin kita diyan.” San Diego further claimed that San Juan gave orders in a disrespectful manner and at one time, accosted her in front of other promodizers saying she should display stocks instead of merely gossiping with other merchandisers, then, threw two (2) boxes to her.[11]

San Juan denied all the accusations against him and insisted that all he wanted was to help the branch management in maintaining the proper display of stocks.[12]

On December 4, 2009, Capistrano submitted her report stating that when she first confronted San Diego as to the undisplayed products, the latter relayed to her that when the box was handed by San Juan, “may nasanggi”. However, when San Diego’s aunt Connie San Diego, the Branch Manager of MDC-Sta. Maria, called her to clarify what happened, she was surprised to learn that the “may nasanggi” incident became “may hinipuan”. Capistrano met with San Diego at MDC Sta. Maria-Waltermart Branch and the latter admitted that emotion got the better of her due to San Juan’s “bossy” attitude. Thus, Capistrano concluded that there was no clear case of sexual harassment and the complaint was only “due to pent up anger”. Nevertheless, she recommended a written reprimand against San Juan for his undue usurpation of authority.[13]

On the same day, San Diego submitted a letter[14] retracting her complaint and admitting that her earlier email was motivated by a misunderstanding with San Juan due to the report he made to Capistrano. She allegedly realized that San Juan’s actuations were never intentional and she fully understood why San Diego had to report her disobedience in the work place.

Notwithstanding San Diego’s recantation, Iletto recommended a grievance investigation against San Juan after finding that the complained incidents constituted a Type D Offense of sexual harassment.[15]

On January 10, 2010 San Diego executed a “Sinumpaang Salaysay”[16] reiterating her accusations against San Juan who was later on put under preventive suspension upon receipt of a February 12, 2010 notice.[17] San Juan was also enjoined to personally appear in the hearing to be conducted by an investigating committee because the acts imputed to him by San Diego were tantamount to sexual harassment, a Type D offense referring to acts of indecency and punishable by dismissal under the Employee’s Manual.

The investigating committee convened on February 19, 2010 and heard the testimonies of San Diego, San Juan, Capistrano, Iletto and Pharmacy Assistant Nieves O. Jose (Jose). Jose allegedly heard San Diego telling Capistrano that “Mam, tama din po ba na dadaan lang siya sa likod, masasagi na puwet ko, pati breast ko, nahawakan.”[18]

On April 8, 2010, the investigating committee concluded that San Juan indeed committed sexual harassment against San Diego as well as acts unbecoming of a male employee.[19] Thus, MDC terminated San Juan’s employment on the ground of indecency and sexual harassment.[20]

The Rulings of the Labor Arbiter and the NLRC

In the January 31, 2011 Decision,[21] the Labor Arbiter ruled that San Juan was not afforded due process of law because he was not furnished with a copy of San Diego’s January 10, 2010 Sinumpaang Salaysay and he was not represented by counsel during the February 19, 2010 hearing. The Labor Arbiter did not also find any sufficient evidence to support San Diego’s accusation of sexual harassment against San Juan considering that the former’s sworn affidavit was not presented to the latter for purposes of confrontation and the recantation she earlier made. The dispositive portion of this Decision reads:

WHEREFORE, premises considered, a Judgment is hereby rendered declaring complainant to have been “ILLEGALLY DISMISSED” from his position as Service Staff Attendant of Mercury Drug Corporation, Sta. Maria Branch, St. Maria, Bulacan, to be REINSTATED to his former or equivalent position without loss of seniority rights, privileges and benefits attached to his position.

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SO ORDERED. (Emphasis appears in the original text of the Decision)

On appeal, the NLRC set aside the Labor Arbiter’s ruling and rendered its July 29, 2011 Decision[22] dismissing the illegal dismissal complaint filed by San Juan. The NLRC held that San Diego’s email complaint and sworn

statement are replete with details showing that San Juan violated the moral value that MDC instills in its employees as enunciated in the employee's manual. It disregarded San Diego's recantation of her earlier complaint and stressed that her resignation is indicative of the severity of San Juan's harassment and she later on reasserted what really happened after she was allowed to withdraw her resignation and was reassigned to another area. Nonetheless, the NLRC agreed with the Labor Arbiter's findings that San Juan was denied of procedural due process; thus, while his dismissal is legal, MDC should be held liable for nominal damages for non-compliance with the required written notice. It then disposed the case as follows:

WHEREFORE, premises considered, the appealed Decision is hereby SET ASIDE and a new one is entered DISMISSING the complaint for illegal dismissal but ordering respondent MERCURY DRUG CORPORATION to pay complainant the amount of P12,255.64 representing his proportionate 13th month pay for the year 2010 and the amount of P30,000.00 as nominal damages.

All other claims are dismissed for lack of merit.

SO ORDERED. (Emphasis appears in the original text of the Decision)

San Juan moved for reconsideration[23] but the NLRC denied the same through its October 17, 2011 Resolution.[24] Hence, the instant petition for certiorari anchored on the following grounds:

I

Petitioner was illegally dismissed from service.

II

Petitioner is entitled to reinstatement, backwages and other money claims[.]

III

Labor arbiter a quo acted well in accordance with law and the settled jurisprudence declaring the dismissal of petitioner illegal.

San Juan contends that there is no just and valid cause for his dismissal. He insists that the NLRC committed grave abuse of discretion in giving credence to San Diego's sworn statement considering that her credibility and motive in filing the sexual harassment case against him is highly questionable because of her several conflicting statements during the course of the investigation; in not taking into account the recommendation of Capistrano who is his direct supervisor and had initially conducted the investigation; and in not considering San Diego's recantation letter which was submitted spontaneously without any intervention and pressure from him.

This Court's Ruling

The petition is devoid of merit.

As a rule, petitions for certiorari under Rule 65 of the Rules of Court involve only jurisdictional issues, or grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, this Court refrains from reviewing factual assessments of the NLRC except when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record; or when the NLRC and the Labor Arbiter have come up with conflicting positions.[25] In the present case, the NLRC and the Labor Arbiter had conflicting decisions as to the commission of the sexual harassment and the validity of San Juan's termination from employment, thus, We are constrained to wade into the factual matters to determine which findings are more in conformity with the evidence on records.

NLRC's Findings Supported by Substantial Evidence

Preliminarily, the Court clarifies that there is no sexual harassment as defined and penalized under Section 3 of Republic Act No. 7877 (R.A. No. 7877) which reads:

Sec. 3. Work, Education or Training-related Sexual Harassment Defined. – Work, education or training-related sexual harassment is committed by an employer, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1)

The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2)

The above acts would impair the employee's rights or privileges under existing labor laws;

(3)

The above acts would result in an intimidating, hostile, or offensive environment for the employee.

Under the foregoing provision, authority, influence or moral ascendancy over another is essential to constitute sexual harassment.[26] Here, there is no showing that San Juan occupied a position in the workplace which gives him authority, influence or moral ascendancy over San Diego. Promodizers are subcontracted either by MDC or by any suppliers, distributors, merchandisers to promote certain products, thus, they are under the direct supervision of the branch manager and not by self-service attendant like San Juan. At most, San Juan could only report the promodizers' misconduct but the authority to act on the same is still lodged with the branch manager. In fact, in the investigating committee report,[27] one of its member, Atty. Joy Ann Marie Garcia, pointed out that San Juan occupied a lower position and has no moral ascendancy which is an element of sexual harassment. Moreover, San Diego was not able to demonstrate that the petitioner demanded, requested or required any sexual favor from San Diego in exchange for "favorable compensation, terms, conditions, promotion or privileges" specified under Section 3 of R.A. 7877.

However, the NLRC correctly found that San Juan committed acts of indecency and immorality punishable by dismissal under MDC's Employee's Manual which states:

Type D Offenses

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3. Committing any act of indecency or immorality with or against a co-employee. If an employee's morality is in question, he or she will be liable for the following consequences:

(a)

Grounds for disqualification for promotion

(b)

If found to be guilty after promotion, grounds for dismissal

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Indeed, sexual advances committed by an employee against another constitute indecency and immorality that jeopardize the tranquility and peace in the work premises. The employer cannot be compelled to continue the employment of a person who was found guilty of maliciously committing acts which are detrimental to its interests. It will demoralize the rank and file if the undeserving, if not undesirable, remains in the service. It may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe. This Court is more emphatic in holding that in protecting the rights of the laborer, it cannot authorize the oppression or self-destruction of the employer.[28]

The aforesaid findings of the NLRC is more in accord with the evidence on record. San Diego's Sinumpaang Salaysay, the ocular inspection conducted by the investigating committee and the testimony of Jose are substantial evidence showing that San Juan committed acts of indecency. It bears stressing that only substantial proof is needed for the imposition of any disciplinary action against an employee. The standard of substantial evidence is satisfied when the employer, as in this case, has reasonable ground to believe that the employee is responsible for the misconduct.[29] As defined, substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[30]

Contrary to San Juan's contentions, San Diego's retraction does not necessarily negate her earlier declaration. Courts do not generally look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.[31] Hence, when confronted with a recanting witness, in this case the complainant, courts must not automatically exclude the original statement based solely on the recantation. Courts should determine which statement should be given credence through a comparison of the original and the new statements, applying the general rules of evidence.[32]

Although San Diego stated in her recantation letter that her complaint was prompted by a misunderstanding, it must be noted that her statements therein referred only to the incidents that transpired while San Juan was asking her to display some products and there is no express repudiation as to San Juan's indecent acts against her. More importantly, the recantation letter cannot be given any significant value considering that it was not under oath as compared to San Diego's January 10, 2010 Sinumpaang Salaysay. It also appears from the records that there are conflicting explanations regarding San Diego's reason in executing the recantation letter. According to Capistrano, San Diego admitted that the filing of the complaint was only due to a pent of anger. However, Iletto testified before the investigating committee that San Diego said she is no longer pursuing the case because of the time, distance and expenses to be incurred.[33] The Court is inclined to give more weight to Iletto's testimony because it was bolstered by San Diego's refiling of her complaint upon being allowed to withdraw her resignation and after being assigned to another MDC branch.

The Court also gives consideration to the findings of the investigating committee that it is possible for San Juan to perpetuate the acts complained of considering that the same transpired in places where there were no costumers or beyond the hearing of his co-employees.

It is also worth noting that the NLRC made a determination of which statements should be given credence unlike the Labor Arbiter who summarily disregarded San Diego's email and sworn affidavit and decided the case based only on the absence of procedural due process. Accordingly, We do not find grave abuse of discretion on the part of the NLRC because its findings conform with the law and established jurisprudence.

San Diego Legally Dismissed from Employment But Denied of Due Process

The twin requirements of notice and hearing constitute due process in cases of employee's dismissal; the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. As held in a catena of cases, two notices must be served to the employee: the first notice informing him that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal; and the second notice indicating that upon due consideration of all the circumstances, grounds have been established to justify termination.[34]

The Labor Arbiter and the NLRC correctly ruled that MDC failed to comply with the requirement of procedural due process because San Juan was not furnished with a copy of San Diego's sworn complaint, written retraction and other relevant documents. The notice of preventive suspension cannot also be considered as sufficient compliance with the law considering that as early as December 2009, MDC was already conducting an investigation as to the veracity of San Diego's claim but the notice informing San Juan that the accusations against him can lead to his dismissal was only served on February 15, 2010. Moreover, the notice of hearing[35] was served to San Juan a day prior to the conduct of investigation; thus, it cannot be said that he was given ample opportunity to avail all defenses and exhaust all remedies to controvert the accusations hurled against him.

Lastly, it must be clarified that the lapse in procedural due process cannot negate the existence of a valid cause for San Juan's dismissal, as earlier discussed at length. However, this violation of the employee's right to procedural due process warrants the payment of indemnity in the form of nominal damages as held in *Agabon v. National Labor Relations Commission*[36] and *JAKA Food Processing Corp. v. Pacot*. [37] Given the circumstances in the present case, the NLRC's award of P30,000.00 is appropriate.

WHEREFORE, the instant petition is hereby DISMISSED. Accordingly, the July 29, 2011 Decision and October 17, 2011 Resolution of the National Labor Relations Commission in NLRC LAC 03-000804-11 are AFFIRMED.

SO ORDERED.

Villon (Chairperson) and Macalino, JJ., concur.

[1] Rollo, pages 3-27.

[2] Penned by Presiding Commissioner Herminio V. Suelo with the concurrence of Commissioners Angelo Ang Palana and Numeriano D. Villena, *ibid.*, pages 33-45.

[3] *Ibid.*, pages 29-31.

[4] Penned by Labor Arbiter Mariano L. Bactin, *ibid.*, 147-162.

[5] See San Juan's Position Paper, *ibid.*, pages 47-60.

[6] See MDC's Position Paper, *ibid.*, pages 72-91.

[7] See San Juan's Position Paper, *supra*, at note 5.

[8] See print copy of the email addressed to Vivian Que Azcona from Hazel Anne San Diego, *rollo*, page 94.

[9] See San Diego's Sinumpaang Salaysay, *ibid.*, page 107.

- [10] See page 3 of MDC's Position Paper, *ibid.*, page 74.
- [11] See Minutes of Interview Concerning the Emailed Sexual Harassment Accusation Against Mr. Geronimo San Juan dated November 27, 2009, *ibid.*, pages 98-100.
- [12] *Ibid.*
- [13] See the December 4, 2009 letter of BM-Trainee Leilanie O. Capistrano, *ibid.*, pages 101-102.
- [14] *Ibid.*, page 103.
- [15] See December 9, 2009 letter of Ileto addressed to MDC's Vice President for Chainstore Operations, *ibid.*, page 106.
- [16] *Supra*, at note 9.
- [17] See Notice of Preventive Suspension, *rollo*, pages 66-67.
- [18] See Investigating Committee Report, *ibid.*, pages 111-126.
- [19] *Ibid.*
- [20] See Notice of Termination, *ibid.*, page 128.
- [21] *Supra*, at note 4.
- [22] *Supra*, at note 2.
- [23] See Motion for Reconsideration, *rollo*, pages 218-233.
- [24] *Supra*, at note 3.
- [25] *Lambert Pawnbrokers v. Binamira*, G.R. No. 170464. July 12, 2010 citing *Pascua v. NLRC*, G.R. No. 123518. March 13, 1998.
- [26] *Aquino v. Acosta*, A.M. No. CTA-01-1, April 02, 2002.
- [27] See Investigating Committee Report, *supra*, at note 18.
- [28] See *Panuncillo v. Cap Philippines, Inc.*, G.R. No. 161305. February 9, 2007 citing *San Miguel Corporation v. Ubaldo*, G.R. No. 92859. February 1, 1993.
- [29] *Millares v. Philippine Long Distance Telephone Co., Inc.*, G.R. No. 154078. May 6, 2005.
- [30] *Philippine Long Distance Telephone Company v. The Late Romeo F. Bolso*, G.R. No. 159701. August 17, 2007
- [31] *Francisco v. NLRC*, G.R. No. 170087. August 31, 2006.
- [32] *Philippine Long Distance Telephone Company v. The Late Romeo F. Bolso*, *supra*, at note 27.
- [33] See page 6 of the Investigating Committee Report, *supra*, at note 18.
- [34] *Maquiling v. Philippine Tuberculosis Society, Inc.*, G.R. No. 143384. February 4, 2005.
- [35] See Notice of Hearing dated February 18, 2010, *rollo*, page 68.
- [36] G.R. No. 158693. November 17, 2004.

[37] G.R. No. 151378. March 28, 2005.

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