

JULIUS CAESAR BARNACHEA AND JOHNSON & JOHNSON SALES AND OFFICE UNION-FFW, PETITIONERS, VS. JOHNSON & JOHNSON PHILIPPINES, INC., RESPONDENT.

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the Petition for Review[1] under Rule 43 of the Rules of Court filed by Julius Caesar Barnachea (“petitioner Julius”) and Johnson & Johnson Sales and Office Union-FFW (“petitioner Union;” collectively “petitioners”) assailing the Decision dated 24 October 2012[2] (“assailed Decision”), and the Order dated 04 December 2012[3] (“assailed Order”), issued by Voluntary Arbitrator Francis V. Sobreviñas (“VA Sobreviñas”), in the voluntary arbitration case docketed as NCMB-NCR-NOS-03-015-12/NOS-03-017-12.

The facts are as follows: petitioners and Johnson & Johnson Philippines, Inc. (“respondent J&J”) voluntarily submitted their dispute before VA Sobreviñas[4] as to the legality of petitioner Julius's termination from employment.

Petitioners filed the Position Paper of the Union,[5] and alleged: petitioner Julius was employed as Territory Representative of respondent J&J; petitioner Julius was the president of petitioner Union; respondent J&J illegally terminated petitioner Julius from employment; respondent J&J terminated petitioner Julius for alleged irregularities in the submission of receipts of Roger's Catering Services (i.e.: Official Receipt Numbers 3279, 3473, 3645, and 3841 bore dates that were either later or earlier, on the basis of the sequence of the issuance, and that the signatures on the Official Receipts were different from the signature of Roger Alcala [(“Alcala;” the owner of Roger's Catering Services)], poor sales performance for the years 2009-2011, unauthorized absences on 17-21 December 2011, and submission of falsified documents; petitioner Julius had no control over the issuance of the receipts; in his sworn statement, Alcala explained that there were times when some receipts were unintentionally skipped, and that he (Alcala) authorized his personnel to sign the receipts for him;[6] on 20 January 2012, petitioner Julius sought the review of respondent J&J's new Performance Improvement Plan (“PIP”), and requested that his performance for the past six years be taken into consideration[7] (petitioner Julius was a consistent quota achiever in the years 2006-2008); district managers and territory representatives agreed on the setting of performance goals, but petitioner Julius did not consent to the performance goals they set; factors beyond petitioner Julius's control affected his performance (i.e., the Mercury Stock Transfer; lack of adjustment period of two to three months in petitioner Julius's new territory; discontinuance of supply of tools and funding; lack of training; unrealistic sales target); the PIP was subject of several pending preventive mediation cases before the National Conciliation and Mediation Board (“NCMB”); petitioner Julius originally filed for vacation leave from 14 December 2011 to 09 January 2012, but petitioner Julius rebooked his flight after being informed that there was a business planning process/quota setting workshop on 17-21 December 2011; petitioner Julius failed to attend the business planning process/quota setting workshop on 17 – 21 December 2011, because he was suffering from severe toothache and swollen gums, so petitioner Julius filed for sick leave for the period 17-21 December 2011;[8] petitioner Julius's medical certificate,[9] although not signed by Dr. Bo MacDonald (“Dr. MacDonald”),

was not falsified, and J&J did not adduce evidence that the medical certificate was falsified; petitioner Julius did not tamper his rebooked Philippine Airlines (“PAL”) e-ticket, as it was from the travel agency King of Travel;[10] respondent J&J did not adduce evidence that petitioner Julius' PAL e-ticket was falsified, or that petitioner Julius had knowledge of the alleged falsification when he submitted the PAL e-ticket; respondent J&J was harassing petitioner Julius because petitioner Julius was the petitioner Union's president; there was no just or valid ground to support petitioner Julius's termination from employment.

The Position Paper of the Union prayed that VA Sobreviñas: declare respondent J&J guilty of illegal dismissal; order respondent J&J to reinstate petitioner Julius to his former position without loss of seniority rights, and other benefits and privileges; order respondent J&J to pay petitioner Julius full backwages, inclusive of other benefits, computed from the time these were withheld until actual reinstatement; order respondent J&J to pay petitioner Julius moral and exemplary damages, litigation expenses, and attorney's fees equivalent to 10% of the total monetary awards.

Respondent J&J filed the Position Paper.[11] The Position Paper alleged: respondent J&J validly dismissed petitioner Julius for legal causes (i.e.: company records showed that petitioner Julius failed to meet the standards for his employment for three consecutive years; after petitioner Julius failed to meet performance standards for two consecutive years, respondent J&J gave petitioner Julius the chance to improve his performance through the PIP (respondent J&J even lowered petitioner Julius's sales targets); the process used in determining the sales quotas was objective and information-based, and it was implemented in standard manner throughout the organization; the sales quotas were not used to discriminate against petitioner Union's members; 8 out of 15 of petitioner Union's members were able to achieve sales quotas, or pass the PIP; petitioner Julius was guilty of gross and habitual neglect of duties, as shown by his deplorable performance despite being given several chances to improve; petitioner Julius willfully disobeyed respondent J&J's lawful orders to meet sales targets, and to attend an important company event; petitioner Julius violated Section 9.2.3 of the Employees' Code of Conduct[12] when he submitted a falsified document to evade liability; Section 9.2.3 was reasonable and lawful, sufficiently known to petitioner Julius, and was connected with the duties he had been engaged to discharge; respondent J&J was a pharmaceutical company whose existence depended on its reputation, hence a violation of Section 9.2.3 warranted the penalty of termination even at the first instance; petitioner Julius committed serious misconduct; the position of Territory Representative was a position of trust and confidence, as respondent J&J allowed its territory representatives to carry the company name in dealing with physicians and the public, and to hold and use company properties; petitioner Julius willfully breached respondent J&J's trust and confidence in him when petitioner Julius submitted a falsified document, and repeatedly peddled lies that he intended to attend the business planning session; petitioner Julius's termination was supported by substantial evidence, and was not a scheme of union busting; respondent J&J complied with the requirements of due process (i.e.: respondent J&J notified petitioner Julius of the acts for which he may be subjected to disciplinary action; respondent J&J gave petitioner Julius the opportunity to be heard; respondent J&J notified petitioner Julius of the decision to terminate his employment); respondent J&J did not illegally dismiss petitioner Julius, thus petitioner Julius was not entitled to reinstatement, or separation pay, or backwages, and damages; assuming that respondent J&J illegally dismissed petitioner Julius, petitioner Julius was not entitled to reinstatement (because of strained relations between petitioner Julius and respondent J&J), and petitioner Julius was not entitled to damages (because there was no legal or factual basis established); petitioner Julius was not entitled to attorney's fees (because there was no sufficient showing of bad faith on the part of respondent J&J).

The Position Paper prayed that VA Sobreviñas: dismiss the case for lack of merit; order petitioners to pay respondent J&J P300,000.00 as attorney's fees.

On 24 October 2012, VA Sobreviñas issued the assailed Decision dismissing the case. Petitioners moved for the reconsideration of the assailed Order,[13] but VA Sobreviñas denied the motion in the assailed Order.

Hence, this Petition for Review, with petitioners making the following assignment of errors:

THAT THE HONORABLE VOLUNTARY ARBITRATOR, IN ARRIVING AT THE DECISION AND RESOLUTION DATED 24 OCTOBER 2012 AND 4 DECEMBER 2012, RESPECTIVELY, COMMITTED GROSS AND REVERSIBLE ERROR IN ITS FINDINGS AND CONCLUSION THAT PETITIONER JULIUS CAESAR BARNACHEA WAS VALIDLY TERMINATED FROM EMPLOYMENT ON THE GROUND OF ALLEGED POOR SALES PERFORMANCE FOR THE YEARS 2009-2011.

THAT THE HONORABLE VOLUNTARY ARBITRATOR, IN ARRIVING AT THE DECISION AND RESOLUTION DATED 24 OCTOBER 2012 AND 4 DECEMBER 2012, RESPECTIVELY, COMMITTED GROSS AND REVERSIBLE ERROR IN ITS FINDINGS AND CONCLUSION THAT PETITIONER JULIUS CAESAR BARNACHEA WAS VALIDLY TERMINATED ON THE GROUND OF ALLEGED UNAUTHORIZED ABSENCES ON DECEMBER 19-21, 2011.

THAT THE HONORABLE VOLUNTARY ARBITRATOR, IN ARRIVING AT THE DECISION AND RESOLUTION DATED 24 OCTOBER 2012 AND 4 DECEMBER 2012, RESPECTIVELY, COMMITTED GROSS AND REVERSIBLE ERROR IN ITS FINDINGS AND CONCLUSION THAT PETITIONER JULIUS CAESAR BARNACHEA WAS VALIDLY TERMINATED FROM EMPLOYMENT ON THE GROUND OF ALLEGED SUBMISSION OF FALSIFIED DOCUMENTS.

The issue is whether VA Sobreviñas erred in issuing the assailed Decision, and the assailed Resolution, and finding that respondent J&J validly terminated petitioner Julius from employment.

The Petition for Review[14] answers in the affirmative. VA Sobreviñas erred in issuing the assailed Decision, and the assailed Resolution, because there was no valid ground to terminate the petitioner Julius.

The Petition for Review thrusts: the issue pertaining to PIP was subject to a notice of strike, and the PIP was temporarily suspended when petitioner Julius's employment was terminated; the PIP increased the quota target of Territory Representatives, and made the quota very difficult, if not impossible, to attain; in May 2019, petitioner Union's members and officers were forced to resign due to the implementation of the new PIP, and the revision of the PIP quota, calls policy, availment of leaves and Company Policy; on 10 February 2012, petitioner Union filed a preventive mediation case with the NCMB, on several grounds (i.e.: respondent J&J's refusal to process the new PIP, revision of the PIP quota, calls policy, availment of leaves and Company Policy; harassment acts against petitioner Union, its officers, and members); on 13 March 2012, petitioner Union converted the preventive mediation case into a notice of strike (i.e., NCMB-NCR-NOS-03-015-12); the PIP implementation was arbitrary and intended to bust petitioner Union through the harassment of petitioner Union's officers; respondent J&J issued to petitioner Julius the notice of termination while the conciliation and mediation on the notice of strike was pending; respondent J&J could not have validly terminated petitioner Julius due to poor performance, because the PIP was still subject to review; petitioner Julius's low sales quota achievement was a result of the implementation of the PIP; petitioner Julius exceeded his target quota in the years 2006-2008, and was a consistent achiever in those years; the quota percentage given was 50% growth over the last sales performance, and petitioner Julius's current quota percentage was equivalent to 105% of the previous years' sales performance; only the District Manager set the new performance standards, because petitioner Julius did not consent to the performance goals; petitioner Julius was not given an adjustment period to address the issue of Mercury Stock Transfer; the alleged failure to meet the unreasonable sales quota cannot be considered willful disobedience; petitioner Julius filed for vacation leave when he left for the United States on 14 December, to accompany his sick mother; petitioner Julius re-set his return, originally on 09 January 2012, to an earlier date, in time for the belatedly announced business

planning process/quota setting workshop on 17 to 21 December 2011; petitioner Julius was not able to attend the business planning process/quota setting workshop on 17-21 December 2011 because he suffered from a severe toothache; petitioner Julius filed for sick leave on 17 to 21 December 2011, hence petitioner Julius cannot be considered to have taken an unauthorized leave of absence; there was no evidence to the contrary to show that petitioner Julius's dental certificate was fraudulent; petitioner Julius bought his airplane ticket from King of Travel, Inc., and he had no participation in its acquisition from PAL; petitioner Julius did not use persuasion in having his ticket rebooked, and he did not request for a tampered or dummy plane e-ticket; petitioner Julius cannot be terminated for the alleged submission of falsified documents, because there was no evidence to show that the documents were falsified; there was no evidence to show that petitioner Julius committed acts of dishonesty, or breach of trust.

The Comment[15] answers in the negative. VA Sobreviñas did not err in issuing the assailed Decision, and the assailed Resolution, because the arguments validly terminated petitioner Julius from employment.

The Comment parries: VA Sobreviñas correctly denied petitioners' Motion for Reconsideration because the Motion was a prohibited motion; the filing of the prohibited pleading or motion did not toll the reglementary period to appeal the assailed Decision, hence the assailed Decision became final and executory on 24 November 2012, ten days after petitioners' receipt; the petitioners filed this Petition for Review out of time; petitioner Julius demonstrated gross and habitual negligence, by missing his sales quotas in 2009 and 2010; respondent J&J lowered petitioner Julius's sales quota to 85% (from the 90%-100% quota of other Territory Representatives) of the sales target, but petitioner Julius still failed to meet the performance standards; petitioner Julius' allegation that he objected to the PIP performance goals, assuming he did object, was not relevant because petitioner Julius's consent was not required in setting sales quotas and in defining other work performance standards; the PIP performance goals were reasonable, and were consonant with petitioner Julius's overall responsibility as Territory Representative; petitioner Julius did not show how the other factors greatly affected his performance; the Mercury Stock Transfer was implemented company-wide, and other employees performed well with the implementation; Sta. Ana, Manila was part of petitioner Julius's original territory; petitioner Julius's dismal performance was attributable to his negligence, because he failed to visit hospitals and healthcare professionals in the first five months of 2011; petitioner Julius's allegations of union busting and acts of harassment were bare allegations without any proof; petitioner Union's officers Rowena Salazar and Rhea Dayao were subjected to disciplinary proceedings, but they opted to voluntarily resign; respondent J&J validly dismissed petitioner Julius for just causes, and not for the purpose of defeating the employees' right to self-organization; petitioner Julius willfully disobeyed the directive to attend the Business Planning on 19-21 December 2011; petitioner Julius willfully disobeyed the directive to submit prescriptions for his medications and receipts for the medications he purchased; petitioner Julius's medical certificate was issued by a mere dental assistant who did not possess the competence of a dental practitioner, and who could not issue a medical certificate; absent proof of a return flight to Manila, and a legitimate tooth or gum ailment incapacitating him, petitioner Julius failed to prove that he intended to comply with respondent J&J's directive for him to attend the Business Planning, and petitioner Julius's non-attendance at the Business Planning was deliberate and not brought about by circumstances beyond his control; petitioner Julius knew that respondent J&J held its Business Planning every December; petitioner Julius belatedly filed his leave application, and booked his travel to the USA prior to the approval of his leave application; petitioner Julius submitted a falsified or a "dummy" PAL e-ticket for a flight from Los Angeles to Manila scheduled on 17 December 2011; the PAL certification, and King of Travel official statement, proved that petitioner Julius caused the issuance of the falsified or "dummy" PAL e-ticket; King of Travel's official statement issued through counsel was not hearsay evidence; King of Travel's positive allegation that Custodio accommodated petitioner Julius's request for a "dummy" PAL e-ticket should prevail over petitioner Julius's bare denial; petitioner Julius refused to

issue an authorization in favor of respondent J&J for the verification of his airline booking records; as Territory Representative using respondent J&J's name in dealing with physicians and the general public, petitioner Julius held a position of trust and confidence; petitioner Julius's fraudulent acts and willful disobedience caused respondent J&J's loss of trust and confidence in petitioner Julius; the findings of VA Sobreviñas were supported by substantial evidence, and thus binding upon the Court; petitioner Julius was proved to be incompetent, insubordinate, and morally infirm, and there were several just causes for his dismissal.

THE COURT'S RULING

The Court rules in the negative. VA Sobreviñas did not err in issuing the assailed Decision, and the assailed Resolution. VA Sobreviñas correctly ruled that respondent J&J validly terminated petitioner Julius from employment.

The evidence showed that respondent J&J had sufficient grounds to terminate petitioner Julius's employment (i.e.: petitioner Julius failed to reach the sales quotas under the PIP; petitioner Julius failed to attend respondent J&J's Business Planning; and petitioner Julius submitted documents which were not what they purported to be).

Petitioner Julius's failure to reach the sales quotas under the PIP was tantamount to poor work performance, and was a proper cause for dismissal. The allegation that the sales quotas were discriminatory to petitioner Union's members, was not substantiated, as in fact, the sales quotas were implemented on a company-wide scale.

Petitioner Julius's absence during the Business Planning cannot be excused. As a territory representative, he was expected to attend the Business Planning. Petitioner Julius's absence was a failure to perform a duty as territory representative.

In justification of his absence, petitioner Julius submitted two documents: the PAL e-ticket, and the dental certificate. Petitioner Julius claimed that he re-booked his return flight to the Philippines in light of the schedule of the Business Planning, but petitioner Julius claimed he was unable to attend the Business Planning due to severe toothache, and swollen gums.

Petitioner Julius's arguments and evidence, are without merit. Petitioner Julius could have easily shown his intent to return to the Philippines, and his actual return to the Philippines, by presenting his duly-stamped passport in evidence. Instead, presented the PAL e-ticket, which was later shown to be a mere dummy ticket. Also, the dental certificate adduced in evidence was issued by a mere dental assistant who did not have the requisite license to practice dentistry, hence was not legally and professionally capable of diagnosing petitioner Julius's dental condition.

There was here no union busting.

Article 276(c) of the Labor Code of the Philippines is relevant. It reads:

(c) In case of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least thirty (30) days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be fifteen (15) days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

Under Article 276(c) above quoted, there is union busting when the existence of the union is threatened by the

employer's act of dismissing the former's officers who have been duly-elected in accordance with its constitution and by-laws.[16]

Petitioners' evidence do not show that the acts of respondent J&J constituted union busting.

The following facts are undisputed: petitioner Julius was a duly-elected officer of petitioner Union; respondent J&J dismissed petitioner Julius. The question that remains is whether petitioner Julius's dismissal threatened the existence of petitioner Union, i.e., whether petitioner Julius's dismissal was done in bad faith, and in violation of petitioner Union's right to self-organization.

We find that petitioner Julius's dismissal was not done in bad faith, and was not in violation of petitioner Union's right to self-organization.

There was no evidence to show that respondent J&J's dismissal of petitioner Julius had the effect of threatening petitioner Union's existence (hence a violation of the right to self-organization). Apart from the fact that petitioner Julius was petitioner Union's president, petitioners did not adduce evidence to prove that respondent J&J's dismissal of petitioner Julius weakened or sabotaged the bargaining position of petitioner Union, or had any similar effect. Absent convincing evidence, we cannot find respondent J&J guilty of violating petitioners' right to self-organization.

We DISMISS the Petition for Review.

IT IS SO ORDERED.

De Leon, M.M., Chairperson and Lantion, J.A.C., JJ., concur.

[1] C.A. Rollo, p. 11.

[2] Annex "A," C.A. Rollo, p. 43.

[3] Annex "B," C.A. Rollo, p. 65.

[4] Submission Agreement, Annex "D," C.A. Rollo, p. 87.

[5] Annex "E," C.A. Rollo, p. 88.

[6] Sinumpaang Salaysay, attachment to Exhibit "3" of the Position Paper of the Union, C.A. Rollo, p. 118.

[7] Exhibit "11" of the Position Paper of the Union, C.A. Rollo, p. 130.

[8] Exhibit "6" of the Position Paper of the Union, C.A. Rollo, p. 123.

[9] Exhibit "5" of the Position Paper of the Union, C.A. Rollo, p. 122.

[10] Exhibit "4" of the Position Paper of the Union, C.A. Rollo, p. 120.

[11] Annex "F," C.A. Rollo, p. 168.

[12] Section 9.2.3 Any act of deceit, dishonesty, misrepresentation, forgery, bribery and wrongful and inappropriate reporting that leads to loss of trust xxx.

[13] Motion for Reconsideration, Annex "C," C.A. Rollo, p. 67.

[14] Supra, at note 01.

[15] C.A. Rollo, p. 368.

[16] Pepsi-Cola Products Philippines, Inc. v. Molon, et al., G.R. No. 175002, 18 February 2013.

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