

RAMIL S.M. RAMOS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, AXA PHILIP-PINES, INC., AND RIEN HERMANS, RESPONDENTS.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision[1] dated September 30, 2013 and Resolution[2] dated January 15, 2014 of the National Labor Relations Commission (NLRC), First Division, in NLRC LAC No. 01-000288-13, NLRC Case No. 12-18195-11 entitled “RAMIL S. RAMOS, Complainant-Appellee, versus AXA PHILIPPINES, INC., RIEN HERMANS, Respondents-Appellants.”, the dispositive portions of which read:

Decision dated September 30, 2013

“WHEREFORE, the appeal is GRANTED. The Labor Arbiter's Decision dated 28 September 2012 is VACATED and SET ASIDE and a new one entered dismissing the complaint for lack of merit. Respondent Axa is, however, DIRECTED to grant financial assistance to complainant in the amount of P35,000.00.

SO ORDERED.”[3]

Resolution dated January 15, 2014

“WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion for reconsideration of the same tenor shall be entertained.

SO ORDERED.”[4]

The facts are:

On December 7, 2011, petitioner Ramil S.M. Ramos (Ramos for brevity) filed a Complaint[5] for illegal dismissal, non-payment of salary, separation pay, illegal deduction, moral damages, exemplary damages, and attorney's fees against private respondents AXA Philippines, Inc. (AXA for brevity) and Rien Hermans. In his Position Paper[6], petitioner Ramos averred that: he previously worked for private respondent AXA as Financial Executive from February 2006 until he resigned on December 30, 2008; when he joined another company, he was required to submit his clearance from private respondent AXA; however, despite his repeated requests, private respondent AXA did not issue his clearance; he was informed that the denial of his request for the issuance of his clearance was due to his failure to settle his alleged obligation to the company in the amount of P61,741.15[7]; it turned out that private respondent AXA, upon investigation, charged him P87,078.72[8] for the withdrawal of policy of one of its clients, Daisy Kam Shung; aggrieved, petitioner Ramos became determined to contest the said matter and insisted in getting a copy of any document or record pertaining to the said investigation; sometime in July 2011, while petitioner Ramos' request to provide him with documents was still pending, private respondent AXA offered him another employment in the company as Corporate Sales Officer; he accepted the offer and commenced to report for work on July 27, 2011; as a probationary employee fully cognizant of the quota that a

sales person has to meet, he was keen in the performance of his duties under the Employment Agreement[9]; thus, he was able to close a number of accounts such as Emerald Headway, Fit for School, and Mitsubishi Motors Philippines; these closed accounts, however, were not officially tagged to him because he lacked the required insurance code, which was brought about by private respondent AXA's refusal to release his clearance; petitioner Ramos persistently requested for documentation regarding Daisy Kam Shung's withdrawal, but these follow-ups remained unheeded; he chose not to pay the amount for which he was supposedly liable, P61,741.15, as he felt that it was grossly unfair and he should not be held responsible for the same; Daisy Kam Shung was not really his client and he had no direct access to Metrobank Seafront Branch clients; it was the duty of the service team to update the client of any development on the withdrawal process; and, he was not the right person to answer and address Daisy Kam Shung's concerns as he was merely requested to provide assistance.

Petitioner Ramos further alleged that: since his counsel wrote a demand letter[10] to private respondent AXA on September 15, 2011 for his clearance and separation pay, he was despised and discriminated by the company; his immediate superior gave him a very cold treatment; on October 10, 2011, he received a letter[11] from Corporate Solutions informing him that he supposedly was not able to close any case, inviting him for a sales counseling; on the said meeting, instead of determining the key areas that need to be improved, petitioner Ramos was advised to resign voluntarily; he did not resign because he knew that he was diligently performing his duties, as he had in fact closed several accounts although not officially tagged to him; he was also positive that he could meet the quota since he had numerous potential pending accounts; it was only on October 14, 2011 that he was finally given a copy of Daisy Kam Shung's complaint; on October 18, 2011, private respondent AXA sent him a letter[12] denying his appeal questioning the cost-charging; petitioner Ramos filed an appeal through a letter[13] dated November 23, 2011, which was the first time he was able to fully explain his side, having received a copy of Daisy Kam Shung's complaint only on October 14; two (2) days later, on November 25, 2011, or two (2) months prior to the expiration of his probationary employment, petitioner Ramos received a letter[14] from private respondent AXA terminating his employment effective November 30, 2011; his dismissal was not based on a just, authorized, or valid cause provided by law; he was actually able to close a number of accounts and had several potential pending accounts; he could have met the quota had he been given the chance to finish his probationary employment and to be properly counseled as mandated in his employment contract; his termination was a clear violation of the provisions on Key Performance Indicator (KPI) validation assessment stages[15]; his illegal dismissal was an offshoot of the company's resentment towards him for taking legal action[16] to obtain his clearance; and, his termination did not comply with the requirements of procedural due process.

Private respondents, for their part, filed a Position Paper[17] maintaining that: the engagement of petitioner Ramos was subject to a six(6)-month probationary period where his continued employment and subsequent regular employment was subject to his compliance with the conditions and standards of employment under Section 3[18] of the Employment Agreement; Appendix 3 thereof shows that the performance of petitioner Ramos and other Corporate Solutions Officers is assessed based on their ability to meet the minimum monthly Key Performance Indicators (KPI) validation requirements[19]; under Section 13.2(c)20 of the Employment Agreement, private respondent AXA may terminate petitioner Ramos' employment if he fails to pass the probationary period or if he fails to meet the requirements for regular employment; petitioner Ramos, after undergoing the mandatory basic training, caddying, and other activities throughout the month of August 2011, began his validation assessment period and took on his responsibilities as Corporate Sales Officer in September 2011; two (2) months into his validation assessment period, petitioner Ramos was unable to meet the minimum KPI requirements prescribed in Appendix 3, scoring 0.0 New Business Income (NBI) and failing to close any case during the said period; alarmed by his poor performance, Corporate Solutions Management Head Mary Ann Rivera scheduled a one-on-one meeting with petitioner Ramos on November 11, 2011 where it was agreed upon

that he had until the end of November to meet the minimum KPI requirement, otherwise, he would be terminated for failure to meet the probationary period standards and requirements for regularization; despite this opportunity given to petitioner Ramos, he again failed to close any case and maintained a 0.0 NBI score; it became clear to private respondent AXA that petitioner Ramos was not suited for the position, and in order to protect the company's interests, private respondent AXA had no choice but to terminate him; on November 25, 2011, private respondent AXA issued to him a written notice of termination²¹; petitioner Ramos' dismissal for failure to meet the minimum performance standards for continued and regular employment was just and in accordance with law; it is a valid exercise of management prerogative; his termination was both substantively and procedurally valid, and petitioner Ramos has no cause of action against private respondent Rien Hermans as he had no hand whatsoever in the former's dismissal.

Both parties thereafter filed their respective Replies²² and Rejoinders.²³

On September 28, 2012, Labor Arbiter Jaime M. Reyno rendered a Decision²⁴ holding that petitioner Ramos was illegally dismissed, ordering his immediate reinstatement without loss of seniority rights and payment of backwages, moral damages, exemplary damages, and attorney's fees. The Labor Arbiter found private respondent AXA's allegation that petitioner Ramos scored 0.0 closed cases as inaccurate, considering that he actually closed accounts as shown in e-mail correspondences but were not officially credited to him because he did not have the required insurance code due to private respondent AXA's refusal to release his clearance. According to the Labor Arbiter, petitioner Ramos' dismissal was a mere excuse for private respondent AXA to get even with him for taking legal action to obtain his clearance. Had private respondents given him the chance to finish the probationary period and undergo sales counseling, he would have made the quota in view of his several potential pending accounts.

Private respondents filed a Memorandum of Appeal²⁵ dated November 5, 2012, which petitioner Ramos countered with his Answer.²⁶

On September 30, 2013, public respondent NLRC rendered the assailed Decision²⁷ setting aside the ruling of the Labor Arbiter and dismissed petitioner Ramos' complaint for lack of merit. Public respondent NLRC held that the company records show that petitioner Ramos was not able to close a case, and scored zero in New Business Income (NBI). As such, private respondent AXA had basis to terminate his probationary employment. Public respondent NLRC observed that nowhere in the exchange of e-mails is there any indication that petitioner Ramos actually closed an account. Even granting that the said exchange would suffice to prove that petitioner Ramos closed an account, it would not constitute substantial evidence that he satisfactorily passed his probationary employment. Further, the imputation of bad faith on the part of the private respondents lacked basis. Nonetheless, public respondent NLRC awarded P35,000.00 in favor of petitioner Ramos as financial assistance.

Petitioner Ramos filed a Motion for Reconsideration²⁸ which public respondent NLRC denied in the assailed Resolution²⁹ dated January 15, 2014.

Hence, this Petition for Certiorari raising the following grounds³⁰:

- I. RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING (TO) LACK OR EXCESS OF JURISDICTION IN FINDING FOR RESPONDENTS AXA AND HERMANS DESPITE ABSENCE OF SUBSTANTIAL EVIDENCE TO SUPPORT THE CONCLUSION THAT PETITIONER RAMOS FAILED TO MEET THE LATTER'S STANDARDS DURING PROBATIONARY PERIOD; and
- II. RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING (TO) LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER RAMOS'S MONEY CLAIMS.

The petition lacks merit.

In a nutshell, petitioner Ramos asserts that: even probationary employees enjoy security of tenure and can only be terminated in accordance with Article 281 of the Labor Code; the termination of a probationary employee is not without limitations and should be exercised with careful discretion; private respondent AXA's standards are not reasonable; it was unreasonable for private respondent AXA to evaluate petitioner Ramos within a six-month probationary period using a validation assessment intended to be applied for a longer evaluation period of four (4) quarters; such standards were not meant to be applied to a six-month probationary period; private respondent AXA failed to adduce substantial evidence that the dismissal was legal; a ruling not supported by substantial evidence constitutes grave abuse of discretion; the conflicting pronouncements of the Labor Arbiter and public respondent NLRC gives this Court authority and discretion to reconcile their findings; as a consequence of petitioner Ramos' illegal termination, he is entitled to backwages, separation pay, moral damages, exemplary damages, attorney's fees and expenses of litigation; and, private respondent Hermans acted in bad faith for instructing those under him to unjustly deny petitioner Ramos' request for clearance and for allowing his illegal dismissal.

Well-settled is the legal tenet that certiorari is a remedy narrow in its scope and inflexible in character. It is not a general utility tool in the legal workshop.[31] Certiorari will issue only to correct errors of jurisdiction and not to correct errors of judgment or mistakes in the tribunal's findings and conclusions.[32] Further, for a petition for certiorari to prosper, mere abuse of discretion on the part of public respondent NLRC is not enough.[33] The onus is upon petitioner Ramos to sufficiently establish that public respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the findings of the Labor Arbiter.

A probationary employee is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationary employee to ascertain whether he is qualified for permanent employment, the employee, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word "probationary", as used to describe the period of employment, implies the purpose of the term or period, not its length.[34]

In line with these fundamental principles, and after a careful review of the facts of the case, this Court finds that public respondent NLRC committed no grave abuse of discretion in dismissing petitioner Ramos' complaint as it was convincingly shown that he failed to meet the performance standards required of him by private respondent AXA, particularly its monthly quota for closed cases and New Business Income (NBI).

An employer, in the exercise of its management prerogative, may hire an employee on a probationary basis in order to determine his fitness to perform his work.[35] Under Article 281 of the Labor Code, there are two (2) grounds to legally terminate a probationary employee. It may be done either: a) for just cause or b) when the employee fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the start of the employment.[36]

As plainly provided in the Employment Agreement, a Corporate Sales Officer such as petitioner Ramos, was required to meet the Minimum Validation Criteria for the Key Performance Indicators (KPIs) specified by private respondent AXA in Appendix 3 thereof, to retain his employment with the company[37], viz:

Monthly KPI

Validation

Target

Weight

NBI

(New Business Income)

560,000

700,000

100%

Closed Cases

3

5

100%

It is undisputed that petitioner Ramos was apprised of the same at the time of his engagement, as well as on October 10, 2011 when private respondent AXA brought to his attention that he was not able to close any case. Under these clear and explicit performance standards, petitioner Ramos should have met the minimum of at least three (3) closed cases and P560,000.00 per month, or a quarterly validation requirement of nine (9) closed cases amounting to P1,680,000.00 of New Business Income (NBI).

By the very nature of a probationary employment, the employee knows from the very start that he will be under close observation, and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors.[38] In this case, after several months under private respondent AXA's employ, petitioner Ramos had zero (0) closed cases and P0 as NBI. This is clear from the letters sent by private respondent AXA to petitioner Ramos, and it was up to him to take exception to the company's express findings, which he failed to do. As compared to the quarterly validation requirement of at least nine (9) closed cases with an equivalent of P1,680,000.00, it is easy to see private respondent AXA's basis for terminating petitioner Ramos' employment, which to emphasize, was merely probationary to begin with.

While petitioner Ramos did not serve four (4) quarters under Appendix 3, what clearly covers him as a probationary employee is the monthly requirement for New Business Income (NBI) and closed cases. On this matter, petitioner Ramos clearly failed as he was not able to close a case or generate NBI during his entire period of employment with private respondent AXA. The company presented documents supporting their allegation that petitioner Ramos registered zero results, and so the onus shifted to him to disprove the same, especially considering that he is the one making a positive allegation. It was his controverting evidence that failed his cause as the e-mail correspondences[39], his lone evidence on the matter, do not sufficiently show that he was in fact able to close an account. Notably, Lagos asked him what were the accounts he closed, but he made no reply. Lagos' statement that she can only remember "Fit for School" is not sufficient proof that petitioner Ramos indeed closed the said account. This cannot in any way fall under the rubric of "substantial evidence." At any rate, even if the same is considered, this is only one (1) out of the minimum of nine (9) which he was required to close. Interestingly, petitioner Ramos did not bother to correct Lagos' statement[40] that it was only Fit for School that she remembers, thereby raising doubts as to whether he really closed Emerald Headway. Nowhere in the e-mails

did Emerald Headway appear or was mentioned. Again, even if this is considered, it is still two (2) out of the minimum of nine (9).

Under this factual milieu, it is clear that petitioner Ramos, a probationary employee, not only missed his quota but failed to meet it by a large margin. Quite telling also is that he never bothered to correct or take exception to the October 10, 2011 Letter[41] of private respondent AXA informing him that he registered zero cases and zero NBI. If it is true that he closed cases, it can be reasonably expected that he would inform private respondent AXA of the same, especially after being informed that he was not able to produce any results. All told, private respondent AXA cannot be faulted in deciding to end petitioner Ramos' probational employment as the company cannot be forced to retain and regularize an employee who is unproductive under its standards.

As aptly held by public respondent NLRC:

“The Labor Arbiter therefore, erred in sustaining the position of complainant that he was able to close cases and that these transactions were not credited to his account because he did not have a license code in Axa. As earlier stated, the records are bereft of proof that complainant was able to close a case. Complainant referred to an exchange of e-mails to show that accounts were not tagged to him, but nowhere in the exchange of e-mails is there any indication that complainant actually closed an account. What the e-mails reveal is that management was merely inquiring whether accounts were already tagged to complainant's name. It cannot be found in the e-mails whether complainant actually closed an account.

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From this correspondence, it is clear that the issue being discussed was the tagging of accounts to complainant. Neither Lagos nor complainant expressly named any account supposedly closed by complainant. Granting, however remote, that this exchange would suffice to prove that complainant closed an account in Axa, the same would not constitute substantial evidence that complainant satisfactorily passed his probationary employment. Remember that complainant should reach specific targets. A mere mention in e-mails that some accounts might not have been credited to him would not establish that he passed the KPI of his probationary employment.

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And as correctly pointed out by respondents, even if the two accounts would be credited to complainant, he would still fail to qualify as a regular employee. He had to close at least three cases and attain an NBI of at least P560,000.00 monthly. Because the records of Axa do not show that he achieved such level of performance, it was incumbent upon complainant to prove otherwise. But complainant failed to show that he accomplished that much.”[42] (Emphasis supplied)

Being in the nature of a "trial period", the essence of a probationary period of employment fundamentally lies in the purpose or objective sought to be attained by both the employer and the employee during said period.[43] While this Court commiserates with the plight of petitioner Ramos, private respondent AXA cannot be forced to retain an unproductive employee, lest it suffer substantial losses. Private respondent AXA cannot sacrifice its own interests and regularize employees who attain substandard or in this case, zero results. This is the very situation sought to be prevented by probationary employment, which is essentially a trial period. Indeed, an employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to its interests.[44] Satisfactory performance is and should be one of the basic standards for regularization.[45]

As for the validation assessment procedure[46] in Appendix 3 of the Employment Agreement such as sales counseling and warning letters, the alleged non-compliance with the same does not make the termination of petitioner Ramos' probationary employment illegal. Assuming *arguendo* that it is applicable, it merely entitles him to nominal damages which the award of financial assistance in the amount of P35,000.00 sufficiently answers for. On this matter, noteworthy is the pronouncement of the Supreme Court in *Abbot Laboratories v. Pearlie Ann F.*

Alcaraz[47], thus:

“D. Employer's violation of company policy and procedure.

Nonetheless, despite the existence of a sufficient ground to terminate Alcaraz's employment and Abbott's compliance with the Labor Code termination procedure, it is readily apparent that Abbott breached its contractual obligation to Alcaraz when it failed to abide by its own procedure in evaluating the performance of a probationary employee.

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Records show that Abbott's PPSE procedure mandates, inter alia, that the job performance of a probationary employee should be formally reviewed and discussed with the employee at least twice: first on the third month and second on the fifth month from the date of employment. Abbott is also required to come up with a Performance Improvement Plan during the third month review to bridge the gap between the employee's performance and the standards set, if any. In addition, a signed copy of the PPSE form should be submitted to Abbott's HRD as the same would serve as basis for recommending the confirmation or termination of the probationary employment.

In this case, it is apparent that Abbott failed to follow the above-stated procedure in evaluating Alcaraz. For one, there lies a hiatus of evidence that a signed copy of Alcaraz's PPSE form was submitted to the HRD. It was not even shown that a PPSE form was completed to formally assess her performance. Neither was the performance evaluation discussed with her during the third and fifth months of her employment. Nor did Abbott come up with the necessary Performance Improvement Plan to properly gauge Alcaraz's performance with the set company standards.

While it is Abbott's management prerogative to promulgate its own company rules and even subsequently amend them, this right equally demands that when it does create its own policies and thereafter notify its employee of the same, it accords upon itself the obligation to faithfully implement them. Indeed, a contrary interpretation would entail a disharmonious relationship in the work place for the laborer should never be mired by the uncertainty of flimsy rules in which the latter's labor rights and duties would, to some extent, depend.

In this light, while there lies due cause to terminate Alcaraz's probationary employment for her failure to meet the standards required for her regularization, and while it must be further pointed out that Abbott had satisfied its statutory duty to serve a written notice of termination, the fact that it violated its own company procedure renders the termination of Alcaraz's employment procedurally infirm, warranting the payment of nominal damages.

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Anent the proper amount of damages to be awarded, the Court observes that Alcaraz's dismissal proceeded from her failure to comply with the standards required for her regularization. As such, it is undeniable that the dismissal process was, in effect, initiated by an act imputable to the employee, akin to dismissals due to just causes under Article 296 of the Labor Code. Therefore, the Court deems it appropriate to fix the amount of nominal damages at the amount of P30,000.00, consistent with its rulings in both *Agabon* and *Jaka*.”

At any rate, this Court opines that the notice requirements under Appendix 3[48] of the Employment Agreement may not have been intended to benefit probationary employees. This is because under the said procedure, if an employee does not validate for two (2) quarters, or a period of six (6) months, he or she would merely be issued a First Warning Letter. Six (6) months, however, is already the entire period of employment of a probationary employee. Thus, in such scenario, all probationary employees who do not validate for their entire probationary

period of six (6) months would attain regular status anyway, as only a First Warning Letter is issued. This could not have been the intention of the Employment Agreement. Thus, to the mind of this Court, considering the brief nature of probationary employment where much is expected and leniency is less, it is doubtful whether these quarterly assessment stages and several notice requirements are applicable to probationary employees. Further, it has been held that the second ground for valid termination of probationary employment, which is failure to qualify as a regular employee in accordance with the employer's reasonable standards, does not require notice and hearing. Due process of law under this ground consists of making the reasonable standards expected of the employee known to him at the time of his probationary employment.[49]

Anent the remaining two (2) months of petitioner Ramos' probationary period, which he argues that he should have been allowed to finish, it is beyond dispute that an employer can lawfully terminate the services of a probationary employee even before the expiration of the six (6) month probationary period. If the termination is for cause, it may be done anytime during the probation. The employer does not have to wait until the probation period is over.[50] In this case, after several months of registering zero (0) results, private respondent AXA cannot be faulted in dismissing petitioner Ramos as possible millions of income is slipping away from them. As for the allegation that the accounts were not tagged to him because he did not have an insurance code, it may be well to note that under the Employment Agreement, it is part of his duty as a Corporate Sales Officer to secure his license from the Insurance Commission within the probationary period.[51]

Verily, probationary employees enjoy only temporary employment status. In general terms, this means that a probationary employee is terminable anytime, permanent employment not having been attained in the meantime. The employer could well decide that it no longer needed the probationary employee's services or his performance fell short of expectations, etc. As long as the termination was made before the expiration of the six-month probationary period, as in this case, the employer was well within its rights to sever the employer-employee relationship. A contrary interpretation would defeat the clear meaning of the term "probationary." [52]

Moreover, there is nothing under Article 281 of the Labor Code that would preclude the employer from extending a regular or a permanent appointment to an employee once the employer finds that the employee is qualified for regular employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, Article 281 of the Labor Code does not likewise preclude the employer from terminating the probationary employment on justifiable causes.[53]

Going now to petitioner Ramos' money claims, it is well-settled that the award of backwages and separation pay in lieu of reinstatement are reliefs that are awarded to an employee who is unjustly dismissed.[54] Backwages and separation pay are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee.[55] In other words, backwages may be granted only when there is a finding that the dismissal is illegal[56], while separation pay in lieu of reinstatement is warranted in cases of illegal dismissal wherein reinstatement is no longer feasible. In this case, there being no illegal dismissal to speak of, there is simply no basis to award backwages and separation pay.

With respect to petitioner Ramos' claim for moral damages, exemplary damages, and attorney's fees, this Court likewise denies the same for lack of factual basis. Moral damages are recoverable only where the dismissal of the employee was attended by bad faith or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy, while exemplary damages may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner.[57] It is not even enough that a dismissal is found illegal, as such termination must be effected through malice or bad faith, which is wanting in this case. Also, where the award of moral and exemplary damages is eliminated, so must the award for attorney's fees be deleted.[58]

On that note, this Court cannot engage in speculation and conjecture anent petitioner Ramos' bare allegation that he was resented by private respondent AXA because of the letter sent by his counsel to the company demanding the issuance of his clearance. No convincing proof was presented to corroborate or support the said claim. In contrast to these unsubstantiated insinuations, the undeniable fact remains that petitioner Ramos failed to meet the company's quota, as earlier discussed, which already constitutes sufficient ground for the termination of his probationary employment. Certainly, no bad faith or fraud can be ascribed to private respondent AXA's in the religious implementation of its performance standards.

The Supreme Court's pronouncement in *Audion Electric Co., Inc. v. NLRC, et al.*[59] pertinently holds, thus:

“xxx Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably, such action must be shown to have been willfully done in bad faith or with ill motive, and bad faith or ill motive under the law cannot be presumed but must be established with clear and convincing evidence. Private respondent predicated his claim for such damages on his own allegations of sleepless nights and mental anguish, without establishing bad faith, fraud or ill motive as legal basis therefor.

Private respondent not being entitled to award of moral damages, an award of exemplary damages is likewise baseless. Where the award of moral and exemplary damages is eliminated, so must the award for attorney's fees be deleted. Private respondent has not shown that he is entitled thereto pursuant to Art. 2208 of the Civil Code.” (Emphasis supplied)

Lastly, petitioner Ramos' prayer to hold private respondent Rien Hermans solidarily liable with private respondent AXA is likewise baseless and unfounded. It is rudimentary that a corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. Bad faith is never presumed. It does not connote bad judgment or negligence, but imports a dishonest purpose and partakes of the nature of fraud. [60] In this case, there is dearth of evidence that private respondent Hermans had a hand or was ever involved in petitioner Ramos' dismissal. There was never a mention of him, much less proof of his participation, in the pertinent letters and documents submitted in evidence by both parties.

It should be borne in mind that the principle of social justice does not mandate that every dispute should be automatically decided in favor of labor. Justice should be dispensed in light of established facts, the applicable law, and existing jurisprudence.[61] Indisputably, an employer has the right, or is at liberty, to choose who will be hired and who will be declined. As a component of this right to select its employees, the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former, as in this case, before hiring him permanently.[62] Sufficient leeway or discretion should be accorded to the employer in the exercise of its right to select its own employees in accordance with its own performance standards. Thus, if an employee can compel an employer to give him work against the employer's will, this is oppression.[63]

Truly, the law in protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer.[64] Management also has its own rights, which are entitled to respect and enforcement in the interest of fair play.[65] All told, as petitioner Ramos failed to show grave abuse of discretion on the part of private respondent NLRC, the dismissal of the instant petition for certiorari is in order.

WHEREFORE, premises considered, the Petition for Certiorari is hereby DENIED and ordered DISMISSED. The assailed Decision dated September 30, 2013 and Resolution dated January 15, 2014 of the NLRC, First Division,

in NLRC LAC No. 01-000288-13, NLRC Case No. 12-18195-11 are hereby AFFIRMED.

No costs.

SO ORDERED.

Gonzales-Sison, M. B., and Cruz, R. A., JJ., concur.

[1] Rollo, pp. 319-328

[2] Rollo, pp. 337-338; this Court's April 14, 2014 Resolution was mistakenly stamped with the same page numbers

[3] Rollo, pp. 327-328

[4] Rollo, p. 338

[5] Rollo, pp. 34-35

[6] Rollo, pp. 37-111

[7] Rollo, p. 69

[8] Ibid.

[9] Rollo, pp. 70-87

[10] Rollo, pp. 96-97

[11] Rollo, p. 98

[12] Rollo, pp. 99-100

[13] Rollo, pp. 101-104

[14] Rollo, pp. 105-111

[15] Rollo, p. 84

[16] Rollo, pp. 96-97

[17] Rollo, pp. 112-190

[18] Rollo, p. 138

[19] Rollo, p. 152

[20] Rollo, p. 144

[21] Rollo, pp. 103-107

[22] Rollo, pp. 191-219

[23] Rollo, pp. 212-219; 220-235

[24] Rollo, pp. 236-245

[25] Rollo, pp. 246-287

- [26] Rollo, pp. 288-317
- [27] Rollo, pp. 319-328
- [28] Rollo, pp. 329-335
- [29] Rollo, pp. 337-338
- [30] Rollo, p. 7
- [31] AGG Trucking v. Melanio Yuag, G.R. No. 195033. October 12, 2011.
- [32] Laguna Autoparts Manufacturing Corp. v. Office of the DOLE Secretary, G.R. No. 157146. April 29, 2005.
- [33] Solvic Industrial Corp. v. NLRC, G.R. No. 125548. September 25, 1998.
- [34] Magis' Young Achievers Learning Center v. Adelaida Manalo, G.R. No. 178835. February 13, 2009.
- [35] Philemploy Services and Resources, Inc. v. Anita Rodriguez, G.R. No. 152616. March 31, 2006.
- [36] Aberdeen Court, Inc. v. Mateo Agustin, Jr., G.R. No. 149371. April 13, 2005.
- [37] Rollo, p. 71
- [38] Philippine Daily Inquirer, Inc. v. Leon Magtibay, Jr., et al., G.R. No. 164532. July 24, 2007.
- [39] Rollo, pp. 88-91
- [40] Rollo, p. 88
- [41] Rollo, p. 98
- [42] Rollo, pp. 324, 326-327
- [43] Philippine Daily Inquirer, Inc. v. Leon Magtibay, Jr., et al., G.R. No. 164532. July 24, 2007.
- [44] Pilar Espina, et al. v. Court of Appeals, G.R. No. 164582. March 28, 2007.
- [45] Mylene Carvajal v. Luzon Development Bank, G.R. No. 186169. August 1, 2012.
- [46] Rollo, p. 84
- [47] G.R. No. 192571. July 23, 2013.
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- [49] Philippine Daily Inquirer, Inc. v. Leon Magtibay, Jr., et al., G.R. No. 164532. July 24, 2007; Mylene Carvajal v. Luzon Development Bank, G.R. No. 186169. August 1, 2012.
- [50] Mylene Carvajal v. Luzon Development Bank, G.R. No. 186169. August 1, 2012.
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