EVANGELINE P. AGCAOILI, LLOYD PADILLA AND FLORA C. PEL, PETITIONERS, VS. GLOBAL JOBSEARCH SERVICES, INC. AND/OR ALEX TANWANGCO, LORIE VIC GARCIA, LOWENA GUIBAO, ALMA TANWANGCO A...

Ponente: TIJAM, J.

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TIJAM, J.:

This petition for certiorari[1] assails the Decision[2] dated November 29, 2011 of the National Labor Relations Commission (NLRC), which modified the Decision[3] dated February 28, 2011 of the Labor Arbiter. Also assailed is the NLRC's Resolution[4] dated April 24, 2012 which denied petitioners' motion for reconsideration.

The case stemmed from a complaint filed on June 4, 2010 by Evangeline Agcaoili, Lloyd Padilla, and Flora Pel (collectively referred to as petitioners) against respondent Global Jobsearch Services, Inc. (GJSI, for brevity), for (a) illegal suspension; (b) illegal dismissal; (c) non-payment of 1 month salary; (d) non-payment of overtime pay and 13[th] month pay; (e) moral and exemplary damages; and, (f) attorney's fees.

Petitioners Evangeline Agcaoili, Lloyd Padilla, and Flora Pel, on various dates, were hired as General Manager, Documentation/Processing/Liaison Officer/Operations In Charge, and Office Assistant/PE Coordinator, respectively, by GJSI[5] a POEA-licensed recruitment agency for overseas employment.[6]

Sometime in the second quarter of 2010, the management of GJSI learned through a confidential report that petitioners were undertaking unauthorized collection of various fees such as no show fee, rebate from trade test fee and re-entry fee from its applicants. GJSI management also discovered the unauthorized sale of books and t-shirts to applicants using the GJSI acknowledgment receipts. For this reason, GJSI sent each petitioner a Notice to Explain with Preventive Suspension and further directed Agcaoili and Padilla to explain the unauthorized stamping of “resident” and “commercial visit” visas in the applicants' passports. Petitioners complied by submitting their Explanation Letters on May 11, 2010, May 14, 2010, and May 17, 2010, respectively.[7]

On May 20, 2010, GJSI sent each petitioner a Notice of Termination[8] in which Agcaoili and Padilla were dismissed due to loss of trust and confidence while Pel was dismissed on ground of gross misconduct resulting to damage and prejudice to the company.

In their position paper[9] filed with the Labor Arbiter, Agcaoili claimed that GJSI prospered and eventually obtained its license to recruit due to her hard work. Her dismissal on the ground of loss of trust and confidence was a ploy in order to replace her as General Manager. She alleged that there was no proof submitted showing that she authorized the collection of various fees and sale of books and t-shirts to applicants. Neither was there any proof that she cleared the stamping of “resident” and “commercial visit” visas on the passports of GJSI's applicants/clients. On the other hand, Padilla and Pel claimed that their termination was unfounded. As mere rank-and-file employees of GJSI, they were unaware that the collection of various fees and the sale of books and t-shirts to GJSI's applicants were unauthorized. They intimated that the collection of fees and sale of books and t-shirts were initiated by one Guibao, who was then handling the Annasban Group Account. The collected

amounts were placed in a group fund to finance the employees' outings, Christmas parties, and loans.[10]

In rebuttal, GJSI contended that petitioners were terminated for just causes, such as loss of trust and confidence and gross misconduct. The dismissal was justified due to the commission of the following infractions: (a) unauthorized collection of various fees, (b) sale of books and t-shirts to applicants using GJSI's acknowledgment receipts, and (c) allowing the unauthorized stamping of “resident” and “commercial visit” visas in their clients' passports, all in violation of the POEA rules and regulations. Petitioners' acts were expressly prohibited by Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995) as they constitute illegal recruitment.

GJSI maintained that, as General Manager, Agcaoili's job was to monitor the daily activities of her subordinates and she was responsible for the management and supervision of her team. In the same manner that, as Operations In Charge, Padilla was responsible for the employees under his supervision as his duty was to monitor that all collections and transactions are in accordance with the POEA rules and regulations. Their acts exposed GJSI to criminal and civil liabilities. In doing so, they can be terminated due to loss of trust and confidence. As regards petitioner Pel, her participation in the unauthorized collection of fees makes her guilty of serious misconduct.[11] GJSI further maintained that the petitioners' preventive suspension was necessary to protect its interests. As regards petitioners' monetary claims, the amounts indicated in their complaint were not withheld from them as they were in fact tendered to petitioners during mediation proceedings but they flatly rejected it for reasons only known to them.

The Labor Arbiter found that GJSI complied with the due process requirement of the law, hence, the termination of Padilla and Pel was lawful and valid; they having admitted their active participation in the illegal transaction that went on in the GJSI's office. With regard to Agcaoili's termination, the same was illegal since there was no showing in the evidence presented by GJSI that she participated in the anomaly. GJSI had failed to discharge the burden of proof that Agcaoili's termination was valid. The Labor Arbiter awarded petitioner Agcaoili separation pay in lieu of reinstatement.[12]

On Appeal, the NLRC ruled on the basis of Article 282 of the Labor Code declaring that an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work as well as fraud, willful breach by the employee of trust reposed in him by his employer or duly authorized representative.[13]

The NLRC agreed with the Labor Arbiter finding the dismissal of Padilla and Pel valid and legal. As regards Agcaoili, the NLRC ruled that she committed acts constituting loss of trust and confidence, hence, her dismissal is likewise valid and legal. The dispositive portion of the NLRC's decision reads, thus:

> “WHEREFORE, premises considered, the Appeal of respondents is granted while the Appeal of complainants is denied. Accordingly, the 28 February 2011 Decision is modified in that the dismissal of complainant Agcaoili is declared as valid.
>
> SO ORDERED.”[14]

Petitioners filed a motion for reconsideration of the NLRC's decision but it was denied.[15]

Hence, this petition for certiorari alleging grave abuse of discretion on the part of the NLRC —

> “1. X X X IN HOLDING THAT DISMISSAL OF HEREIN COMPLAINANTS ARE VALID.
>
> 2. X X X IN DISMISSING THE CLAIM OF MORAL AND EXEMPLARY DAMAGES BY THE COMPLAINANTS.

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> 3. X X X IN DISMISSING THE INSTANT CASE WITHOUT RULING ON THE MONEY CLAIMS OF COMPLAINANTS.[16]"

The core issue to be resolved is whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in confirming the dismissal of Agacaoili, Padilla, and Pel as valid and legal under the given facts.

By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.17 In this case, We find no compelling reason to reverse the findings and conclusions of the NLRC.

In the main, We take into account the discussion of the NLRC on the matter of Agcaoili's knowledge and participation in the anomalies inside the GJSI office, thus:

> "x x x We are convinced that denial of any knowledge or participation in the activities would not get Agcaoili off the hook however. Her subordinates admitted that they, as well as all GJSI staff, know of the collections and sales which are placed in a group fund. This group fund is in then used for company outings, Christmas parties and employees loans. Respondent GJSI also uses it if the company runs out of petty cash fund. It would be impossible for her not to know of these also when every staff, including GJSI, have been benefiting therefrom. As general manager, she also oversees company funds, company outings and Christmas parties need funding. She naturally has to ask the source of funds for these company activities. If GJSI funds have not been used, as general manager, she naturally would ask funding source.
>
> x x x x x x
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> Complainant Agcaoili's knowledge of these activities is bolstered by the admissions of complainants Padilla and Pel. Both confirmed complainant Agcaoili's statements. They were aware that the latter was approached by Guibao in relation to the collection of fees as well as the sale of t-shirts but that such requests were denied by Agcaoili. Having knowledge of the activities, it would be preposterous for Agcaoili to now claim that the Tanwangcos should have investigated Guibao's activities. She is the general manager. If she did have the authority to turn down the requests of Guibao, she likewise had the authority to stop the activities for being, to borrow her words, nefarious. As it stood, the activities were committed with her knowledge.
>
> Respondents bewail that complainant Agcaoili allowed the stamping of resident and commercial visit visas in blatant violation of the law. Respondents underscore that they have only been permitted to process work visas based on POEA Rules and Regulations. Respondents contend that complainant Agcaoili, as General Manager should answer for all the actions of her subordinates."[18]

Agcaoili's dismissal premised upon the loss of trust and confidence reposed on her by the management of GJSI, therefore, is in order. First, as a ground for dismissal, the term "trust and confidence" is restricted to managerial employees.[19] Second, there must be an actual breach of duty committed by the employee which must be established by substantial evidence.[20] In this case, the actual breach of duty committed by Agcaoili is attributed to the fact that she ignored her duty to oversee the work and undertakings of her subordinates. From the evidence gathered, she had knowledge of the "nefarious" activities in the GJSI yet she did not do anything to stop it. Even as Agcaoili pointed to Guibao as the one who orchestrated the anomalies within the GJSI, the latter's employment is not a matter in question in this case, thus, Guibao's involvement and liability cannot be discussed herewith. The core of the matter being that, as General Manager, Agcaoili's work essentially involves decision-making including implementation of the company's policies and supervision of subordinate employees. Obviously, she failed to

carry-out the responsibilities attached to her office.

On the basis of the foregoing, it is right to say that the NLRC did not gravely abuse its discretion when it uniformly ruled for the legality of petitioners' dismissal. The NLRC's judgment is firmly anchored on the following:

> "Complainants Agcaoili's and Padilla's dismissals on loss of trust and confidence is justified. Respondent GJSI has proven Padilla's direct involvement in the collection and sale while it had reasonable grounds to believe that complainant Agcaoili had knowledge of the nefarious activities but did not stop it, neither did she inform respondents about the anomalies attributed to Guibao. It bears to stress that complainant Agcaoili by virtue of her position was expected to oversee the day-to-day operation of respondent company. It is part of her duty to see to it that no anomalies are committed and if they have been perpetuated to put a halt to them."[21]

Similarly, Pel's dismissal is valid given the following:

> "Complainant Pel's admission is sufficient to find her guilty of serious misconduct. She cannot feign ignorance of the POEA rules and regulations on allowable fees and legitimate recruitment activities. Being employed by a recruitment agency, she is tasked to know which collections are authorized and which are not. She is likewise tasked to know that the sale of books and t-shirts to respondent GJSI applicants and recruits so that all GJSI employees would benefit therefrom would, in the long run, tarnish the company's image. x x x"[22]

Clearly then, petitioners may be dismissed by GJSI for grave misconduct and/or loss of confidence. With particular regard to Agcaoili and Padilla who are managerial employees, GJSI is allowed wide latitude of discretion in terminating them because they perform functions which, by their nature, require full trust and confidence. Management has a right to dismiss erring employees on reasons of self-protection. However, loss of trust and confidence or grave misconduct must not be based on unsubstantiated suspicions, conjectures or surmises. Loss of trust and confidence as a just cause for termination of employee must rest on a breach of duty committed by the employee and not on the caprices of the employer.[23] Without a doubt and as already discussed elsewhere in this decision, the dismissal of petitioners are not based merely on unsubstantiated suspicions, conjectures or surmises but on hard evidence submitted by GJSI and weighed by the NLRC.

As aptly put in the NLRC Decision —

> "The dismissals where (sic) done for the protection of respondent GJSI. The collection of fees which are not allowable fees, as well as the selling of books and t-shirts to applicants, will have a negative impact on respondent GJSI. Making an 'enterprise' out of fees collected from, as well as sale of books and t-shirts to, applicants would affect GJSI's image as a recruitment agency." [24]

The other issues raised by petitioners, i.e. damages and money claims, need not be discussed in view of Our finding that this is not a case of illegal dismissal. Hence, there is no basis for the award of damages in favor of petitioners. Neither does the ground exist to grant petitioners' monetary claim against GJSI.

All told, We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC.

WHEREFORE, the petition for certiorari is DISMISSED. The assailed Decision dated November 29, 2011 of the NLRC in NLRC LAC No. 05-001172-11, NLRC NCR CASE No. 06-07816-10, is hereby AFFIRMED.

SO ORDERED.

Lopez, M.V., and Garcia-Fernandez, M.V., JJ. , concur.

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[1] Filed under Rule 65 of the Rules of Court on July 13, 2012; Rollo, pp. 3-24.

[2] Rollo, pp. 33- 52.

[3] Rollo, pp. 26-31.

[4] Rollo, pp. 58-60.

[5] Represented by its officers, namely, Alex F. Tanwangco, Alma Tanwangco-Yray and Mitzi Decio.

[6] See NLRC Decision, p. 2; Rollo, p. 34.

[7] Rollo, pp. 128, 129, 130.

[8] Rollo, pp. 132, 133, 134.

[9] Rollo, pp. 103-111.

[10] NLRC Decision, p. 5; Rollo, p. 37.

[11] NLRC Decision, p. 7; Rollo, p. 39.

[12] Rollo, pp. 28-29.

[13] NLRC Decision, p. 10; Rollo, p. 42.

[14] NLRC Decision, p. 19; Rollo, p. 51.

[15] Resolution dated April 24, 2014; Rollo, pp. 58-50.

[16] See Petition, pp. 12-13; Rollo, pp. 14-15.

[17] Standard Chartered Bank Employees Union v. Confesor, G.R. No. 114974, June 16, 2004.

[18] NLRC Decision, pp. 16-17; Rollo, pp. 48-49.

[19] Samson v. NLRC, G.R. No. 121035, April 12, 2000.

[20] Felix v. NLRC, G.R. No. 148256, November 17, 2004.

[21] NLRC Decision, p. 17; Rollo, p. 49.

[22] Id., p. 18; Rollo, p. 50.

[23] Tolentino v. PLDT, G.R. No. 160404, June 8, 2005.

[24] NLRC Decision, p. 18; Rollo, p. 50.

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