

REYNALDO F. LINESES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION- SIXTH DIVISION AND PNB LIFE INSURANCE, INC./ MS. ESTER TAN, RESPONDENTS.

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

From the dismissal[1] of petitioner Reynaldo Lineses' Complaint for illegal termination of his employment and the subsequent denial[2] of his plea for reconsideration, he interposed the current Petition[3] anchored on wanton exercise of public respondent's discretion.

Based on facts We collated, it was established that petitioner was initially hired by private respondent PNB Life (formerly known as New York Life) as project consultant[4] in January, 2008 for a six month contract. The contract was thereafter extended for another six months or until December, 2008.[5]

In January, 2009 private respondent was eventually hired as a regular employee of private respondent and was stationed as Division Head of the Sales Department.[6] As Division Head, he was assigned to supervise area managers and cluster heads within his area.

When petitioner was assigned to head the sales department of private respondent PNB Life, there were two existing sales distribution channels under petitioner's supervision and these were the bancassurance and Special Market (SMK).

As explained by private respondent PNB life, under the bancassurance system, “there was a marketing agreement with a partner-bank. The partner-bank allows private respondent PNB life to use its premises to make sales presentations, and provides a list of bank clients who are interested in purchasing life insurance policies. In turn, the partner-bank gets 'marketing fee' from PNB life for every life insurance policy sold to partner-bank's client. Thus, PNB Life's employees under the bancassurance arm, known as Cluster Heads, and the agents under them, do not use their own resources and connections in sourcing clients. The Cluster Heads are already assigned to certain partner-bank branches/areas where they can sell life insurance to bank clients.

SMK, on the other hand, refers to the traditional agency channel where the agents source potential clients, through their own efforts and using their own resources. Since the agents under SMK sell life insurance by their own means and methods, and using their own connections, the agents under SMK get higher commission.”[7]

In the last quarter of 2009, co-private respondent Ester Tan (Ms. Tan) took over PNB Life and became the President. During her term, Ms. Tan received a Complaint against some executives of PNB Life, including petitioner, for the alleged diversion of bancassurance sales to SMK.

PNB Life management conducted an initial investigation for the alleged anomalous transaction and in the meantime, Ms. Tan issued to petitioner a Notice of Forced Leave[8] with pay for two weeks.

During the investigation, cluster heads submitted sworn statements narrating how petitioner was involved in the

diversion of bancassurance business to SMK and how petitioner obtained his share in the commission from the deviation of sales.[9]

PNB Life engaged the services of Sycip, Gorres, Velayo & Co. (SGV) for the audit and Quasha Law Firm to determine voluntariness and personal knowledge of the employees' statements, inclusive of the legality of management action during and after the investigation.

The investigation[10] revealed that out of the 21 SMK policies from January 1, 2009 to December 31, 2009, 13 have been solicited through partner-banks/bancassurance. As a result of the diversion of 13 policies, PNB Life and partner-banks suffered direct financial losses since it paid out more commissions. It was likewise discovered that petitioner coursed SMK sales through Mega Financing, a company under Corazon Lineses, petitioner's mother, and son Jan Paul Lineses, and petitioner received a share from the commission distributed to SMK agents.

On January 18, 2010, a Show-Cause Letter[11] was addressed to petitioner about the alleged dishonesty, conflict of interest, mismanagement, incompetency and inefficiency, and was required to submit a written explanation thereon until January 25, 2010. Petitioner replied and explained his side via a letter[12] dated February 1, 2010. According to petitioner, there was no truth to the allegations against him. On the issue of diversion of bancassurance sales to SMK, petitioner averred that it was impossible since bank managers will not permit such a scheme because they will lose their shares in the commission. Petitioner also claimed that the accusation against him was hatched as part of the effort to remove him so that the group of Ms. Tan can take over the management. Thereafter, the case of petitioner was referred to the Board of Directors for further investigation and deliberation.[13]

On February 17, 2010, private respondent PNB Life issued a notice of termination[14] to petitioner based on loss of trust and confidence.

Thus, on his perception that he was illegally terminated, petitioner filed a Complaint for illegal dismissal, non-payment of salary/wages, damages and attorney's fees.

On October 14, 2010,[15] Labor Arbiter Antonio R. Macam dismissed petitioner's Complaint for lack of merit which prompted petitioner to appeal his case before the NLRC but the reviewing authority also agreed with the Labor Arbiter.[16]

Following the dismissal of petitioner's appeal and the subsequent rejection of his plea for reconsideration, petitioner eventually ventilated his grievances, through the current recourse, to rectify public respondent's impressions.

Petitioner basically reiterated the concept of his illegal dismissal. He argued that he was not holding a managerial position but merely a supervisory position who implements pre-established management policy, with no powers or prerogatives to hire, fire or discipline company employees. Moreover, private respondent PNB Life charged him with dishonesty, conflict of interest, mismanagement, imprudence and inefficiency with no direct and credible evidence. He further asserted that his dismissal was due to intra-corporate politics. He added that when the team of Ms. Tan from Sunlife of Canada entered PNB Life, there was an intention to decimate the sales and marketing personnel and supplant them with her team. Withal, petitioner also conveyed the idea that his dismissal was a charade, arbitrary and tainted with bad faith.

For its part, private respondent was of the view that petitioner's dismissal was triggered by a valid investigation which arose from complaints initiated against him for anomalous transactions. Private respondent asserted that as Division Head, petitioner supervised area managers and cluster heads assigned in his area. He administered sales in the area of his assignment. Hence, trust and confidence was reposed upon him. Furthermore, private respondent

claimed that his dismissal was supported by substantial evidence such as notarized affidavits of the employees,[17] the Intra Fund Transfer Report[18] and findings[19] of SGV.

Private respondent likewise averred that petitioner was accorded due process prior to his dismissal. Petitioner was duly informed of the charges against him and was given time to explain his part and participated in a conference. Thus, his termination was aboveboard.

At the zenith of the controversy is the legality of petitioner's severance from private respondent.

Loss of trust and confidence is a just cause for dismissal of an employee in Article 282 (c) of the Labor Code.[20] Indeed, an employer may terminate an employment for "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."

Loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as custody, handling, care and protection of the employer's property and funds.[21]

Moreover, as a valid basis for termination, the employer must consider these parameters: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.[22]

Furthermore, an employer has the prerogative and wider latitude of discretion in dismissing a managerial employee or personnel. The employer is not required to present proof beyond reasonable doubt. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer would suffice for the employee's termination.[23]

A scrutiny of the facts at hand revealed that petitioner was employed as Division Head of the sales department of PNB Life and was tasked to supervise area managers and cluster heads. Petitioner also organized sales team and recruited employees and agents for the company and made recommendations on possible sanctions or disciplinary actions for erring employees and agents.[24]

Clearly, petitioner was holding a managerial position, since he possessed the authority to act in the interest of his employer and such authority was not merely routinary or clerical but required the use of independent judgment.[25] Given such exercise of authority and responsibility, there was no doubt that trust was reposed upon petitioner by private respondent PNB Life.

As can be gleaned from available datum, We subscribe to the conclusion reached by both the Labor Arbiter and public respondent relative to petitioner's transgression of trust and confidence.

We likewise agree that there was substantial evidence anent the foundation for petitioner's termination consisting of notarized affidavits from cluster heads: William Eric J. Suner, Anna Liza D. Abella, Norie M. Batahn, Haji H. Yu, Ma. Rousell Panganoron, Justino Baroro Jr., Fidelberto Serrano and Marilou delos Santos, who narrated in detail how they were instructed and encouraged by petitioner to divert sales from bancassurance to SMK in order to obtain higher commission and to be coursed through Mega Financing. Moreover, the Intra Fund Transfer Reports submitted by cluster head Marilou Delos Santos also reflected how petitioner distributed the commission and profited therefrom, apart from the SGV's report which confirmed the alternative route of sales.

As consequence of petitioner's actuations, private respondent suffered direct financial losses since it paid higher commissions to agents and special agency managers more than what they deserved. In addition, petitioner failed to protect the interest of private respondent PNB life. Thus, PNB Life was justified when it pursued the course of

action against petitioner for willful breach of trust.

Private respondent observed the procedure prescribed by law when it validly dismissed petitioner from employment.

Section 2 (d), Rule I of the Implementing Rules of Book VI of the Labor Code, in relation to Article 282 of the Labor Code, spoke of the due process requirements prior to termination of employment, viz: (1) a written notice specifying the ground or grounds for termination; (2) a hearing or conference to give the employee concerned the opportunity to respond to the charge; and (3) a written notice of termination.[26]

Private respondent gave petitioner the opportunity to explain his side. Initially, a show cause order was addressed to him informing him of all the charges. Petitioner was also given ample opportunity to air his side. In fact, petitioner requested for an extension of time to file his reply to the show cause order and it was granted by private respondent. Thereafter, a conference was held during which occasion petitioner was even assisted by his counsel for the investigation of his case. Followed by the deliberation of the Board of Directors, which decided to dismiss him for loss of confidence and trust, a notice of termination was eventually brought to the attention of petitioner.

Inasmuch as petitioner was served with the incipient notice of the accusation and the subsequent notice, which informed him that the management's stand was to terminate his employment, petitioner was indeed afforded his right to due process.

As a final note, while the Constitution accords an employee security of tenure, it abhors oppression to an employer who cannot be compelled to retain an employee whose continued employment would be patently inimical to its interest.[27]

WHEREFORE, in view of the foregoing discourse, the Petition for Certiorari is hereby DISMISSED. Hence, the assailed Judgment dated May 4, 2011 and the Resolution dated June 5, 2011 in NLRC NCR Case No. 06-08132-10 (NLRC LAC No. 01-000178-11) are hereby AFFIRMED.

SO ORDERED.

Reyes, Jr., J.C., Chairperson and Acosta, F.P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015 effective February 2, 2015.

[1] Decision promulgated on May 4, 2011, Rollo, pages, 35-42.

[2] Resolution promulgated June 15, 2011, Rollo, pages 51-53.

[3] Dated August 23, 2011.

[4] Rollo, pages 112-114.

[5] Rollo, page 115.

[6] Rollo, pages 117-119.

[7] Private Respondent's Memorandum pages 300-301.

[8] Rollo, pages 137-138 .

[9] Rollo, pages 121-136, 139-152.

[10] Rollo, pages 153-157.

[11] Rollo, pages 158-161.

[12] Rollo, pages, 166-171.

[13] Rollo, page 172.

[14] Rollo, page 173-A.

[15] Rollo, pages 24-33.

[16] Rollo, pages, 34-42.

[17] Rollo, pages 121-136, 139-152.

[18] Rollo, page 153.

[19] Rollo, pages 154-157.

[20] ART. 282. TERMINATION BY EMPLOYER. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[21] Bluer than Blue Joint Ventures Company/Mary Ann Dela Vega v. Glyza Esteban, G.R. No. 192582, April 7, 2014.

[22] Baguio Central University Ignacio Gallente, G.R. No. 188267, December 2, 2013.

[23] Philippine Plaza Holdings, Inc., v. Ma. Flora M. Episcopo, G.R. No. 192826, February 27, 2013, citing Bristol Myers Squibb (Phils), Inc, v. Baban, G.R. No. 167449, December 17, 2008, 574 SCRA 198, 208-209.

[24] See Section 2, rule I, Book Three of the Omnibus Rules Implementing the Labor Code.

[25] Rowena De Leon Cruz v. Bank of the Philippines, G.R. No. 173357, February 13, 2013.

[26] Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, in part, provides:

Section 2. Security of tenure. – xxx

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(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i.) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii.) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires

is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii.) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[27] *Flordeliza Maria Reyes Rayel v. Philippine Luen Thai Holdings Corporation/L&T International Group Philippines, Inc.*, G.R. No. 174893, July 11, 2012.

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