

SITEL PHILIPPINES, CORP., SHIELA JOY TANATE, JANICE B. ORTEGA, AND MAYBELLE L. VALDEZ, PETITIONERS, VS. JOSE ROMEO GARCIA AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

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MACALINO, J:

Before the Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated December 20, 2012 (Assailed Decision) and the Resolution[3] dated February 28, 2013 (Assailed Resolution) of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's award of backwages, separation pay and attorney's fees in favor of Jose Romeo Garcia in NLRC LAC No. 11-003208-12 (NLRC NCR-11-17014-11).

The fallo of the Assailed Decision states:

“WHEREFORE, the appeal filed by respondents is hereby DISMISSED. The decision dated 31 May 2012 is AFFIRMED.

SO ORDERED.”[4]

The dispositive portion of the Assailed Resolution reads:

“ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit. No further Motions for Reconsideration shall be entertained.

SO ORDERED.”[5]

Jose Romeo Garcia (private respondent) was hired as a Customer Service Representative on March 17, 2008 and was assigned at the Capital ONE-MAA account of Sitel. His main duty was to call current credit card holders of Capital One Bank and offer to sell them a “payment protection program plan” (a type of insurance).[6]

On September 29, 2011, an internal red flag report[7] was received by Sitel from the Quality Assurance Team (Q.A. Team) of Capital One-MAA account who questioned the sales tagged as “closed” by private respondent but apparently were not properly verified pursuant to the standard procedures.[8] Private respondent was likewise furnished a copy of this same report as shown by his signature acknowledging receipt thereof at the bottom part of the page.[9]

In the reported incident, the Q.A. Team made reference to one particular call made by private respondent to a customer named Linda Lopez. During the said call, private respondent asked the customer the initial question, “Do you understand and accept the terms as I have read them to you?” (referring to the payment fees, schedule and terms of the sale), however, the customer hung up and the call got disconnected. Thus, private respondent allegedly was not able to get a “yes” from the customer and was not able to complete the verification process by obtaining her city of birth. When the Q.A. Team looked at the records, it was shown that private respondent had pegged the sale as “closed,” meaning the same was fully verified and completed. Apparently, private respondent had also “copy-pasted” the customer's city of birth without the latter's oral verification.

On the same date, Sitel issued the CARE 1 Form[10] (Corrective Action and Response Form)/ Notice to Explain to private respondent requiring him to explain within five (5) days why no corrective action should be imposed upon him for the said reported incident.[11] He submitted his written explanation[12] on the same day stating that he would or will not do such fraudulent activities in any calls.[13]

To give private respondent the full measure of due process, Sitel set an administrative hearing[14] on October 4, 2011. Meanwhile, private respondent was placed under preventive suspension[15] for twelve (12) days or from September 29, 2011 to October 8, 2011. During the hearing[16], private respondent admitted that he practices the habit of “copy-pasting” the city of birth but denied that it is fraudulent in nature. Finding the need to further investigate on the matter, Sitel decided to extend private respondent's preventive suspension until October 22, 2011.[17]

Owing to private respondent's explanation that he had the habit of “copy-pasting” the customers' city of birth, Sitel pulled up records of previous calls made by private respondent. Capital One-MAA also requested Sitel to validate all 5,000 calls made by private respondent wherein sales had been pegged as “confirmed” or “verified”. It was during this investigation that Sitel management allegedly found a total of 177 calls pegged by private respondent as “closed” or “confirmed” sales when in truth, the customers either declined the purchases or did not verify their city of birth. As a result, Sitel had to recall the sales made and tag them as unverified or fraudulent, as per the Standard Operating Procedure of Capital One-MAA. The credits applied to the accounts of the customers during the period of July 21, 2007 to September 27, 2011 (the period in which the 177 calls were made) had to be recalled and cancelled tediously by Sitel as preventive measure against any further damage or lawsuit on account of fraud. For this reason, Capital One-MAA lost an amount equivalent to USD1,568 representing penalties and recalled sales incentives or profits arising from the unverified or fraudulent sales transactions.

After deliberation, Sitel decided to terminate the services of private respondent effective October 20, 2011. Private respondent personally received the Decision Notice[18] under protest.

Thereafter, private respondent filed a case for illegal dismissal[19] against Sitel and its officers, Shiela Joy Tarnate, Site HR Manager; Janice B. Ortega, Coach; and, Maybelle L. Valdez, Operations Manager and Quality Supervisor. No amicable settlement having been reached by both parties, the Labor Arbiter required both parties to file their respective position papers.[20]

Private respondent, in his Position Paper[21] counters that there was no just cause for his termination and that Sitel did not comply with the due process requirements of the Labor Code. He explains that he was not given an opportunity to present any evidence in his defense at the administrative hearing; that the playback of the line recording by Sitel of the portion where he asked and was given the city of birth by the customer was not properly recorded; that on the basis of the malfunction of the technical equipment of Sitel, he was charged with fraud.

On May 31, 2012, the Labor Arbiter ruled[22] in favor of private respondent, the decretal portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered declaring complainant's dismissal from his employment illegal. Concomitantly, respondents are ordered to pay complainant his back wages and separation pay in the sum of TWO HUNDRED TWENTY-SIX THOUSAND TWO HUNDRED SIXTY-ONE PESOS & 84/100 (P226,261.84), temporarily computed up to the promulgation of this judgment plus ten (10%) percent thereof by way of and/as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.”[23]

Sitel appealed[24] to the NLRC which, in its Assailed Decision, affirmed the Labor Arbiter's ruling. The Motion

for Reconsideration filed by Sitel was denied by the NLRC in its Assailed Resolution dated February 28, 2013.

Hence, this petition where Sitel submits the following for resolution:

“A.

THE PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE RULING OF THE LABOR ARBITER WHO TOTALLY DISREGARDED OVERWHELMING EVIDENCE THAT PRIVATE RESPONDENT ACTED FRAUDULENTLY IN THE PERFORMANCE OF HIS DUTIES

B.

THE PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE RULING OF THE LABOR ARBITER THAT THERE WAS NO JUST AND VALID CAUSE FOR PRIVATE RESPONDENT'S DISMISSAL.

C.

CONSEQUENTLY, THE PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE AWARD OF BACKWAGES AND SEPARATION PAY IN FAVOR OF PRIVATE RESPONDENT”[25]

The issues can be summed up to whether the NLRC committed grave abuse of discretion in ruling that there was no just cause for private respondent's dismissal.

Under Article 282 of the Labor Code, “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.”

To be lawful, the cause for termination must be a serious and grave malfeasance to justify the deprivation of a means of livelihood.[26]

We agree with Sitel that the charge against private respondent was not limited to the matter of fraud, but also for other acts against good conduct and behavior, dishonesty and the latter's failure to observe and follow the standard operating procedure of his account. Based on the Corrective Action Response Form 1, the charge against private respondent falls under Section 27 of Sitel's Code of Conduct which specifically states:

“Section 27. Other Acts of Dishonesty and Fraud – Committing other acts of dishonesty and fraud where there is a clear intent of personal gain, and the dishonest or fraudulent act is prejudicial to the guest, outside agency, supplier, officer or other employees and personnel of Sitel, or the dishonest or fraudulent act is done to avoid responsibility or serious consequence.”[27]

The above act or omission is categorized as a Class “D” offense which warrants termination as penalty.

Private respondent's act also violated the provision on Acts Against Standards and Procedure of Capital One-MAA as adopted by Sitel, viz:

“6.16 Any Act of Fraud or Deception (incl. but not limited to Sales, Balance Transfers, Costs/Prices)-CSP does not clearly state the cost and/or billing scheme (i.e.: monthly fee, yearly fee, etc.) for (Cross-Sell) products. Examples would be slurring, omitting and altering, failure to obtain a “clear yes” during the sales presentation of any product – Class d – DISMISSAL

6.16.1 External Consent Red Flags, of Consent Nature will never be turned around and will result to dismissal from the MAA Program_Class D - DISMISSAL”[28]

Private respondent is guilty of fraud and serious dishonesty in the performance of his duties and obligations. When private respondent pegged the sale as “closed”, he claimed to have fully verified and completed the sale according to security procedures. Private respondent knowingly “copy-pasted” the customer's city of birth without the latter's oral verification to make it appear that a sale has been confirmed and in order to gain credits for such sale.

Private respondent contends that his act of deviating from said standard operating procedure was simple negligence on his part; that he no longer remembers the details of that particular sale. Nonetheless, the evidence presented by Sitel shows that private respondent admitted that he has the habit of “copy-pasting” answers to the security questions of the account, a clear breach of the security procedures of the Capital One-MAA account.

Also, by reporting a confirmed sale, sales quotas are met and sales incentives are given to agents such as private respondent. If not for the red flag raised by the Quality Assurance of Capital One-MAA, he would have been entitled to his sales incentives. Customer information, especially credit card information is treated with utmost care and confidentiality. When such information is disclosed by an agent without the customer's consent, it is a clear violation of the confidentiality clause entered into by Sitel with its customer.

The above acts of private respondent are considered as deliberate and intentional and not merely unintentional or simple negligence contrary to his allegation. The alleged 177 fraudulent calls pegged by private respondent as “closed” sales were immaterial considering that a single instance of fraud is penalized by termination under Sitel's Code of Conduct. Indeed, private respondent committed a fraudulent and a serious kind of dishonesty in connection with his job as customer service representative, thus constituting a just and valid cause for his dismissal.

As to the due process requirement, the following must be satisfied for termination of employment based on just causes as defined in Art. 282:

“(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.”[29]

To clarify, the following should be considered in terminating the services of employees:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for

termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[30]

Here, private respondent was afforded due process considering that he was given a fair and reasonable opportunity to defend himself against the charge of fraud and dishonesty. He was given the benefit of hearing and investigation before his termination.

A copy of the internal red flag report was duly received by private respondent as evidenced by his signature at the bottom thereof. He was also required to explain in writing why no corrective action should be imposed upon him for his acts. Private respondent submitted his explanation, to wit:

"With regards to the call, Agent is confident that the card holder wants to enroll with the payment protection program that is why agent was able to complete the disclosure properly.

However, agent cannot recalled (sic) totally if the cardholder completed in saying her City of Birth and as we listen to the record it seems it was a drop call [on] the caller part.

With this in mind the city of birth did appear in the screen.

I would like to point out that agent in my mind would or will not do such fraudulent activities in any call and is confident that I have been doing the right thing.

By [chance] I might have pegged it accidentally it was not intended and should have made a small note in the profit or at least called the attention of my supervisor of such accident.

I do make a note in some cases and in every call I call my supervisor['s] attention [if ever] I commit an error in my regular work just to justify that I have been performing my job w/o fraudulent activities.

Whatever consequences I may have agent is willing to accept such offenses inspite the error but again I have never been doing any fraudulent actions. So help me God."

An administrative hearing was also conducted wherein private respondent participated. It was stated in the notice of administrative hearing that private respondent is instructed to bring with him his corroborating witness/es to support his defense, and counsel or any representative of his choice, should he desire one, to assist him during the

hearing. Likewise, he was told to prepare any and all documentary pieces of evidence that he wishes to submit in addition to his written explanation. The Minutes of the Administrative Hearing^[31] also reveals that private respondent attended and affirmed the said minutes by affixing his signature therein; that he was made aware that the hearing was for infraction of Dishonesty and Fraud, a Class D offense that merits the penalty of Termination; that the recording of that particular call was played back for reference and he was not able to get a clear yes as call was disconnected; that he admitted that he practices the habit of “copy-pasting” the customer's city of birth but denied that it is fraudulent in nature.

Eventually, the notice of termination was served upon private respondent stating that after careful thought and deliberation, the management of Sitel decided to impose upon him the corrective action of termination effective October 20, 2011.

The factual findings of the Labor Arbiter when affirmed by the NLRC are given great weight and respect when devoid of arbitrariness and supported by substantial evidence.^[32] In the case at bench, the findings of the LA and the NLRC on the absence of fraud on the part of private respondent was not supported by substantial evidence. On the contrary, Sitel was able to establish the fraudulent and dishonest act of private respondent. It is on record that the recording of the alleged “closed sale” was played back during the administrative hearing where private respondent admitted that: he did not get a clear “yes” from the customer but he still proceeded to “copy-paste” her city of birth and pegged the sale as “closed” and that he practices the habit of “copy-pasting” the customer's city of birth.

It is therefore a grave abuse of discretion on the part of the NLRC to affirm the ruling of the Labor Arbiter that private respondent was dismissed merely on suspicion of fraud when there is substantial evidence to prove the contrary. Thus, the complaint for illegal dismissal filed by private respondent is dismissed for lack of merit. Likewise, the award of backwages, separation pay and attorney's fees are deleted for lack of basis.

WHEREFORE, premises considered, the petition is GRANTED. Accordingly, the Decision dated December 20, 2012 and the Resolution dated February 28, 2013 of the National Labor Relations Commission in NLRC LAC No. 11-003208-12 (NLRC NCR-11-17014-11) are hereby ANNULLED and SET ASIDE.

SO ORDERED.

Villon and Corales, JJ., concur.

[1] Rollo, pp. 3-29.

[2] Id. at pp. 31-39.

[3] Id. at pp. 41-42.

[4] Id. at p. 38.

[5] Id. at pp. 41-42.

[6] Id. at p. 5.

[7] Id. at p. 86.

[8] Id. at p. 7.

[9] Id. at p. 7.

- [10] Id. at p. 87.
- [11] Id. at p. 8.
- [12] Id. at p. 88.
- [13] Id. at p. 9.
- [14] Id. at p. 89.
- [15] Id. at p. 91.
- [16] Id. at p. 92.
- [17] Id. at p. 94.
- [18] Id. at pp. 142-143.
- [19] Id. at pp. 60-62.
- [20] Id. at pp. 119-133; pp. 144-159.
- [21] Id. at pp. 119-133.
- [22] Id. at pp. 169-178.
- [23] Id. at pp. 177-178.
- [24] Id. at pp. 179-203.
- [25] Id. at p. 13.
- [26] HSBC v. NLRC, G.R. No. 116542, July 30, 1996.
- [27] Rollo, pp. 307-308.
- [28] Id. at p. 308.
- [29] St. Luke's Medical Center, Inc. v. Notario, G.R. No. 152166, October 20, 2010.
- [30] Unilever Philippines, Inc. v. Rivera, G.R. No. 201701, June 3, 2013.
- [31] Rollo, pp. 92-93.
- [32] Career Philippines Shipmanagement, Inc. et al. v. Serna, G.R. No. 172086, December 3, 2012.

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