

CATHAY PACIFIC AIRWAYS, LIMITED, PETITIONER, VS. PHILIP LUIS F. MARIN AND THE HON. COURT OF APPEALS (FORMER FIRST DIVISION), RESPONDENTS.

G.R. NO. 148931. September 12, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 50884, which granted the petition filed by respondent Philip Luis F. Marin and reversed the ruling of the Labor Arbiter and affirmed by the National Labor Relations Commission (NLRC) dismissing his complaint for illegal dismissal; likewise assailed is the Resolution of the CA denying the motion for reconsideration thereof.

Marin used to work for Saudia Airlines as a ticketing agent. When he applied for employment as a Reservation Officer in Cathay Pacific Airways, Ltd. (Cathay), he was interviewed by the following: Senior Supervisor Nenita Montallana, Reservations Manager Elizabeth Leviste, Staff and Administrative Supervisor M.A. Canizares, and Country Manager (Philippines) Peter W. Foster.

In a letter[2] dated March 30, 1992, Foster confirmed Marin's appointment as Reservations Officer effective April 6, 1992 for a probationary period of six months. He was to receive a monthly salary of P5,334.00, including holidays and rest days, with a promise of a salary review upon satisfactory completion of the probationary period. The letter also stated that Cathay reserved the right to "terminate [Marin's] services during the probationary period if [his] performance proves to be unsatisfactory, in which case, [he] will receive the salary due [him] at the time of the termination of [his] services." It was also understood that Marin "had accepted the [recognized] terms of employment," and that he would be "reconfirmed as a member of [the] regular staff upon completion of the probationary period." [3]

On October 2, 1992, Marin received the following letters from Foster:

02 October 1992

Mr. Philip Luis Marin
Cathay Pacific Airways, Ltd.
Manila
Dear Philip,

It is with regret that we accept your resignation as Reservations Officer with effect 03 October 1992.

We wish you success in your endeavors.

Yours sincerely,

(Sgd.)

PETER FOSTER

Manager, Philippines[4]

x x x x

02 October 1992

Mr. Philip Luis Marin
Cathay Pacific Airways, Ltd.
Manila
Dear Philip,

After a thorough review of your performance during the past six months, we found that it is unsatisfactory. We are, therefore, terminating your services with effect from 03 October 1992.

Yours sincerely,

(Sgd.)

PETER FOSTER

Manager, Philippines[5]

On October 15, 1992, Marin filed a complaint[6] for illegal dismissal against Cathay and Foster before the NLRC. The complaint was later amended to include claims for 13th month pay, moral and exemplary damages, and attorney's fees.[7]

The Case for Complainant

Marin insisted that he was dismissed from employment without cause, and that the same was arbitrary and capricious. Although he was a probationary employee, he was entitled to security of tenure. He claimed that he never received any letters or documents informing him of Cathay's employment standards. When he assumed office, he was never briefed regarding his duties and functions as reservation officer and started working without knowing Cathay's rules and regulations.[8] He was briefed only on April 13, 1992 on the rules regarding phone calls, break time, and others.[9] He also came to know of the rules and regulations of the company on his own initiative.[10]

Marin pointed out that he did not commit any infraction during his probationary employment, and that those alleged by Gozun and Montallana were mere fabrications and "products of afterthought." As shown by his performance ratings during the months from May to July 1992, his work performance was good.[11] While he received copies of some documents which were to be used to evaluate his performance, he was not briefed on what the documents were about. He likewise never received any memorandum calling his attention to any such infraction. He was not furnished a copy of the October 14, 1991 Memorandum[12] of M.A. Canizares, as well as the staff assessment[13] made by Gozun.

Marin also denied having resigned from employment. He claimed that, on October 2, 1992, Leviste gave him two white bond papers and asked him to make a letter of resignation. When he refused, he was given another letter terminating his probationary employment allegedly due to unsatisfactory performance.[14] Marin claimed that he suffered sleepless nights and depression, humiliation and embarrassment on account of his illegal and capricious dismissal from employment; hence, he was entitled to moral damages.[15]

The Case for Respondents

For their part, respondents claimed that, as reservation officer, Marin was tasked to book passengers, answer

queries related to their itinerary in the telesales area, and respond to telexes from one port to another.[16] He was prohibited from receiving or making personal calls in the telesales area[17] and had to use the lounge during coffee breaks.[18] There was a separate room and telephone which could be used for personal calls. During the first three (3) months, Marin's performance was below than what was expected of him as reservation officer, as can be gleaned from the staff assessments conducted by Gozun, who had direct supervision over Marin, and that of Reservation Supervisor Montallana. The assessments dated July 6, 1992 and September 30, 1992 were duly noted by the Reservations Manager.[19] Thus, since Marin failed to meet the standards of Cathay for the position of reservation officer, it was decided that a regular employment contract would not be extended to Marin.

Montallana testified that Marin was not furnished with a copy of the pink-colored documents containing the standards of contract, nor was the latter briefed on Cathay's rules and regulations. However, upon instruction of Foster and as mandated in the October 14, 1991 Memorandum of M.A. Canizares, she briefed Marin on the standards and expectations of Cathay for probationary employees, as well as its rules and regulations. She informed Marin of the work expected of him: he had to have 25 calls per hour from the public and should be able to satisfy queries of the traveling public; aside from regular attendance, he should likewise be open to suggestions, constructive criticism, as well as being given instructions by his supervisors; and gossiping and chatting while on duty were strictly prohibited. Marin was also enjoined to follow the rules and regulations issued by Cathay to the staff of the Reservation Department.

According to Gozun, Marin's direct supervisor, the latter was caught conversing noisily with co-employee Aileen Lao during office hours[20] (Marin and Lao were seated back-to-back in a cubicle). Consequently, Gozun called their attention and told them that they were a little bit noisy. They were then instructed to go back to work.[21]

On June 26, 1992, Gozun again found Marin conversing noisily with a co-employee during office hours, distracting other employees and leaving several calls unattended. Marin repeated his infractions twice in July 1992 in the telesales area. He was advised by Montallana and Leviste of the results of the staff assessment on July 6, 1992, and was told to stop his disruptive conduct in his work station and to mend his ways.

However, in August 1992, Marin was found taking his coffee break at the telesales area which was used exclusively for receiving and entertaining calls from the public. He was again found chatting noisily with his co-employees, in fine disrupting their work; and even received personal calls from the telesales area on September 18, 1992, thus, blocking customers' calls. Taking into account his repeated infractions and the recommendation in the staff assessments, Cathay decided not to extend regular employment to Marin.[22]

On the other hand, Leviste testified that, after her vacation, the staff supervisors informed her that Marin had already been briefed on the standards, rules and regulations of the company. When she asked Marin if he had already been briefed by the supervisors, Marin replied in the affirmative, and confirmed that the standards, rules and regulations were "okay" with him.[23] She likewise claimed to have briefed Marin on the staff assessment made by Gozun on July 6, 1992 in the presence of Montallana. After the briefing, she advised him to continue with his good points but to improve on his distractive behavior. Marin even asked what she meant by distractive behavior, and she replied that she was referring to Gozun's observations that he (Marin) had been chatting noisily around the telesales area and that he had left his working area, leaving calls from the public unattended. Sometime in August 1992, Gozun called her attention about Marin, who was again seen chatting with his co-employees in the work area during breaktime; she directed Marin to attend to his work.

On October 2, 1992, Gozun and Montallana submitted to Leviste the staff assessment report of Marin dated September 30, 1992. They later had a conference, during which Gozun and Montallana recommended that the probationary employment of Marin be terminated. She agreed with the recommendation. She then informed Marin

of the staff assessment, the recommendation of the reservation supervisors, as well as Cathay's decision not to regularize his employment on account of his "below normal work performance." So as not to prejudice his chance for employment in other companies, Leviste suggested that Marin had the option to voluntarily resign from Cathay, and showed him the two letters signed by Foster dated October 2, 1992, one accepting his voluntary resignation, and the other terminating his probationary employment. Marin opted to seek advice from Foster and talked to him on October 5, 1992. Foster rejected Marin's request to be extended regular employment, and told Marin that Cathay had given him all the chances and opportunities but that he failed to live up to the standards and expectations of the company. Foster suggested that Marin would be better off resigning voluntarily his probationary employment. However, Marin threatened to take legal action against Cathay, to which Foster replied that Cathay would then have to take the appropriate legal recourse. Foster never demanded that Marin resign from his employment.[24]

To rebut the testimony of Marin, Gozun, Montallana and Leviste testified that Marin was briefed on April 13, 1992 by Montallana on Cathay's standards and expectations for new employees, specifically for the position he was hired. Marin was again briefed regarding the company standards and expectations on July 6, 1992.[25]

In their comment on Marin's formal offer of evidence, Cathay offered in evidence a copy of the House Rules in the Reservation Department[26] which it was claimed that Marin was briefed on when he started working in Cathay.

On September 28, 1995, the Labor Arbiter rendered judgment ordering the dismissal of the complaint, holding that Marin had admitted to knowing the rules and regulations of the company.[27] Marin's below normal performance was evidenced by the two staff assessments of Gozun and Montallana;[28] hence, there was factual basis for the termination of his probationary employment.

Marin appealed the decision to the NLRC. He alleged that the Labor Arbiter erred in finding that he was apprised of the requisites and standards related to the performance of his duties and that he committed infractions of company rules and regulations while at work. He averred that respondents merely presented Gozun, Montallana and Leviste, and their staff assessment, but failed to present any of the employees of respondent Cathay who were allegedly distracted by his behavior. His co-employees, Marin alleged, are the best witnesses to testify on his alleged infractions. He insisted that Gozun and Montallana were themselves busy in their work and could not have observed him; hence, their separate accounts had no factual basis. He claimed that he was deprived of his right to be notified of the staff assessments against him and his right to controvert the same.

On July 31, 1998, the NLRC issued a Resolution[29] dismissing the appeal and affirming the decision of the Labor Arbiter. The NLRC ratiocinated that Gozun, Montallana, and Leviste were tasked to supervise and assess Cathay's employees, which necessarily included watching their actuations. There was no need to corroborate their alleged testimonies by those of Marin's former co-employees. Moreover, these officers testified on matters of their own personal knowledge; thus, the fact that they were actually busy with the performance of their functions when Marin was observed to have committed infractions is irrelevant.

The NLRC further declared that the option of who to present as witness lies on the party offering the same, not on the opposing party. It was erroneous for Marin to assume that the employees with whom he conversed were the best witnesses on the conversation, as the employees would certainly not testify that they were chatting so noisily and that others were disturbed by Marin's behavior. The NLRC noted that, for her disruptive conversation with Marin, Aileen Lao's attention was called and was subjected to company rules and regulations. Marin was served a written notice of the particular acts for which his dismissal was sought, and was afforded the opportunity to be heard and defend himself. He was served a written notice of the decision to dismiss him and the cause thereof.

With the two appraisals made on his over-all performance at the end of the third and sixth month, including the discussion between him and his supervisors, Marin could not claim lack of prior hearing. The NLRC further noted that two assessments of Marin's performance was conducted, as evidenced by the staff assessment form indicating that his over-all performance was short of normal, which was clearly explained by Gozun and Montallana during the hearing of the case.[30]

Marin filed a motion for reconsideration which the NLRC denied. He forthwith filed a petition for certiorari in the CA for the nullification of the NLRC ruling, alleging that:

- IN DECLARING THAT PETITIONER WAS SERVED OR FURNISHED THE REQUIRED WRITTEN NOTICE WHICH APPRISED HIM OF HIS PARTICULAR ACTS OR OMISSIONS FOR WHICH HIS DISMISSAL WAS SOUGHT WHEN ABSOLUTELY NOTHING IN THE RECORDS WOULD SUPPORT SUCH CONCLUSION.
- IN DECLARING THAT PETITIONER WAS AFFORDED DUE HEARING ON SAID ACTS OR OMISSIONS WHEN COMPLETELY NOTHING IN THE RECORDS WOULD SUPPORT SUCH CONCLUSION.
- IN DISREGARDING DOCUMENTARY AND TESTIMONIAL EVIDENCE WHICH WOULD PROVE THE ILLEGALITY OF THE ACT AND MANNER OF DISMISSAL OF THE PETITIONER COMMITTED BY CATHAY PACIFIC AIRWAYS, LTD.
- IN DECLARING THAT PETITIONER WAS BRIEFED OF THE STANDARDS HE HAD TO MEET TO BE EXTENDED REGULAR EMPLOYMENT WHEN DOCUMENTARY AND TESTIMONIAL EVIDENCE WOULD SHOW THAT PETITIONER WAS NOT FORMALLY BRIEFED OF SUCH STANDARDS UPON AND AFTER THE ENGAGEMENT OF HIS EMPLOYMENT AS PROBATIONARY EMPLOYEE.[31]

On December 19, 2000, the CA rendered judgment granting the petition and reversed the assailed resolution of the NLRC.[32] According to the CA, Cathay did not observe the two-notice requirement before terminating Marin's probationary employment. Marin was likewise not given any opportunity to be briefed on the company rules and regulations, as well as the standards to be complied with in order to become a regular employee.

Cathay filed a motion for reconsideration, which was denied by the CA, hence, the present petition where petitioners assert that the appellate court erred as follows:

A

THE COURT OF APPEALS HAS DECIDED IN A WAY NOT IN ACCORD WITH LAW BY REVERSING THE RESOLUTIONS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) DESPITE THE ABSENCE OF ANY ABUSE OF DISCRETION ON THE PART OF THESE LOWER TRIBUNALS.

B

THE COURT OF APPEALS, DEPARTING FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS, SUPPLANTED THE LOWER TRIBUNALS' FACTUAL FINDINGS WITH ITS OWN THAT ARE CONTRARY TO EVIDENCE ON RECORD.[33]

Petitioner alleges that respondent failed to prove that the NLRC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing its resolutions. Moreover, the rule is that the findings of fact of the Labor Arbiter as affirmed by the NLRC and the appellate court are considered with finality, the reason being that a quasi-judicial agency like the NLRC has acquired a unique expertise because its jurisdiction is

confined to specific matters.

It is pointed out that both the Labor Arbiter and the NLRC did not give credence to respondent's evidence, and relied on the evidence of petitioner. Contrary to the CA's findings, the records show that respondent was, in fact, briefed by Gozun and Montallana on the standards to qualify for regularization after the probationary period. Gozun briefed respondent on the rules and regulations of the Reservations Department of petitioner before his employment, and was adequately informed of the basis of the termination, conformably with Rule 28, Department Order No. 9, Series of 1997 of the Department of Labor and Employment. Respondent was further served a copy of Foster's October 2, 1992 letter stating that he would not be given regular employment on account of his unsatisfactory performance, as mandated by Article 281 of the Labor Code of the Philippines.

As gleaned from the staff assessment report of Gozun and Montallana, respondent's performance during his employment is as follows:

- "The staff have a good relationship with him, however, it disrupts the operations of the department as he is always chatting noisily with others during office hours."
- "Philip is an average worker. But he cannot be depended/relied upon as he always leaves his work area and chats noisily with other staff leaving calls unanswered."
- "Conductwise, he needs a big improvement. He is noisy and always talking with staff even if there are lots of calls. He takes his coffee breaks in the work area. He disrupts his colleagues who are at work during his lunch breaks. He is restless and cannot stay in the work area during work hours."
- "He still needs maturity in tackling daily reservations work. He needs improvement in some CX entries to facilitate his daily transaction in Cupid. More practice in Abacus. He will be recommended for training in HKG, in Cupid and Abacus courses." [34]

Petitioner insists that it did not merely inform respondent of its decision not to extend regular employment on account of his below normal performance; Leviste and Foster went out of their way to suggest that he voluntarily resign so that his chances of employment in other companies would not be adversely affected. Respondent instead filed the instant complaint against petitioner.

For his part, respondent avers that the NLRC committed grave abuse of discretion amounting to excess of jurisdiction when it

x x x 1) upheld the finding of the Labor Arbiter that respondent Marin was furnished or served a written notice which apprised him of the particular acts or omissions for which his (Marin) dismissal is sought when absolutely nothing in the records would support such declaration; 2) declared that respondent Marin was afforded due hearing when completely nothing in the records would support such a conclusion; 3) declared that respondent Marin was briefed of the standards he had to meet to be extended regular employment when documentary and testimonial evidence would show that there was no such formal briefing. [35]

He maintains that the findings and conclusion of the Labor Arbiter and NLRC were based on surmises, speculations and conjectures. He insists that the only documents he received from petitioner Cathay related to his employment were the following:

- Employment Contract dated 30 March 1992
- CX Reservations Update 1992
- Minutes of Reservations Meeting
- Computer Generated Individual Performance Reports

- Letters (Notices) dated 02 October 1992 of Peter Foster[36]

Even Foster's October 2, 1992 letter did not state whether his performance was below par; neither was a copy of the staff assessments of Gozun attached to said letter. He was not even furnished a copy of any memorandum related to his supposed infractions and alleged below par work performance before his meeting with Leviste on October 2, 1992.

Respondent posits that the staff assessment reports of Gozun and Montallana were merely the products of afterthoughts of petitioners made only after the termination of his employment.

The petition is meritorious.

Article 281 of the Labor Code provides:

ART. 281. Probationary employment. - Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.[37]

It is settled that a probationary employee enjoys only a temporary employment status, not a permanent status. In general terms, he is terminable anytime as long as such termination is made before the expiration of the six-month probationary period.[38] The employment of a probationary employee may only be terminated either (1) for a just cause; or (2) when the employee fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of his employment. The power of the employer to terminate an employee on probation is thus subject to the following conditions: (1) it must be exercised in accordance with the specific requirements of the contract; (2) the dissatisfaction on the part of the employer must be real and in good faith, not prejudicial so as to violate the contract or the law; and (3) there must be no unlawful discrimination in the dismissal. The burden of proving just or valid cause for dismissing an employee rests on the employer.[39]

In *Secon Philippines, Ltd. v. NLRC*,[40] this Court held that the probationary employment of an employee may be terminated when he fails to qualify as regular employee in accordance with reasonable standards made known to him by his employer at the time of employment and after due process; in *Manlimos v. National Labor Relations Commission*,[41] it was held that the constitutional protection on the probationary employee ends upon the expiration of the period provided for in the probationary contract of employment. Thus, a probationary employee remains secure in his or her employment during the time that the employment contract remains in effect, but the moment the probationary employment period expires, the employee can no longer invoke the constitutional protection. Thereafter, the parties are free to renew the contract or not; or for the employer to extend to such employee a regular or permanent employment. If the employee is not given a permanent or regular employment contract on account of his unsatisfactory work performance, it cannot be said that he was illegally dismissed. In such case, the contract merely expired.[42]

We agree with the rulings of the Labor Arbiter and NLRC that respondent's employment was not terminated during the period of his probationary employment, and that he was not extended a regular employment by petitioner Cathay on account of his unsatisfactory work performance during the probationary period.[43]

As gleaned from the evidence on record, petitioner Cathay's decision not to extend any regular or permanent employment to respondent was based

on findings that his work performance during the six-month probationary period was unsatisfactory, based on the staff assessment reports of Gozun and Montallana dated July 6, 1992 and September 30, 1992, respectively. The job performance of respondent was found to be below normal performance or was less than normally expected of the position of a reservation officer. Per the July 1992 Staff Assessment Report of Gozun and Montallana which Leviste noted, while respondent had a good relationship with the staff and was able to accomplish his work, he had been seen chatting noisily with them during office hours, thus disrupting the operations of the reservation department. Worse, he always left his work area and chatted leaving calls from the public unanswered.

Leviste called the attention of respondent on the said reports and urged him to avoid the same infractions and to improve on his work performance. Despite these reminders, respondent remained adamant and still entertained personal calls not only in his own workstation but in others' as well, and also passed on to colleagues the calls he received on his own. Respondent could not be relied upon to carry out the obligation of his position as he took a lot of personal calls from one cubicle to another. Thus, Leviste testified:

ATTY. VILLANUEVA

Will you please describe to this Court how you explain it with Mr. Marin?

WITNESS

Mrs. Montallana was holding the staff assessment in front of Mr. Marin and I was seated here. Mrs. Montallana went through the assessment form one by one telling him his strong points and weak points. And after that assessment, after Mrs. Montallana finished, I told Mr. Marin, "you know now already your over-all performance for the first three months. You know now your good points and you know your weak points. You continue with your good points but you must improve to your weak point." But I am very particularly concerned about his destructive behavior. I said to him that I am particularly more concerned about your destructive behavior. Then he said, what do you mean by destructive?

ATTY. ANDRES

Your Honor please, the answer of the witness is too far from the question already.

ATTY. VILLANUEVA

The question was, will you please describe how she explained it with Mr. Marin.

WITNESS

I myself told him about his destructive behavior. Then, he told me, "what do you mean by destructive?" I said, "I am specifically referring to comments made by his supervisor that you are chatting noisily around the area." According to his supervisor, he is chatting noisily around the area and he is leaving his working area and leaving calls unattended.

ATTY. VILLANUEVA

Sometime in August 1992, do you recall any unusual incident involving Philip Marin?

WITNESS

Yes.

ATTY. VILLANUEVA

And what is this?

WITNESS

At that time, Mr. Gozun called me out to the office and told me, "Tingnan mo si Philip, naka- break iyan, pero nasa working area, nakikipagdaldalan."

I just simply told him "get Mr. Marin out of the working area so that the staff on duty can continue their work."

ATTY. VILLANUEVA

Now, how about on September 7, 1992, do you recall any unusual incident involving Mr. Marin again?

WITNESS

Yes.

ATTY. VILLANUEVA

What is that?

WITNESS

On September 17, I called his attention. Actually, that particular time, I called Mrs. Montallana to my office and told her, "look Philip, he is standing up and going to another ADC position and he was taking personal calls."

ATTY. VILLANUEVA

How did you know that it was a personal call?

WITNESS

Because my phone is equipped with a monitoring device. If you lift that up and put on monitoring, you can immediately find out that it is personal call. And at that time, I told Mrs. Montallana to call and ask Mr. Marin to come to my office and I said to him, "Why are you taking personal call on another ACD position?" You know that you are not permitted to do that because you are not or it is not allowed to take personal call on the ADC position.

ATTY. VILLANUEVA

What do you mean by ACD position?

WITNESS

Automatic call distribution. Let say, for example, you are assigned to TCI, you will be occupying that position and that is ADC position. If you take a personal call to another cubicle, it is not allowed. He confirmed that he was taking personal call. I told him that "you know, Philip, you are not supposed to take personal calls." He told me that the caller was a friend of her sister. I said, "please make sure that you do not do that again. You are disrupting the operations. If you do that, if you get out of your table, your ACD position, that phone will be clogged. If you go to another area, the local will clogged again." So I told him, "please make sure that you do not do that again because are disrupting the flow of calls."

ATTY. VILLANUEVA

How about on September 18, 1992, do you recall an unusual incident involving Mr. Philip Marin?

WITNESS

Yes. I have to call his attention again.

ATTY. VILLANUEVA

What was that incident?

WITNESS

At that time, there was no floor supervisor to the office because at that time, Mr. Gozun was on leave. At that time, Mrs. Montallana and myself were in my room and we were discussing of a particular report. You know, it is a habit of mine to glance at or to look at the telephone sales area because this area has a window in front of it and I saw Mr. Marin taking personal call again on an ADC position. Immediately, I said, "Nenita, let us monitor this." And after that, he went back to the desk and after awhile, another staff call him to go to take a personal call and we monitored this again. I said, "naku, malala na talaga ito." Normally, if it is a personal call, we don't listen. You will know that it is a personal call. So we put it down. After that, another staff called him again. This time, when he went there, we listened again and this time, we listened longer because we were taking a lunch. It was another Cathay Pacific staff on a ADC talking to him. They were talking about a trip and about the pasalubong. So we called him at that time. I asked Mrs. Montallana to call him and I told, "Philip, yesterday I just told you that you are not supposed to take personal call. Why did you do it again?"[44]

Conductwise, respondent needed a big improvement. He was noisy and was always talking with the staff even if there were a lot of calls. He took his coffee breaks in the work area; he disrupted his colleagues who were at work during lunch breaks; he was restless and could not stay in the work area during work hours; he needed maturity in tackling his daily tasks, and needed "improvement on some CX entries to facilitate his daily transactions in Cupid Mare practice and in Abacus."[45]

Respondent failed to realize that, in a working environment, conduct is very important as part of a related field. Respondent had to improve on the functionalities and techniques of his work which his former job did not emphasize on. In fine, respondent's conduct violated Rules II(c), IV and V of House Rules of the Reservation Department, which read:

II. BREAKS

x x x x

C. Breaks shall be taken only in the Staff Room and/or the Staff Lounge. No breaks shall be taken in the work areas.

Example: TELESales AREA, QUEUE HANDLING AREA and FLIGHT REVIEW AREA[46]

x x x x

IV. PERSONAL CALLS

A. Personal calls maybe done only during break time and only through telephone number 8122691.

B. Taking or making personal calls is strictly prohibited during an employee's tour of duty or company time.

C. Taking of personal calls from the ACD (Automatic Call Distribution System) or Business lines is strictly prohibited at all times unless it is an emergency.

D. Incoming personal calls from the ACD and direct lines shall be noted down and message deposited in the message board of the Department.

V. ORDER AND DISCIPLINE IN THE WORK AREA

A. Order and discipline must, at all times, be maintained in the work area.

B. No employee shall be allowed to take his/her break in the work area.

Example: TELESales AREA, QUEUE HANDLING AREA and FLIGHT REVIEW AREA

C. Chatting, gossiping or talking noisily in the work areas at all times are strictly prohibited.

D. No employee shall leave his/her designated work stations or area unless with prior knowledge of his/her Supervisors.[47]

Respondent cannot feign ignorance of these rules. On April 13, 1992, after the comptrollers' strike at the airport was settled, respondent was briefed by Montallana on petitioner's rules and regulations, as well as those regarding the work expected of him as a reservation officer,[48] stressing the need for him to totally commit and be enthusiastic about his work.[49]

Indeed, when he testified, respondent declared that the said rules were relayed to him, and that he found out about them on his own initiative.[50] Respondent was bound to comply with and follow the rules and regulations. One of his responsibilities was to answer calls or queries from the public related to the itinerary of passengers and bookings, and to respond to telexes from one port to another in the telesales area. He was prohibited from making or receiving personal calls in the telesales area, which was also off-limits during coffee or lunch breaks. He was prohibited from leaving his booth in the area except during coffee or lunch breaks.[51]

Respondent's claim that the infractions contained in the staff assessment reports were fabricated by Gozun, Montallana and Leviste, has no factual basis. Admittedly, neither of them issued a Memorandum to respondent relative to his infractions or misdeeds; respondent was merely verbally apprised of the staff assessments. However, Gozun, Montallana and Leviste merely complied with the Memorandum of M.A. Canizares on October 14, 1992 to all department heads of the probationary staff, which states that "written memorandum may be dispensed with for administrative convenience but the employee's attention should be called at all times and discussed with the employee concerned." The supervisors were required to give the probationary employees every opportunity to qualify as regular employees."[52]

Likewise barren of merit is respondent's claim that his infractions/misdeeds are mere fabrications or products of the afterthought of Gozun, Montallana and Leviste. He failed to adduce proof to show that his previous supervisors had any ill motive to falsely ascribe to him the infractions/misdeeds. The rule is settled that where there is nothing to indicate that a witness was actuated by improper motive his positive and categorical declaration on the stand, made under solemn oath, should be given full faith and credence.[53] Indeed, Leviste denied the claim of respondent that he was illegally dismissed. Her testimony is as follows:

ATTY. VILLANUEVA

Philip Marin mentioned here in his affidavit that allegedly you told him that his performance was very good. What can you say about this claim of Mr. Philip Marin?

WITNESS

That is totally untrue. I was there in the first assessment. Mrs. Montallana told me that his performance was below normal. On the second assessment, that was also the same. The conclusion of Mr. Philip Marin was contrary to what our assessment.

ATTY. VILLANUEVA

Philip Marin also claimed that in his complaint/affidavit that you allegedly illegally dismissed him. What can you say about truth or falsity of this accusation?

WITNESS

That is certainly not true. I think, that is, baseless. I think, no employer in his right mind who spent lump sum of money, time and effort in training him, that is, almost 36 months, would just dismiss a good employee. But in the case of Mr. Marin, after assessment of the supervisors which I thorough (sic) reviewed, we found out that his performance was below normal.

ATTY. VILLANUEVA

Mrs. Leviste x x x

WITNESS

As a matter of fact, it was a difficult decision on our part because we have to sacrifice such investment because, otherwise, we know that we will have a problem in our hand.[54]

In fact, Leviste even went out of her way to suggest to respondent to resign voluntarily, or else face the adverse consequences of not being extended regular employment on account of unsatisfactory work performance; had he resigned voluntarily before the expiry of the probationary period, he would have brighter prospects of employment with another airline or other business entities. This is gleaned from Leviste's testimony:

ATTY. VILLANUEVA

Mrs. Leviste, you mentioned that you submitted - You mentioned that after you talked with Philip Marin regarding your suggestion in good faith for him to resign voluntarily so that his prospect for future employment may not be prejudiced, otherwise he could not truthfully say to his future employer that he was not extended his regular employment?

WITNESS

Yes.

ATTY. VILLANUEVA

Your affidavit mentioned that apparently Mr. Marin saw the wisdom of your suggestion. What were these letters? Which of the two letters simultaneously gave to Philip Marin?

WITNESS

One was the letter of resignation.

ATTY. VILLANUEVA

Letter of resignation or letter accepting his resignation?

WITNESS

Letter accepting his resignation and the letter terminating his probationary employment.

ATTY. VILLANUEVA

After you have given these letters accepting his resignation and the other letter terminating his probationary employment, do you recall what, if any, was the reaction of Philip Marin?

ATTY. ANDRES

The witness would be incompetent.

ATTY. VILLANUEVA

On the basis of her observation. All right, I will rephrase my question.

Did you give these two letters?

WITNESS

That was October 2. That was in the afternoon.

ATTY. VILLANUEVA

These two letters were given by you simultaneously?

WITNESS

Yes.[55]

However, respondent rejected the suggestion and opted to file his complaint with the NLRC. A decision of petitioner to afford respondent a graceful exit is perfectly within its discretion.[56]

While it is true that respondent was not furnished with the pink-colored set of regulations of petitioner Cathay and with copies of the staff assessment reports, nevertheless, respondent was briefed by Montallana on their contents. When Leviste inquired from respondent if he understood the rules and regulations, and if job specifications were clear to him, the latter responded in the affirmative.[57] Respondent admitted having received from petitioner Cathay copies of documents to be used to evaluate his performance. Petitioner thus complied with the statutory requirement.[58]

In the light of his intransigent refusal to mend his ways and follow company rules and regulations, respondent cannot expect his employment to be regularized simply because he was not furnished with a copy of the document containing the standards promulgated by it. On this matter, the following pronouncement of the Court in *Aberdeen Court, Inc. v. Agustin, Jr.*[59] is instructive:

The above rule, however, should not be used to exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense, in regard to which there is no need to spell out a policy or standard to be met. This is what the NLRC found to be the fact in this case. Said the NLRC:

It bears stressing that even if technically the reading of air exhaust balancing is not within the realm of expertise of the complainant, still it ought not to be missed that prudence and due diligence imposed upon him not to readily accept the report handed to him by the workers of Centigrade Industries. Required of the complainant was that he himself proceed to the work area, inquire from the workers as to any difficulties encountered, problems fixed and otherwise observe for himself the progress and/or condition/quality of the work performed.

As it is, We find it hard to believe that complainant would just have been made to sign the report to signify his presence. By saying so, complainant is inadvertently degrading himself from an electrical engineer to a mere watchdog. It is in this regard that We concur with the respondents that by his omission, lack of concern and grasp of basic knowledge and common sense, complainant has shown himself to be undeserving of continued employment from probationary employee to regular employee.[60]

It bears stressing that the decision of petitioner not to regularize the employment of respondent was based on the recommendation of Gozun, Montallana and Leviste, based on their assessment of respondent's performance:

2. The overall performance of the probationary staff shall be assessed by the Department Head and Supervisor at the end of the third month of the probationary period. A second and final assessment of the overall performance of the probationary staff shall be conducted before the end of the sixth month of the probationary period to determine whether the probationary staff may be confirmed as a regular employee.

3. Department Heads and Supervisors shall be directly responsible for the discipline of probationary staff in the

departments giving them every opportunity of qualifying as regular employees. Written memos may be dispensed with for administrative convenience, but the employee's attention should, at all times, be called and discussed with the employee(s) concerned.

4. Probationary staff may be confirmed as regular employees based on the recommendation to Manager Philippines of the Department Heads and/or Supervisor.[61]

Thus, respondent cannot validly claim that he was denied due process simply because he was not given a copy of the September 30, 1992 Staff Assessment Report of Gozun. The evidence on record shows that Leviste briefed respondent on the staff assessments and petitioner's decision not to regularize his employment upon the expiry of the probationary period, including the basis of said decision.[62] Respondent was even allowed to confer with and appeal to Foster for him to be extended regular employment, but Foster found no merit in his plea.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals is REVERSED. The decision of the National Labor Relations Commission affirming, on appeal, the decision of the Labor Arbiter is AFFIRMED. No costs.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice B.A. Adefuin-De la Cruz (retired), with Associate Justices Salome A. Montoya (retired) and Renato C. Dacudao, concurring; rollo, pp. 32-39.

[2] Exhibit "B," records, p. 160.

[3] Id.

[4] Exhibit "F," records, p. 170.

[5] Exhibit "G," id. at 171.

[6] Records, p. 2.

[7] Id. at 24.

[8] TSN, August 15, 1994, p. 51.

[9] TSN, July 28, 1994, p. 18.

[10] Id. at 27-28.

[11] Exhibits "D" to "E," records, pp. 167-169.

[12] Exhibit "5," id. at 142.

[13] Exhibits "3" and "4," records, pp. 134-141.

[14] TSN, April 7, 1994, p. 55.

[15] Id. at 59-60.

[16] TSN, July 28, 1994, pp. 38-39.

[17] Id. at 34-35.

[18] Id. at 39.

[19] Exhibits "3" and "4," records, pp. 134-141.

[20] TSN, April 26, 1992, p. 42.

[21] Id. at 44.

[22] Records, pp. 67-69.

[23] TSN, February 22, 1994, p. 45.

[24] Records, p. 94.

[25] Id. at 131-133.

[26] Exhibit "6," records, p. 176.

[27] Rollo, pp. 60-67.

[28] Exhibits "3" and "4," records, pp. 134-141.

[29] Rollo, pp. 44-59.

[30] Id. at 52-58.

[31] Id. at 35.

[32] Id. at 32-39.

[33] Id. at 11.

[34] Id. at 22.

[35] Id. at 161.

[36] Id. at 164.

[37] The Secretary of Labor issued Department Order No. 10, Series of 1997, which took effect on June 22, 1997. The Order reads:

Probationary employment. - There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just cause, when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

[38] De la Cruz, Jr. v. National Labor Relations Commission, G.R. No. 145417, December 11, 2003, 418 SCRA 226, 236.

- [39] *Dusit Hotel Nikko v. Gatbartos*, G.R. No. 161654, May 5, 2006, p. 5.
- [40] 377 Phil. 711, 717 (1999).
- [41] G.R. No. 113337, March 2, 1995, 242 SCRA 145, 156.
- [42] *Colegio de San Agustin v. National Labor Relations Commission*, G.R. No. 87333, September 6, 1991, 201 SCRA 398, 403.
- [43] TSN, February 22, 1994, pp. 63-64.
- [44] TSN, February 22, 1994, pp. 15-24.
- [45] Exhibit "3" and "4," records, pp. 134-141.
- [46] Exhibit "6," *id.* at 176.
- [47] Exhibit "6-A," *id.* at 177.
- [48] Exhibits "1" and "2."
- [49] TSN, September 16, 1993, pp. 15-16.
- [50] TSN, July 28, 1994, pp. 29-30.
- [51] *Id.* at 25-47.
- [52] Exhibit "5"; TSN, February 22, 1994, p. 49.
- [53] *People v. Dela Cruz*, 402 Phil. 138, 151 (2001).
- [54] TSN, February 22, 1994, pp. 29-31.
- [55] *Id.* at 71-74.
- [56] *Willi Hahn Enterprises v. Maghuyop*, G.R. No. 160348, December 17, 2004, 447 SCRA 349, 354.
- [57] *Id.* at 45.
- [58] *Alcira v. National Labor Relations Commission*, G.R. No. 149859, June 9, 2004, 431 SCRA 508, 514.
- [59] G.R. No. 149371, April 13, 2005, 456 SCRA 32.
- [60] *Id.* at 42-43.
- [61] Exhibit "5," records, p. 142.
- [62] TSN, February 22, 1994, p. 27.

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