

U-BIX CORPORATION AND EDILBERTO B. BRAVO PETITIONERS, VS. VALERIE ANNE H. HOLLERO, RESPONDENT.

G.R. No. 177647. October 31, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner U-Bix Corporation (U-Bix) hired on March 6, 1996 Valerie Anne H. Hollero (respondent) as a management trainee at its Furniture Division, with salary and allowances totaling P10,000 monthly. On May 1, 1996, it promoted respondent to facilities manager, with salary and allowances totaling P20,000 monthly.

U-Bix later sent respondent and three other employees to the United States for two months of training for a newly acquired franchise, the ServiceMaster Company. The training commenced on July 4, 1996 and ended on September 3, 1996.

Before respondent left for the United States, she signed a contract with petitioner, the pertinent portion of which reads:

VALERIE ANNE H. HOLLERO shall remain in the employ of U-BIX CORPORATION for a period of five (5) years from completion of her U.S. Training otherwise she shall reimburse U-BIX CORPORATION for all costs (prorated) and expenses which U-BIX CORPORATION incurred for her (Hollero's) training in the U.S.[1] (*Underscoring and italics supplied*)

On February 14, 1997, U-Bix, citing respondent's supposed "pattern of tardiness, absences, neglect of duties, and lack of interest,"[2] terminated her employment for loss of trust and confidence.[3]

U-Bix in fact filed on May 22, 1997 a complaint[4] against respondent before the Labor Arbiter for the reimbursement of training expenses and damages. In its complaint, which was docketed as NLRC NCR Case No. 00-05-03696-97, U-Bix alleged that upon respondent's return from her training abroad, she demonstrated gross neglect of her duties as shown by her continued tardiness, habitual absences, and failure to submit reports and/or documents on their due dates, attention to which was repeatedly called but she persisted in such conduct; that on December 17, 1996, respondent's superiors discussed with her the duties and responsibilities of a facilities manager and the work performance standards expected of her, following which or on December 18 and 19, 1996, she did not report for work without prior notice; that on December 23, 1996, respondent's superior Bill Malfitano (Malfitano) handcarried to her residence a memorandum requiring her to explain in writing her unauthorized absences, with a warning that failure to respond within 24 hours from receipt thereof would be considered a waiver of her right to give her explanation; that respondent, however, failed and refused to submit any explanation, constraining U-Bix to terminate her employment; and that on April 24, 1997, U-Bix's counsel wrote respondent a letter[5] demanding the reimbursement of P187,510 training expenses but the same remained unheeded.

Subsequently or on August 25, 1997, respondent filed a complaint for illegal dismissal against petitioner U-Bix and/or its President-petitioner Edilberto B. Bravo.[6] Her complaint, which was docketed as NLRC-NCR Case

No. 00-08-05988-97, alleged as follows:

After her training abroad, she and her three other co-employees-trainees and an American manager who was assigned to the Philippines as part of the franchise agreement "started the set-up of the new franchise in the country." She organized the launching of U-Bix's subsidiary company (Facilities Managers, Inc.), trained personnel on ServiceMaster methods of cleaning and customer service, and distributed chemicals and equipment from the United States to the various U-Bix branches upon Malfitano's advice and guidance. And during the second week of December 1996, she headed the cleaning personnel in cleaning the production plant in Sucat, Parañaque which lasted up to midnight for three days.

Respondent who was made to understand that she was the contact person of U-Bix and the head of the implementation team, was furnished a copy of her job description.[7]

On December 17, 1996, Malfitano met with the implementation team and discussed the various roles of each member thereof, since setting up stage was about to end and the duties and responsibilities of each member were being streamlined.

From December 18-19, 1996, respondent suffered from loose bowel movement, preventing her from reporting for work. She, however, failed to notify the company of her absence.

On the second day of her absence or on December 19, 1996, Malfitano visited her during which she explained to him that she had no way to communicate with the office except by telephone but that her neighbor's telephone was out of order. When she reported back for work on December 23, 1996, she was asked to explain why she did not advise the company of her failure to report for work on December 18 and 19, 1996. She reiterated her explanation given to Malfitano, apologizing for the inconvenience her absence caused the office.

On the same day that she reported for work on December 23, 1996, Malfitano advised her that he was recommending the termination of her services and asked her to, as she did, turn over her files and office keys. And he advised her not to report for work until further notice. She complied[8] and did not receive any word from U-Bix until the first week of March 1997 when she received a letter informing her of her dismissal effective February 14, 1997.

NLRC-NCR Case No. 00-05-03696-97 and NLRC-NCR Case No. 00-08-05988-97 were consolidated.[9]

By Decision of February 8, 1999, Labor Arbiter Donato G. Quinto, Jr., found for U-Bix, disposing as follows:[10]

WHEREFORE, judgment is hereby rendered as follows:

- in NLRC-NCR Case No. 00-05-03696-97
- Declaring the dismissal of respondent Valerie Anne H. Hollero to be valid and legal, and
- Ordering said respondent Valerie Anne H. Hollero to pay complainant U-Bix Corporation the amount of P187,510.00 with interest at 12% per annum, until fully paid, as discussed above.
- B. in NLRC NCR Case No. 00-08-05988-97 -
- Dismissing complainant Valerie Anne H. Hollero's complaint for illegal dismissal and money claims for lack of merit.[11] (Underscoring supplied)

On appeal before the National Labor Relations Commission (NLRC) (docketed as NLRC NCR CA No. 018999-99),[12] the NLRC reversed the Labor Arbiter's decision. Finding that reinstatement was not feasible due to strained relations,[13] it awarded respondent backwages and separation pay. Thus it disposed:

WHEREFORE, premises considered, the assailed decision dated February 8, 1999 is hereby REVERSED and SET ASIDE and a new one entered as follows:

- Dismissing the complaint of the respondent-appellee U-BIX CORPORATION, in NLRC NCR Case No. 00-05-03696-97 for lack of jurisdiction; and,

- Finding the dismissal of complainant-appellant Valerie Anne H. Hollero in NLRC NCR Case No. 00-08-05988-97 to be illegal thereby ordering respondents-appellees U-BIX CORPORATION/Edilberto B. Bravo to pay the former the following:

1. Backwages P520,000.00

2. Separation Pay 60,000.00; and

Total P580,000.00

All other claims for damages are dismissed for insufficiency of evidence.[14] (Underscoring supplied)

Petitioners' Motion for Reconsideration[15] having been denied by the NLRC, they filed a Petition for Certiorari (with application for issuance of temporary restraining order and/or writ of preliminary injunction)[16] before the Court of Appeals which, by Decision[17] of January 8, 2007, dismissed the same, disposing as follows:

WHEREFORE, the petition is DISMISSED. The assailed NLRC Resolutions dated July 12, 1999 and March 14, 2000 in NLRC NCR CA No. 018999-99 are hereby AFFIRMED with the clarification that NLRC-NCR Case No. 00-05-03696-97 is dismissed for lack of merit instead of lack of jurisdiction.

SO ORDERED.[18] (Emphasis in the original)

Their Motion for Reconsideration[19] having been denied,[20] petitioners filed the present Petition for Review on Certiorari,[21] faulting the Court of Appeals

I

x x x IN HOLDING THAT PETITIONERS FAILED TO ESTABLISH A VALID CAUSE FOR RESPONDENT HOLLERO'S DISMISSAL.

II

x x x IN RULING THAT PETITIONER U-BIX FAILED TO OBSERVE THE PROCEDURAL REQUIREMENTS OF DUE PROCESS IN TERMINATING RESPONDENT HOLLERO.

III

x x x IN RULING THAT PETITIONER U-BIX IS NOT ENTITLED TO REIMBURSEMENT OF RESPONDENT HOLLERO'S TRAINING EXPENSES.[22]

In termination cases, the employer has the burden of proving that the dismissal is for a valid and just cause.[23] While an employer enjoys a wider latitude of discretion in terminating the employment of managerial employees,[24] managerial employees are also entitled to security of tenure and cannot be arbitrarily dismissed at any time and without cause as reasonably established in an appropriate investigation.[25]

In the case at bar, petitioners failed to substantiate their allegations of respondent's habitual absenteeism, habitual tardiness, neglect of duties, and lack of interest. Daily time records, attendance records, or other documentary evidence attesting to these grounds could have readily been presented to support the allegations but none was.

On the other hand, copies of respondent's Pay Advice Slips for September-December 1996 show no deductions

for absences or tardiness, except in the Pay Advice Slip for October 1-15, 1996 which deductions correspond to a duly approved leave of absence without pay from September 23-24, 1996 (subject of petitioner's application filed on September 21, 1996).[26]

A receipt acknowledging the turnover of keys on December 23, 1996[27] submitted by respondent substantiates her account of the meeting that took place when she reported back for work on that day, which document belies petitioners' claim that she abandoned her work and that "[o]n the evening of December 23, 1997, Mr. Bill Malfitano, one of respondent's superiors, went out of his way to deliver to the respondent a letter requesting for a written explanation as to her errant acts." [28]

Malfitano's memorandum to respondent dated December 12, 1996, or close to two weeks before she was asked on December 23, 1996 to turn over the keys, stating that her "leadership role in this implementation is critical to our success in meeting our customers' needs"[29] and she had "been introduced as the FMI manager responsible for our program implementation to the site coordinator at each of the U-Bix facilities,"[30] belies U-Bix's allegations of her habitual absenteeism, habitual tardiness, neglect of duty, and lack of interest.

Petitioners go on to lay stress on respondent's failure to report for work on December 18-21, 1996 without notifying the office and without explaining her absence when she returned for work.[31]

As the Court of Appeals observed, however,

Records likewise reveal that U-Bix failed to adduce evidence showing that Mr. Malfitano denied or corroborated [herein respondent] Valerie's claim that he had visited her on the evening of December 19, 1996 and accepted the explanation for her absence. While its pleadings below were silent on the matter, U-Bix admits now that Mr. Malfitano went to Valerie's house on said date[32] but skirted the issue of whether or not he had accepted her explanation. That despite Valerie's absences from December 18 to 21, 1996 U-Bix only made issue of her absences on December 18 and 19, indicates that her condition had already come to the latter's knowledge thereafter, thereby excusing her absences on December 20 and 21. Thus, while the Court finds it thoughtless of Valerie not to have exerted diligent efforts to inform the office of the reason for her absence at the earliest time possible, it, however, believes in her claim that she informed Mr. Malfitano about it and that the latter had accepted her explanation. Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[33] (*Italics in the original; underscoring supplied*)

Assuming *arguendo* that respondent's four-day absence was not justified, absences must be habitual to be a ground for dismissal.[34] At all events, granting that petitioners' following contention is in order, viz:

In this day where over-the-counter medicines abound for common ailments such as loose bowel movement, Hollero's story of unabated LBM to cause her to be absent for 4 consecutive days starting December 18 to December 21, 1996 is simply incredible. Wors[e], in this day and age of high technology and modern telecommunication facilities in Metro Manila, Hollero's pitiful story that she had no other means of communicating with petitioner U-Bix except thru her neighbor's busted phone is even more incredible.

These bespeak of an unresourceful and indifferent manager. It breaks one's credibility to believe that respondent Hollero was suffering for 4 consecutive days from unrelenting LBM such that she could not even request somebody to call her employer U-Bix of her predicament. x x x [35] (*Underscoring supplied*),

there must be reasonable proportionality between the offense and the penalty.[36] Dismissal is the ultimate penalty that can be meted to an employee, and where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with so severe consequence.[37] Thus in *Zagala v. Mikado Philippines Corporation*,[38] this Court found dismissal too severe a penalty on incurring of absences in excess of the allowable number.

Further, petitioners take respondent's failure to pray for reinstatement as an admission that her dismissal was valid.[39] Such position glosses over respondent's explanation that reinstatement would not be feasible due to the strained relations between her and petitioners.[40] Besides, the merits of a complaint for illegal dismissal do not depend on its prayer but on whether the employer discharges its burden of proving that the dismissal is valid.

In another vein, the Court finds that petitioners failed to comply with the procedural requirements for a valid dismissal. Respondent being a manager did not excuse them from observing such procedural requirements.

Thus a first notice informing and bearing on the charge must be sent to the employee. The December 23, 1996 memorandum of Malfitano which he handcarried to respondent's residence on even date merely reads:

I am requesting that you send me a written explanation which satisfactorily addresses the two days you abandoned your management position without a call or any contact with the ServiceMASTER team or anyone within the U-Bix Organization.

The two days I am referring to are Wednesday, December 18, 1996 and Thursday, December 19, 1996.

I am requesting that you respond in writing by 5 pm on Tuesday, December 24, 1996. If we do not receive a response within the time allotted we will have to consider this as waiving your right to provide any further explanation relating to this absence.[41]

The notice does not inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to her dismissal. It does not contain a plain statement of the charges of malfeasance or misfeasance nor categorically state the effect on her employment if the charges are proven to be true.[42] It does not apprise respondent of possible dismissal should her explanation prove unsatisfactory. Besides, the petitioners did not even establish that respondent received the memorandum.

Neither did petitioners show that they conducted a hearing or conference during which respondent, with the assistance of counsel if she so desired, had opportunity to respond to the charge, present her evidence, or rebut the evidence presented against her.[43] The meeting with respondent on December 23, 1996 did not satisfy the hearing requirement, for respondent was not given the opportunity to avail herself of counsel.

Article 277(b) of the Labor Code mandates that an employer who seeks to dismiss an employee must "afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Expounding on this provision, this Court held that "[a]mple opportunity' connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense including legal representation." [44]

With regard to U-Bix's complaint for reimbursement of training expenses, the Court finds that the Court of Appeals erred in holding that the Labor Arbiter has jurisdiction thereover. Consider the reason proffered for such ruling:

x x x In the instant case, while the principal relief prayed for is the reimbursement of damages for breach of a contractual obligation, the issue of whether or not Valerie should be held liable therefor necessarily includes the determination of the validity of her termination which can only be resolved by reference to, and application of, labor laws and jurisprudence. Thus, since the alleged breach of the Agreement is so closely intertwined with the issue of illegal dismissal, the resolution of both issues falls within the area of competence or expertise of the labor arbiters and the NLRC.[45] (*Italics in the original*)

The legality of respondent's dismissal was, however, raised not by U-Bix's complaint but in respondent's Position Paper.[46] Jurisdiction over the subject matter is determined from the allegations made in the complaint, and cannot be made to depend upon the defenses made by a defendant in his Answer or Motion to Dismiss.[47] The

jurisdiction of labor arbiters, as well as of the NLRC, is limited to disputes arising from an employer-employee relationship which can only be resolved by reference to the Labor Code, other labor statutes, or their collective bargaining agreement.[48] U-Bix's complaint was one to collect sum of money based on civil laws - on obligations and contract, not to enforce rights under the Labor Code, other labor statutes, or the collective bargaining agreement.

WHEREFORE, the January 8, 2007 Decision of the Court of Appeals is AFFIRMED with MODIFICATION in that NLRC-NCR Case No. 00-05-03696-97 is dismissed, not for lack of merit but, for lack of jurisdiction.

SO ORDERED.

Quisumbing, Acting C.J., (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] NLRC records, p. 153.

[2] Id. at 94-95.

[3] Ibid.

[4] Id. at 2-9.

[5] Id. at 14-16.

[6] Id. at 285.

[7] Id. at 155-156.

[8] Id. at 157.

[9] Id. at 287-289.

[10] Id. at 291-306.

[11] Id. at 305-306.

[12] Id. at 464.

[13] Id. at 483. Vide at 350.

[14] Id. at 484.

[15] Id. at 486-508.

[16] CA rollo, pp. 2-46.

[17] Penned by Court of Appeals Associate Justice Estela M. Perlas-Bernabe, with the concurrence of Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin. Id. at 421-429.

[18] Id. at 429.

[19] Id. at 437-446.

[20] Id. at 466.

[21] Rollo, pp. 23-55.

[22] Id. at 37-38.

[23] Vide Philippine Long Distance Telephone Company, Inc. v. Balbastro, G.R. No. 157202, March 28, 2007, 519 SCRA 233, 243; Skippers Pacific, Inc. v. Shipper Maritime Service, Ltd., 440 Phil. 906, 917-918 (2002) (citations omitted).

[24] Vide Salvador v. Philippine Mining Service Corporation, 443 Phil. 878, 892-893 (2003).

[25] Vide Philippine Transmarine Carriers Inc., v. Carilla, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 597-598.

[26] Vide NLRC records, pp. 226-232.

[27] Id. at 93.

[28] Id. at 238.

[29] Id. at 155.

[30] Ibid.

[31] Rollo, p. 36, 40-41.

[32] Vide CA rollo, p. 36-37.

[33] Id. at 427.

[34] Vide LABOR CODE, Article 282 (b); Acebedo Optical v. National Labor Relations Commission, G.R. No. 150171, July 17, 2007, 527 SCRA 655, 675.

[35] Rollo, p. 40.

[36] Zagala v. Mikado Philippines Corporation, G.R. No. 160863, September 27, 2006, 503 SCRA 581, 590.

[37] Vide at 590-591.

[38] Id. at 583, 592.

[39] Rollo, pp. 44-45.

[40] NLRC records, p. 350.

[41] Id. at 96.

[42] Vide Maquiling v. Philippine Tuberculosis Society, Inc., G.R. No. 143384, February 4, 2005, 450 SCRA 465, 477.

[43] Vide RULES IMPLEMENTING BOOK VI, Rule I, Section 2.

[44] Mañebo v. National Labor Relations Commission, G.R. No. 107721, January 10, 1994, 229 SCRA 240, 251.

[45] CA rollo, p. 426.

[46] Vide NLRC records, pp. 2-9, 74-85.

[47] Vide Yusen Air and Sea Service Philippines, Inc. v. Villamor, G.R. No. 154060, August 16, 2005, 467 SCRA 167, 175 (citations omitted).

[48] Georg Grotjahn GMBH & Co. v. Isnani, G.R. No. 109272, August 10, 1994, 235 SCRA 216, 221.

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