

JULIET G. APACIBLE, PETITIONER, VS. MULTIMED INDUSTRIES INCORPORATED AND THE BOARD OF DIRECTORS OF MULTIMED INDUSTRIES, THE PRESIDENT MR. JOSELITO TAMBUNTING, MANAGERS MARLENE L...

G.R. No. 178903. May 30, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Juliet Apacible was hired sometime in 1994 by respondent Multimed Industries Incorporated (the company) as Hospital Sales Representative. She rose from the ranks to become Assistant Area Sales Manager for Cebu Operations, the position she held at the time she was separated from the service in 2003.

On August 4, 2003, petitioner was informed by respondent Marlene Orozco (Marlene), her immediate superior, that she would be transferred to the company's main office in Pasig City on account of the ongoing reorganization. As the transfer would entail major adjustments, petitioner requested that her transfer be made effective in October or November 2003 and that she be given time to discuss it with her husband and daughter.

A week later, however, or on August 11, 2003, petitioner was informed that her transfer would be effective August 18, 2003. On even date, she was placed under investigation for the delayed release of BCRs (cash budget for customer representation in sealed envelopes which are given to loyal clients) which she received for distribution earlier in July 2003. In her written explanation,[1] petitioner, admitting that the delay constituted a violation of company policies, averred that she forgot to endorse the BCRs because she was thinking about her impending transfer; and that she did not misappropriate the money as she had already released the BCRs.

Finding that the delay in releasing the BCRs amounted to loss of trust and confidence, petitioner was given the option to resign. She thereupon reported to the head office in Pasig City where she met on August 23, 2003 with Marlene and respondent Ma. Luz B. Yan (referred to as Jig Blanco Yan [Jig] in the Decision and letters), respondent company's Human Resources Manager.

In the meeting with Marlene and Jig, petitioner claims that Jig gave her four options: resignation, termination, availing of an early retirement package worth P40,000, or transfer to Pasig City. Without availing of any option, petitioner took a leave of absence on August 28, 29 and September 1, 2003.

On September 1, 2003, petitioner, through her counsel Atty. Leo Montenegro, sent letters[2] to respondent Olga Mariño (Olga) and Jig denouncing their August 23 meeting as "illegal," "insensitive," "inhumane" and petitioner's dismissals a "unilateral arrangement and ruthless display of power." In the same letter, Atty. Montenegro demanded payment of separation pay and stated that he had advised petitioner to remain in her current position in Cebu.

On September 3, 2003, respondent company sent petitioner a memorandum-directive[3] for her to immediately report to the head office in Pasig City and to return the company vehicle assigned to her to the Cebu Office within

24 hours. Petitioner did not heed the directive, however. She instead filed an application for sick leave until September 11, 2003, and another until September 27, 2003.

By Memorandum[4] of October 1, 2003, respondent reiterated its directive to petitioner, but her counsel Atty. Montenegro sent another letter to Jig, faulting her for pressuring petitioner to resign and reiterating the demand for separation pay. Again Atty. Montenegro stated that he had advised petitioner to remain in Cebu.

On October 6, 2003, petitioner requested that she be given her daily work assignment in Cebu, which request was later to be denied by Olga by letter[5] dated October 8, 2003. On October 7, 2003, petitioner was given a show cause notice[6] for her to explain in writing why she should not be sanctioned for insubordination for failure to comply with the transfer order.

Again, petitioner, through Atty. Montenegro, wrote[7] respondent company, maintaining that she was "not transferring to Manila" and that if the company "want[ed] petitioner out of the company," separation pay must be paid.

By letter[8] of October 14, 2003 to Atty. Montenegro, respondent company denied having pressured petitioner as it stressed that the transfer was based on business demands and did not entail a demotion in rank nor diminution of benefits.

On November 4, 2002, respondent company sent petitioner a notice of termination[9] effective November 7, 2003 for insubordination, prompting petitioner to file a complaint[10] for illegal dismissal, non-payment of overtime pay, 13[th] month pay, service incentive leave pay, separation pay, damages and attorney's fees before the Labor Arbiter.

By Decision[11] of March 22, 2005, the Labor Arbiter dismissed petitioner's complaint, ruling that she was dismissed for just cause, i.e., fraud or loss of trust and confidence under Article 282 (a) and (c) of the Labor Code.

On appeal, the National Labor Relations Commission (NLRC), by Decision[12] of March 22, 2005, affirmed the Labor Arbiter's decision but on a different ground - petitioner's refusal to obey the transfer orders which amounted to insubordination. The NLRC, however, granted petitioner separation pay by way of financial assistance amounting to P282,370, 13[th] month pay of P23,530.833, and P5,430.1925 representing salary for five unpaid days in November.

In granting separation pay, the NLRC noted that petitioner's refusal to comply with the transfer orders was upon advice of her counsel, hence, there was a "modicum of good faith" on her part. Respondent company moved for partial reconsideration of this ruling which petitioner, in her comment, opposed and even sought the award of moral and exemplary damages.

By Resolution[13] of February 22, 2006, the NLRC denied respondent company's motion, and glossed over petitioner's comment as it was not under oath.

By Decision[14] of February 27, 2007, the Court of Appeals granted respondent company's appeal by modifying the NLRC Decision. It ruled that petitioner was not entitled to separation pay because, contrary to the NLRC's finding, she "lacked good faith." It noted that petitioner, from the start, knew and accepted the company policy on transfers whenever so required, and could not thus refuse "another valid reassignment by treating it as an imposition and burden."

The appellate court further held that as an Assistant Area Sales Manager, petitioner was expected to "show more exacting work ethics, a higher degree of loyalty and respect as opposed to her subordinate employees," yet she "openly and continually defied" the transfer orders; and that her belligerent attitude became even more

pronounced when her counsel sent several insulting and threatening letters to respondent company and its officers. The appellate court went on to find that petitioner's acts were "highly insolent, impertinent and lacking in good faith," hence, not entitled to separation pay by way of financial assistance.

Petitioner's motion for reconsideration having been denied by Resolution[15] of June 28, 2007, she instituted the present petition in which she prays for the restoration of the award of the separation pay by way of financial assistance.

The only issue thus proffered is whether petitioner is entitled separation pay by way of financial assistance.

As found by the Labor Arbiter, the NLRC and the appellate court, petitioner was justly dismissed from employment. The NLRC awarded separation pay as financial assistance, however, noting that petitioner's obstinacy was upon the advice of her counsel, Atty. Montenegro and, therefore, there was a modicum of good faith on her part. The appellate court demurred to this ruling, noting that petitioner's actuations reeked of bad faith, hence, undeserving of separation pay.

The petition fails.

Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM))-Katipunan[16] explains the propriety of granting separation pay in termination cases in this wise:

The law is clear. Separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause, such as serious misconduct.

x x x x

It is true that there have been instances when the Court awarded financial assistance to employees who were terminated for just causes, on grounds of equity and social justice. The same, however, has been curbed and rationalized in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*. In that case, we recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightly terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, we also held that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character. When the employee commits an act of dishonesty, depravity, or iniquity, the grant of financial assistance is misplaced compassion. It is tantamount not only to condoning a patently illegal or dishonest act, but an endorsement thereof. It will be an insult to all the laborers who despite their economic difficulties, strive to maintain good values and moral conduct.

In fact, in the recent case of *Toyota Motors Philippines, Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, we ruled that separation pay shall not be granted to all employees who are dismissed on any of the four grounds provided in Article 282 of the Labor Code. Such ruling was reiterated and further explained in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*:

To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or wilful disobedience; gross and habitual neglect of duty; fraud or wilful breach of trust; or commission of a crime against the person of the employer or his immediate family?grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass

us from sustaining the employers when they are right, as assistance to the undeserving and those who are unworthy of the liberality of the law. (*italics in the original, emphasis and underscoring supplied*)

Petitioner was, it bears reiteration, dismissed for wilfully disobeying the lawful order of her employer to transfer from Cebu to Pasig City. As correctly noted by the appellate court, petitioner knew and accepted respondent company's policy on transfers when she was hired and was in fact even transferred many times from one area of operations to another - Bacolod City, Iloilo City and Cebu.

Bascon v. Court of Appeals^[17] outlines the elements of gross insubordination as follows:

As regards the appellate court's finding that petitioners were justly terminated for gross insubordination or wilful disobedience, Article 282 of the Labor Code provides in part:

An employer may terminate an employment for any of the following causes:

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

However, wilful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been wilful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. (*emphasis and underscoring supplied*)

Clearly, petitioner's adamant refusal to transfer, coupled with her failure to heed the order for her return the company vehicle assigned to her and, more importantly, allowing her counsel to write letters couched in harsh language to her superiors unquestionably show that she was guilty of insubordination, hence, not entitled to the award of separation pay.

WHEREFORE, the petition is denied and the Decision of the Court of Appeals dated February 27, 2007 and Resolution of June 28, 2007 are **AFFIRMED**.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Records, pp. 85-86.

[2] *Id.* at pp. 60-61.

[3] *Id.* at p. 88.

[4] *Id.* at p. 90.

[5] *Id.* at p. 12.

[6] *Id.* at p. 92.

[7] *Vide* letter dated October 9, 2003, *id.* at 66-67

[8] *Id.* at 10.

[9] *Id.* at 70.

[10] Id. at 1-2.

[11] Id. at 107-135. Penned by Labor Arbiter Ricardo G. Barrios, Jr.

[12] Id. at 184-192. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[13] Id. at 226-229. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[14] Rollo, pp. 26-40. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Antonio J. Villamor and Stephen C. Cruz.

[15] Id. at 49. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Antonio J. Villamor and Stephen C. Cruz.

[16] G.R. No. 164016, March 15, 2010, 615 SCRA 240.

[17] G.R. No. 144899, February 5, 2004, 422 SCRA 122.

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