

ANABEL BENJAMIN AND RENATO CONSOLACION, PETITIONERS, VS. AMELLAR CORPORATION, RESPONDENT.

G.R. No. 183383. April 05, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Amellar Corporation (respondent) provides information technology services to local government units (LGUs) including computerizing their system and operations.

In October 1999, respondent hired petitioner Anabel Benjamin (Anabel) who, since March 26, 2001, was the Project Data Controller of its Content Build Up (CBU) Department.

The CBU Department of respondent collates and cleanses all the paper data gathered from the LGU-client which are then encoded and fed into the designed operating system.

As the most senior member of the department, Anabel was its officer-in-charge. From 2002 to 2003, she administered the CBU functions of respondent's projects in Imus, Cavite and Mabini, Batangas. [1] Petitioner Renato Consolacion (Consolacion), a supervising data controller in respondent's Imus project, directly reported to Anabel.[2]

By letter of March 20, 2003, the municipal assessor of Mabini, Batangas informed the manager of respondent that its real property tax administration database was not "100% complete," contrary to the report of respondent's supervising data controller Evangeline Repiano (Evangeline).[3]

Melvin Tandoc (Tandoc), respondent's Technology Manager, thus sent Anabel a memorandum of March 27, 2003 reading:

X X X X

This is the first written complaint of such nature that we have received from our client. However, other complaints of the same nature have been conveyed to our TTS and/or Marketing Departments orally by Nasugbu, Batangas; Mariveles, Bataan; and Lucena City personnel.

X X X X.

After several months of working in Imus, Cavite, [a] confidential assistant informed me that the assigned SDC, Renato Consolacion, allegedly gave specific oral instructions to some of our Data Controllers and subsequently our Data Encoders on field not to encode several decks of index cards of payments to 'beat' the deadline and pass on the job to our Training and Technical Support (TTS) Department.

X X X X

You are hereby ordered to explain these (Mabini, Batangas and Imus, Cavite) incidents in writing and submit such explanation before 12:00 PM on March 31, 2003, Monday. This is to ensure that your side is adequately and fairly heard.[4] (emphasis and underscoring supplied)

Anabel thereupon required Consolacion and Evangeline to explain in writing the alleged incidents subject of Tandoc's memorandum.[5] Complying, Consolacion gave the following explanation:

x x x x.

If we are still going to accommodate the latest payments and posted [sic] from time to time posting of collection will never end. I have instructed the Land Tax Division, Treasurer['s] Office to separate those recently posted with new payments to update later in order to have a systematic flow of mass updating of payments.

Furthermore, I have no instruction to our DC's stating that we have to leave several decks of indexes just to "beat" the deadline[.] I'm looking forward that our DC's will stand fairly and honest beyond their conscience attesting my good intentions to keep the work within pace and credible.[6] (emphasis and underscoring supplied)

Tandoc, to whom Consolacion's explanation was transmitted, sent another memorandum to Anabel indicating that he was not satisfied therewith and accordingly advising her that a formal investigation would be conducted.[7] Anabel thereupon sent Consolacion a memorandum notifying him that a formal investigation would be conducted on the "4[th] week of April" without any mention therein of the actual date of the formal hearing.[8]

It was only on April 23, 2003 that Tandoc directed Anabel to inform Consolacion and Evangeline that the formal hearing on the issues raised in his March 27, 2003 memorandum would proceed at 1:45 P.M. of said date.[9]

Respondent, alleging that Anabel did not inform Consolacion of the hearing, preventively suspended her for three days starting April 25, 2003 for "obstructing the conduct of due process." [10] She was also subsequently suspended for three working days starting April 30, 2003 for not obeying a direct order.

Anabel thereupon filed a complaint for illegal suspension before the National Labor Relations Commission (NLRC) against respondent and/or Tandoc.[11]

In the meantime, respondent conducted hearings on Consolacion's case on April 23 and 28, 2003 during which Consolacion purportedly admitted the following:

- Failure to provide written instructions for the separation of currently transacted records to officials of the Municipality of Imus;
- Failure to advise or belatedly advising the supervising data controllers of the separation of the records; and
- Failure to send some of the template letters and/or failure to follow the time frame for sending thereof.[12]

As for Evangeline, respondent cleared her of any wrongdoing, it concluding that the written complaint from the municipal assessor of Mabini was "more likely due to miscommunication." Respondent even commended Evangeline for her "care and diligence expected from a responsible supervisor." [13]

Tandoc later sent Anabel a memorandum of May 6, 2003

"appris[ing her of] the following acts or omissions for which [her] dismissal was [sought]"

Willful Breach of Trust Reposed in You

1. Reporting completion when there is no basis for such report;
2. Self-serving denials on the existence of verbally conveyed work or instructions and unwritten procedures;
3. Self-serving alibis on why certain work that can be delegated or sufficiently complied with on time in your capacity as supervisor and as senior officer in your department have not been accomplished or accomplished

late only upon the prodding of a written memorandum; and

4. Attempting to obstruct the conduct of due process for your subordinates under investigation/hearing.

Gross and Habitual Neglect of Duties

1. Failure to institute existing standards and procedures both written and unwritten; and
2. Failure to monitor and correct the errors of your subordinates.

Willful Disobedience of Lawful Orders in Connection with Work

1. Failure to comply with the lawful orders of your superior

You are hereby directed to submit within 72 hours your written answer on why you should not be dismissed on the said grounds. You are hereby given the opportunity to draft your written answer even outside of the office and still be paid your regular wages within said period.

x x x x.

Attached is the annex on the acts and omissions referred to by this notice.[14] (emphasis in the original; underscoring supplied)

On receipt of the memorandum, Anabel requested for a bill of particulars and for additional time to respond to the charges.[15] Tandoc replied that the "annex"[16] to the memorandum was particular enough. Nevertheless, he gave Anabel until May 14, 2003 to respond to the charges.

On May 14, 2003, Anabel reiterated her request for a bill of particulars.[17] On even date, Tandoc issued Consolacion a five-page memorandum informing him of his dismissal "for willful breach of trust reposed in him and all related and applicable charges acceptable to the Philippine Labor Code that pertain to the facts of this case." [18]

The following day or on May 15, 2003, Tandoc issued Anabel a Notice on Decision to Dismiss.[19]

Anabel amended her Complaint, adding as causes of action illegal dismissal, damages, and attorney's fees.[20] Consolacion also filed a complaint for .[21] Both cases were consolidated.

By Decision[22] dated October 21, 2003, Labor Arbiter Felipe P. Pati, finding that petitioners were illegally dismissed, disposed:

WHEREFORE premises all considered, judgment is hereby rendered ordering respondents jointly and severally liable to:

1. reinstate complainants to their former positions without loss of seniority rights;
2. pay complainants full backwages in the amount of:
 - a) Anabel Benjamin - P72,500.00
 - b) Renato Consolacion - P45,000.00

subject to adjustment upon actual reinstatement.

All other claims are dismissed for lack of merit.

SO ORDERED.[23]

On appeal, the NLRC affirmed the Labor Arbiter's decision,[24] prompting respondent to file a petition for certiorari[25] before the Court of Appeals.

By Decision[26] of August 17, 2007, the Court of Appeals reversed the NLRC Decision and dismissed petitioners' complaints, hence, the present petition, assailing the appellate court's decision,

I.

x x x THERE [BEING] NO PROOF OF GROSS AND HABITUAL NEGLECT OF DUTIES OR LOSS OF TRUST AND CONFIDENCE.

II.

x x x SINCE [RESPONDENT'S] PETITION IS PATENTLY WITHOUT MERIT.

III.

x x x FOR THE COMMON AND UNANIMOUS FINDINGS OF THE LABOR ARBITER AND THE NLRC ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

IV.

x x x [FOR] MANAGEMENT PREROGATIVE IS NOT ABSOLUTE.[27] (underscoring supplied)

Petitioners contend that respondent failed to substantiate the grounds for their dismissal from employment, maintaining that respondent merely relied on speculations and unsubstantiated conclusions.[28]

Respondent, in its Comment, preliminarily moves to have Consolacion dropped as petitioner for failure to sign the verification and certification of non-forum shopping.

On the merits, respondent underscores that Anabel falsely reported the completion of work in the Imus project; that she failed to follow ordinary procedures and instructions, to monitor and correct operational errors, and to comply with the lawful orders of her superiors.[29]

As for Consolacion, respondent asserts that he too misrepresented that the Imus project had been completed; that he failed to follow procedures and instructions, to provide written instructions for the separation of currently transacted records to the officials of Imus, to advise or belatedly advise the data controllers of the separation of the records, and to send the template letter or follow the time frame for sending such letter.[30]

Finally, respondent echoes the finding of the appellate court that it observed petitioners' right to due process by complying with the mandated two-notice requirement following an "extensive fact[-]finding process, culminated by scheduling and actual hearings and investigations."[31]

The petition is impressed with merit.

On the procedural issue, the Court resolved to relax the application of technical rules of procedure in labor cases to serve the demands of substantial justice, there being merit in Consolacion's case.[32] His counsel, who claimed that Consolacion was in the province at the time of the filing of the petition, promptly submitted Consolacion's verification and certification as directed by the Court.

Consolacion was terminated for "willful breach of trust reposed in him and all related and applicable charges acceptable to the Philippine Labor Code."

To terminate the services of an employee for loss of trust and confidence,[33] two requisites must concur: (1) the employee concerned must be holding a position of trust and confidence[34] and (2) there must be an act that would justify the loss of trust and confidence.[35]

Consolacion occupied a position imbued with trust and confidence, he being a supervising data controller. It was

his primary duty to monitor and report the performance of the data controllers in relation to the scope of work contracted out to respondent. Respondent thus banks heavily on the report of Consolacion to monitor the output quality and quantity of its data controllers. On the basis of this report, respondent assesses its employees and bills its clients for work done.

Respondent, however, failed to justify its loss of trust and confidence on Consolacion even as it imputed to him, via Notice of Formal Investigation of April 14, 2003, non-compliance with

- a) . . established non-written [sic] procedures and standards;
- b) . . . established written procedures and standards, and
- c) . . . verbal orders and/or instructions.[36]

Evidently, the immediately stated acts of non-compliance are too general and can encompass just about any malfeasance. Nowhere in the Notice was there a detailed narration of the facts and circumstances that would serve as bases to terminate Consolacion, thus leaving to surmise what those procedures, standards and orders were.

King of Kings Transport v. Mamac [37] explains the importance of the first written notice:

(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) x x x x

(3) x x x x (emphasis and underscoring supplied)

In the "hearing" of April 23, 2003,[38] "commonly encountered problems" in the Imus project, not specific acts against Consolacion, were discussed. The supposed "confidential" assistant mentioned in Tandoc's above-quoted memorandum of March 23, 2003 was not presented nor identified. In the Court's view, what was undertaken by respondent at said April 23, 2003 "hearing" was an assessment conference among the data encoders in the Imus project, designed to pinpoint strengths and weaknesses in the work conducted. This conference or consultation cannot stand as proxy for the requisite hearing.[39]

Respondent was itself not sure of what to charge petitioner Consolacion. It would appear that it was baiting him into admitting whatever malfeasance may be uncovered during the process.[40]

Still, respondent used as its main basis for termination the supposed claim of Consolacion that the Imus project had been completed. Again, nothing is extant in the records to show that Consolacion had in fact reported the completion of the Imus project. It should be recalled that it was another project--that one in Mabini, Batangas--which was reported to have been completed. And it was not even by Consolacion but by Evangeline.

The other ground cited in the dismissal notice (all related and applicable charges acceptable to the Labor Code) evidently lacks particularity and does not clearly state what those related and applicable charges were. Such

omnibus ground does not suffice at law.

Respecting Anabel who was dismissed for willful breach of trust, gross and habitual neglect of duties, and willful disobedience to lawful orders, she, like Consolacion, occupied a position of trust and confidence, she being the officer-in-charge of the CBU Department.

Respondent, however, failed to prove even a single act *à* basis of its loss of trust and confidence in Anabel. Apart from its self-serving assertions, respondent had not offered any piece of documentary evidence to lend truth to its allegations. It harps on supposed "numerous" complaints it received on their projects, yet only one written complaint on the Mabini project was presented. Note that the Mabini project had been determined to be completed and the accountable data controller, Evangeline, had been absolved from any liability. Suffice it to state that respondent contented itself with conjectures and surmises as proofs of its charges.

Respondent also faults Anabel for gross and habitual neglect of duties for "failure to institute existing standards and procedures both written and unwritten" and "failure to monitor and correct the errors of [her] subordinates." [41] Despite Anabel's May 14, 2003 letter for particulars, [42] however, respondent never addressed what were the standards and procedures she violated and errors she failed to monitor. Respondent instead sent her a dismissal notice.

It bears stressing in dismissing an employee for gross and habitual neglect of duties, the negligence should not merely be gross. It should also be habitual. [43] There being nothing in the records to identify what specific duties Anabel violated and whether the violations were gross and habitual, any discussion herein is an exercise in futility.

Respondent capitalizes on the alleged failure of Anabel to immediately inform Consolacion of the April 23, 2003 "hearing" to anchor its claim of willful disobedience to a lawful order to justify her suspension with pay for three days. Anabel, however, did actually inform Consolacion of the "hearing" date on "the 4[th] week of April" [44] as in fact the records show that Consolacion attended the April 23, 2003 "hearing." [45]

Respondent further penalized Anabel with a three-day suspension, this time without pay, for "obstructing the conduct of due process and possible obstruction of the ongoing due process," [46] also on the basis of the same alleged failure to immediately notify Consolacion for the April 23, 2003 hearing.

As did the NLRC, the Court finds that respondent erred in preventively suspending petitioner Anabel for lack of basis, there being no serious and imminent threat to its life and property or to her co-workers. [47]

And so does the Court find erroneous the suspension penalty imposed on Anabel for violating her right to due process. Respondent cannot suspend Anabel without hearing her side for her alleged disobedience since suspension in this instance was a penalty. Respondent should thus be made to reimburse Anabel for her suspension without pay covering three (3) working days.

Finally, that respondent did not even bother to calendar a hearing on Anabel's case further betrays any constancy to due process. Anabel's failure to give a written answer to the first notice notwithstanding, the same cannot be construed as a waiver of her right to a hearing. [48]

WHEREFORE, the assailed Decision of the Court of Appeals is REVERSED and SET ASIDE. Respondent, Amellar Corporation, is ORDERED to reinstate petitioners, Anabel Benjamin and Renato Consolacion, to their former positions or their equivalent, without loss of seniority rights and privileges, and to pay them full backwages inclusive of allowances and other benefits or their monetary equivalent, from the time of their dismissal until actual reinstatement. If reinstatement is no longer feasible, respondent is directed to give them

separation pay equivalent to at least one month salary for every year of service, computed from the time of engagement of their services up to the finality of this decision.

Respondent is further DIRECTED to pay Anabel Benjamin her wages covering three working days for her illegal suspension.

The records of this case are REMANDED to the Labor Arbiter for computation of petitioners' respective monetary claims.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Villarama, Jr., and Mendoza[*], JJ., concur.

[*] Additional member per Raffle dated March 10, 2010.

[1] NLRC records, p. 59.

[2] Id. at 59.

[3] Id. at 78.

[4] Id. at 79.

[5] Id. at 80-81

[6] Id. at 82.

[7] Id. at 87 and 91.

[8] Id. at 94.

[9] Id. at 115.

[10] Ibid.

[11] CA rollo, p. 67.

[12] NLRC records, p. 117.

[13] Id. at 118-122.

[14] Id. at 123.

[15] Id. at 126.

[16] Id. at 124-125.

[17] Id. at 130.

[18] Id. at 131-135.

[19] Id. at 136-138.

[20] Id. at 2.

[21] Id. at 10.

[22] Id. at 171-181.

[23] Id. at 181.

[24] Id. at 256-259.

[25] CA rollo, pp. 2-42.

[26] Id. at 260-276. Penned by then Court of Appeals Associate Justice (now Associate Justice of this Court) Lucas P. Bersamin, with the concurrence of Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe.

[27] Rollo, p. 17.

[28] Id. at 18-29.

[29] Id. at 168-172.

[30] Id. at 173-174.

[31] Id. at 175.

[32] *Casimiro v. Stern Real Estate, Inc.*, G.R. No. 162233, March 10, 2006, 484 SCRA 463, 479; *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 628.

[33] ART. 282. Termination by employer. x x x

(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. (emphasis supplied)

[34] *Condo Suite Club Travel, Inc. v. NLRC*, 380 Phil. 660, 668 (2000).

[35] *Equitable Banking Corporation v. NLRC*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 376.

[36] NLRC records, p. 94.

[37] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126.

[38] NLRC records, pp. 110-111.

[39] *Maneja v. NLRC*, 353 Phil. 45, 66; 290 SCRA 603 (1998).

[40] In its Memorandum of May 14, 2003, respondent stated that

5.0 After a series of written notices and written replies from the concerned personnel, one of which is Mr. Renato Consolacion, the written arguments of Mr. Consolacion deserved a proper hearing. This was to provide sufficient opportunity for him to expound on his answers, confront the contrary opinions of his subordinates and/or indirect superior, and answer all allegations properly so his side will be adequately heard. Two hearings have been

conducted on two separate occasions to validate and verify all issues and concerns raised. x x x (emphasis and underscoring supplied)

[41] Supra note 16.

[42] NLRC records, p. 130.

[43] Union Motor Corporation v. National Labor Relations Commission, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 694-695.

[44] Vide NLRC records, p. 94.

[45] Id. at 110.

[46] Id. at 115.

[47] Section 8, Book V, Rule XXIII, Rules Implementing Book V [of the Labor Code]: "The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life and property of the employer or of his co-workers."

[48] Vide Hagonoy Rural Bank v. NLRC, 349 Phil. 220, 235 (1998).

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