

PAMELA FLORENTINA P. JUMUAD, PETITIONER, VS. HI-FLYER FOOD, INC. AND/OR JESUS R. MONTEMAYOR, RESPONDENTS.

G.R. No. 187887. September 07, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari assailing the April 20, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 03346, which reversed the August 10, 2006 Decision[2] and the November 29, 2007 Resolution[3] of the National Labor Relations Commission, 4[th] Division (NLRC), in NLRC Case No. V-000813-06. The NLRC Decision and Resolution affirmed in toto the Decision[4] of the Labor Arbiter Julie C. Ronduque (LA) in RAB Case No. VII-10-2269-05 favoring the petitioner.

The Facts:

On May 22, 1995, petitioner Pamela Florentina P. Jumuad (Jumuad) began her employment with respondent Hi-Flyer Food, Inc. (Hi-Flyer), as management trainee. Hi-Flyer is a corporation licensed to operate Kentucky Fried Chicken (KFC) restaurants in the Philippines. Based on her performance through the years, Jumuad received several promotions until she became the area manager for the entire Visayas-Mindanao 1 region, comprising the provinces of Cebu, Bacolod, Iloilo and Bohol.[5]

Aside from being responsible in monitoring her subordinates, Jumuad was tasked to: 1) be highly visible in the restaurants under her jurisdiction; 2) monitor and support day-to-day operations; and 3) ensure that all the facilities and equipment at the restaurant were properly maintained and serviced.[6] Among the branches under her supervision were the KFC branches in Gaisano Mall, Cebu City (KFC-Gaisano); in Cocomall, Cebu City (KFC-Cocomall); and in Island City Mall, Bohol (KFC-Bohol).

As area manager, Jumuad was allowed to avail of Hi-Flyer's car loan program,[7] wherein forty (40%) percent of the total loanable amount would be subsidized by Hi-Flyer and the remaining sixty (60%) percent would be deducted from her salary. It was also agreed that in the event that she would resign or would be terminated prior to the payment in full of the said car loan, she could opt to surrender the car to Hi-Flyer or to pay the full balance of the loan.[8]

In just her first year as Area Manager, Jumuad gained distinction and was awarded the 3[rd] top area manager nationwide. She was rewarded with a trip to Singapore for her excellent performance.[9]

On October 4, 2004, Hi Flyer conducted a food safety, service and sanitation audit at KFC-Gaisano. The audit, denominated as CHAMPS Excellence Review (CER), revealed several sanitation violations, such as the presence of rodents and the use of a defective chiller for the storage of food.[10] When asked to explain, Jumuad first pointed out that she had already taken steps to prevent the further infestation of the branch. As to why the branch became infested with rodents, Jumuad faulted management's decision to terminate the services of the branch's pest control program and to rely solely on the pest control program of the mall. As for the defective chiller, she

explained that it was under repair at the time of the CER.[11] Soon thereafter, Hi-Flyer ordered the KFC-Gaisano branch closed.

Then, sometime in June of 2005, Hi-Flyer audited the accounts of KFC-Bohol amid reports that certain employees were covering up cash shortages. As a result, the following irregularities were discovered: 1) cash shortage amounting to ₱62,290.85; 2) delay in the deposits of cash sales by an average of three days; 3) the presence of two sealed cash-for-deposit envelopes containing paper cut-outs instead of cash; 4) falsified entries in the deposit logbook; 5) lapses in inventory control; and 6) material product spoilage.[12] In her report regarding the incident, Jumud disclaimed any fault in the incident by pointing out that she was the one responsible for the discovery of this irregularity.[13]

On August 7, 2005, Hi-Flyer conducted another CER, this time at its KFC-Cocomall branch. Grout and leaks at the branch's kitchen wall, dried up spills from the marinador, as well as a live rat under postmix, and signs of rodent gnawing/infestation were found.[14] This time, Jumud explained to management that she had been busy conducting management team meetings at the other KFC branches and that, at the date the CER was conducted, she had no scheduled visit at the KFC-Cocomall branch.[15]

Seeking to hold Jumud accountable for the irregularities uncovered in the branches under her supervision, Hi-Flyer sent Jumud an Irregularities Report[16] and Notice of Charges[17] which she received on September 5, 2005. On September 7, 2005 Jumud submitted her written explanation.[18] On September 28, 2005, Hi-Flyer held an administrative hearing where Jumud appeared with counsel. Apparently not satisfied with her explanations, Hi-Flyer served her a Notice of Dismissal[19] dated October 14, 2005, effecting her termination on October 17, 2005.

This prompted Jumud to file a complaint against Hi-Flyer and/or Jesus R. Montemayor (Montemayor) for illegal dismissal before the NLRC on October 17, 2005, praying for reinstatement and payment of separation pay, 13th month pay, service incentive leave, moral and exemplary damages, and attorney's fees. Jumud also sought the reimbursement of the amount equivalent to her forty percent (40%) contribution to Hi-Flyer's subsidized car loan program.

While the LA found that Jumud was not completely blameless for the anomalies discovered, she was of the view that the employer's prerogative to dismiss or layoff an employee "must be exercised without abuse of discretion" and "should be tempered with compassion and understanding." [20] Thus, the dismissal was too harsh considering the circumstances. After finding that no serious cause for termination existed, the LA ruled that Jumud was illegally dismissed. The LA disposed:

WHEREFORE, VIEWED FROM THE FOREGOING PREMISES, judgment is hereby rendered declaring complainant's dismissal as ILLEGAL. Consequently, reinstatement not being feasible, respondents HI-FLYER FOOD, INC. AND OR JESUS R. MONTEMAYOR are hereby ordered to pay, jointly and severally, complainant PAMELA FLORENTINA P. JUMUD, the total amount of THREE HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED PESOS (₱336,400.00), Philippine currency, representing Separation Pay, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.

Further, same respondents are ordered to reimburse complainant an amount equivalent to 40% of the value of her car loaned pursuant to the car loan entitlement memorandum.

Other claims are DISMISSED for lack of merit.[21]

Both Jumud and Hi-Flyer appealed to the NLRC. Jumud faulted the LA for not awarding backwages and damages despite its finding that she was illegally dismissed. Hi-Flyer and Montemayor, on the other hand, assailed the finding that Jumud was illegally dismissed and that they were solidarily liable therefor. They also

questioned the orders of the LA that they pay separation pay and reimburse the forty percent (40%) of the loan Jumud paid pursuant to Hi-Flyer's car entitlement program.

Echoing the finding of the LA that the dismissal of Jumud was too harsh, the NLRC affirmed in toto the LA decision dated August 10, 2006. In addition, the NLRC noted that even before the Irregularities Report and Notice of Charges were given to Jumud on September 5, 2005, two (2) electronic mails (e-mails) between Montemayor and officers of Hi-Flyer showed that Hi-Flyer was already determined to terminate Jumud. The first e-mail[22] read:

From: Jess R. Montemayor
Sent: Tuesday, August 16, 2005 5:59 PM
To: bebe chaves; Maria Judith N. Marcelo; Jennifer Coloma Ravela; Bernard Joseph A. Velasco
Cc: Odjie Belarmino; Jesse D. Cruz
Subject: RE: 049 KFC Cocomall - Food Safety Risk/Product Quality Violation

I agree if the sanctions are light we should change them. In the case of Pamela however, the fact that Cebu Colon store had these violations is not the first time this incident has happened in her area. The Bohol case was also in her area and maybe these two incidents is enough grounds already for her to be terminated or maybe asked to resign instead of being terminated.

I know if any Ops person serves expired product this is ground for termination. I think serving off specs products such as this lumpy gravy in the case of Coco Mall should be grounds for termination. How many customers have we lost due to this lumpy clearly out of specs gravy? 20 customers maybe.

Jess.

The second e-mail,[23] sent by one Bebe Chaves of Hi-Flyer to Montemayor and other officers of Hi-Flyer, reads:

From: bebe chaves
Sent: Sat 9/3/2005 3:45 AM
To: Maria Judith N. Marcelo
CC: Jennifer Coloma Ravela; Goodwin Belarmino; Jess R. Montemayor
Subject: RE: 049 KFC Cocomall - Food Safety Risk/Product Quality Violation

Jojo,

Just an update of our meeting yesterday with Jennifer. After having reviewed the case and all existing documents, we have decided that there is enough ground to terminate her services. IR/Jennifer are working hand in hand to service due notice and close the case.

According to the NLRC, these e-mails were proof that Jumud was denied due process considering that no matter how she would refute the charges hurled against her, the decision of Hi-Flyer to terminate her would not change.[24]

Sustaining the order of the LA to reimburse Jumud the amount equivalent to 40% of the value of the car loan, the NLRC explained that Jumud enjoyed this benefit during her period of employment as Area Manager and could have still enjoyed the same if not for her illegal dismissal.[25]

Finally, the NLRC held that the active participation of Montemayor in the illegal dismissal of Jumud justified his solidary liability with Hi-Flyer.

Both Jumud and Hi-Flyer sought reconsideration of the NLRC Decision but their respective motions were denied on November 29, 2007.[26]

Alleging grave abuse of discretion on the part of the NLRC, Hi-Flyer appealed the case before the CA in Cebu City.

On April 20, 2009, the CA rendered the subject decision reversing the decision of the labor tribunal. The appellate court disposed:

WHEREFORE, in view of the foregoing, the Petition is GRANTED. The Decision of the National Labor Relations Commission (4[th] Division) dated 28 September 2007 in NLRC Case No. V-000813-06 (RAB Case No. VII-10-2269-05, as well as the Decision dated 10 August 2006 of the Honorable Labor Arbiter Julie C. Ronduque, and the 29 November 2006 Resolution of the NLRC denying petitioner's Motion for Reconsideration dated 08 November 2007, are hereby REVERSED and SET ASIDE.

No pronouncement as to costs.

SO ORDERED.[27]

Contrary to the findings of the LA and the NLRC, the CA was of the opinion that the requirements of substantive and procedural due process were complied with affording Jumud an opportunity to be heard first, when she submitted her written explanation and then, when she was informed of the decision and the basis of her termination.[28] As for the e-mail exchanges between Montemayor and the officers of Hi-Flyer, the CA opined that they did not equate to a predetermination of Jumud's termination. It was of the view that the e-mail exchanges were mere discussions between Montemayor and other officers of Hi-Flyer on whether grounds for disciplinary action or termination existed. To the mind of the CA, the e-mails just showed that Hi-Flyer extensively deliberated the nature and cause of the charges against Jumud.[29]

On the issue of loss of trust and confidence, the CA considered the deplorable sanitary conditions and the cash shortages uncovered at three of the seven KFC branches supervised by Jumud as enough bases for Hi-Flyer to lose its trust and confidence in her.[30]

With regard to the reimbursement of the 40% of the car loan as awarded by the labor tribunal, the CA opined that the terms of the car loan program did not provide for reimbursement in case an employee was terminated for just cause and they, in fact, required that the employee should stay with the company for at least three (3) years from the date of the loan to obtain the full 40% subsidy. The CA further stated that the rights and obligations of the parties should be litigated in a separate civil action before the regular courts.[31]

The CA also exculpated Montemayor from any liability since it considered Jumud's dismissal with a just cause and it found no evidence that he acted with malice and bad faith.[32]

Hence, this petition on the following

GROUNDS:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLD[ING] AS VALID THE TERMINATION OF PETITIONER'S SERVICES BY RESPONDENTS.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION 4[TH] DIVISION OF CEBU CITY WHICH AFFIRMED THE DECISION OF LABOR ARBITER JULIE RENDOQUE.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION 4[TH] DIVISION OF CEBU CITY WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO REIMBURSEMENT OF FORTY PERCENT (40%) OF THE CAR VALUE BENEFITS.

It is a hornbook rule that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[33] While this rule is strictly adhered to in labor cases, the same rule, however, admits exceptions. These include: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[34]

In the case at bench, the factual findings of the CA differ from that of the LA and the NLRC. This divergence of positions between the CA and the labor tribunal below constrains the Court to review and evaluate assiduously the evidence on record.

The petition is without merit.

On whether Jumud was illegally dismissed, Article 282 of the Labor Code provides:

Art. 282. Termination by Employer. -- An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

Jumud was terminated for neglect of duty and breach of trust and confidence. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. It has been said that a single or an isolated act of negligence cannot constitute as a just cause for the dismissal of an employee.[35] To be a ground for removal, the neglect of duty must be both gross and habitual.[36]

On the other hand, breach of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.[37]

It should be noted, however, that the finding of guilt or innocence in a charge of gross and habitual neglect of duty does not preclude the finding of guilty or innocence in a charge of breach of trust and confidence. Each of the

charges must be treated separately, as the law itself has treated them separately. To repeat, to warrant removal from service for gross and habitual neglect of duty, it must be shown that the negligence should not merely be gross, but also habitual. In breach of trust and confidence, so long as it is shown there is some basis for management to lose its trust and confidence and that the dismissal was not used as an occasion for abuse, as a subterfuge for causes which are illegal, improper, and unjustified and is genuine, that is, not a mere afterthought intended to justify an earlier action taken in bad faith, the free will of management to conduct its own business affairs to achieve its purpose cannot be denied.

After an assiduous review of the facts as contained in the records, the Court is convinced that Jumud cannot be dismissed on the ground of gross and habitual neglect of duty. The Court notes the apparent neglect of Jumud of her duty in ensuring that her subordinates were properly monitored and that she had dutifully done all that was expected of her to ensure the safety of the consuming public who continue to patronize the KFC branches under her jurisdiction. Had Jumud discharged her duties to be highly visible in the restaurants under her jurisdiction, monitor and support the day to day operations of the branches and ensure that all the facilities and equipment at the restaurant were properly maintained and serviced, the deplorable conditions and irregularities at the various KFC branches under her jurisdiction would have been prevented.

Considering, however, that over a year had lapsed between the incidences at KFC-Gaisano and KFC-Bohol, and that the nature of the anomalies uncovered were each of a different nature, the Court finds that her acts or lack of action in the performance of her duties is not born of habit.

Despite saying this, it cannot be denied that Jumud willfully breached her duties as to be unworthy of the trust and confidence of Hi-Flyer. First, there is no denying that Jumud was a managerial employee. As correctly noted by the appellate court, Jumud executed management policies and had the power to discipline the employees of KFC branches in her area. She recommended actions on employees to the head office. Pertinent is Article 212 (m) of the Labor Code defining a managerial employee as one who is vested with powers or prerogatives to lay down and execute management policies and/or hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees.

Based on established facts, the mere existence of the grounds for the loss of trust and confidence justifies petitioner's dismissal. Pursuant to the Court's ruling in *Lima Land, Inc. v. Cuevas*,^[38] as long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed.

In the present case, the CER's reports of Hi-Flyer show that there were anomalies committed in the branches managed by Jumud. On the principle of respondeat superior or command responsibility alone, Jumud may be held liable for negligence in the performance of her managerial duties. She may not have been directly involved in causing the cash shortages in KFC-Bohol, but her involvement in not performing her duty monitoring and supporting the day to day operations of the branches and ensure that all the facilities and equipment at the restaurant were properly maintained and serviced, could have truly prevented the whole debacle from ever occurring.

Moreover, it is observed that rather than taking proactive steps to prevent the anomalies at her branches, Jumud merely effected remedial measures. In the restaurant business where the health and well-being of the consuming public is at stake, this does not suffice. Thus, there is reasonable basis for Hi-Flyer to withdraw its trust in her and dismissing her from its service.

The disquisition of the appellate court on the matter is also worth mentioning:

In this case, there is ample evidence that private respondent indeed committed acts justifying loss of trust and confidence of Hi-Flyer, and eventually, which resulted to her dismissal from service. Private respondent's mismanagement and negligence in supervising the effective operation of KFC branches in the span of less than a year, resulting in the closure of KFC-Gaisano due to deplorable sanitary conditions, cash shortages in KFC-Bohol, in which the said branch, at the time of discovery, was only several months into operation, and the poor sanitation at KFC-Cocomall. The glaring fact that three (3) out of the seven (7) branches under her area were neglected cannot be glossed over by private respondent's explanation that there was no negligence on her part as the sanitation problem was structural, that she had been usually busy conducting management team meetings in several branches of KFC in her area or that she had no participation whatsoever in the alleged cash shortages.

x x x

It bears stressing that both the Labor Arbiter and the NLRC found that private respondent was indeed lax in her duties. Thus, said the NLRC: "xxx [i]t is Our considered view that xxx complainant cannot totally claim that she was not remiss in her duties xxx.[39]

As the employer, Hi-Flyer has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[40]

So long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, the employer's exercise of its management prerogative must be upheld.[41]

In this case, Hi-Flyer exercised in good faith its management prerogative as there is no dispute that it has lost trust and confidence in her and her managerial abilities, to its damage and prejudice. Her dismissal, was therefore, justified.

As for Jumud's claim for the reimbursement of the 40% of the value of the car loan subsidized by Hi-Flyer under its car loan policy, the same must also be denied. The rights and obligations of the parties to a car loan agreement is not a proper issue in a labor dispute but in a civil one.[42] It involves the relationship of debtor and creditor rather than employee-employer relations.[43] Jurisdiction, therefore, lies with the regular courts in a separate civil action.[44]

The law imposes many obligations on the employer such as providing just compensation to workers, observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, the law also recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to its interests.[45]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Velasco, Jr, (Chairperson), Peralta, Abad, and Villarama, Jr.,[*] JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 1076 dated September 6, 2011.

[1] Rollo, pp. 445-464. Penned by Associate Justice Rodil V. Zalameda with the concurrence of Associate Justice Amy C. Lazaro-Javier and Associate Justice Francisco P. Acosta.

[2] Id. at 304-323.

[3] Id. at 348-349.

[4] Id. at 213-227.

[5] Id. at 50-52.

[6] Id. at 492.

[7] Id. at 106-111.

[8] Id. at 106-111.

[9] Id. at 52.

[10] Id. at 136-137.

[11] Id. at 523-524.

[12] Id. at 138-147.

[13] Id. at 451-454.

[14] Id. at 154-156.

[15] Id. at 471-472.

[16] Id. at 159-160.

[17] Id. at 162.

[18] Id. at 164-166.

[19] Id. at 89.

[20] Id. at 298.

[21] Id. at 300.

[22] Id. at 90.

[23] Id. at 91.

[24] Id. at 318-319.

[25] Id. at 321.

[26] Id. at 348-349.

[27] Id. at 464.

[28] Id. at 455.

[29] Id. at 454-455.

[30] Id. at 457.

[31] Id. at 462-463.

[32] Id. at 463.

[33] Dealco Farms, Inc. v. National Labor Relations Commission (5th Division), G.R. No. 153192, January 30, 2009, 577 SCRA 280.

[34] Pagsibigan v. People, G.R. No. 163868, June 4, 2009, 588 SCRA 249.

[35] St. Luke's Medical Center, Inc. and Robert Kuan v. Estrelito Notario, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 78.1

[36] JGB and Associates, Inc. v. National Labor Relations Commission, 324 Phil. 747 (1996); Premiere Development Bank v. Mantal, G.R. No. 167716, March 23, 2006, 485 SCRA 234, 239.

[37] Caingat v. NLRC, 493 Phil. 299, 308 (2005).

[38] G.R. No. 169523, June 16, 2010, 621 SCRA 36.

[39] Rollo, pp. 457-458.

[40] Deles, Jr. v. NLRC, 384 Phil. 271, 281-282 (2000).

[41] Meralco v. NLRC, 331 Phil. 838, 847 (1996).

[42] Nestlé Philippines, Inc. v. NLRC, G.R. No. 85197, March 18, 1991, 195 SCRA 340.

[43] Smart Communications, Inc. v. Astorga, G.R. No. 148132, January 28, 2008. 524 SCRA 434.

[44] Hongkong and Shanghai Banking Corporation, Ltd., v. Broqueza, G.R. No. 178610, November 17, 2010.

[45] Agabon v. National Labor Relations Commission, 485 Phil. 248, 279 (2004).

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