

SUNRISE HOLIDAY CONCEPTS, INC., Petitioner, vs. TERESA A. ARUGAY, Respondent.

G.R. No. 189457. April 07, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari, assailing the Amended Decision[1] dated April 7, 2009 and the Resolution[2] dated September 2, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 100227. The Facts

Version of the Employee

On February 16, 2004, respondent was engaged by petitioner as Collection Manager under a six (6)-month probationary period. She was promised a compensation of Sixteen Thousand Pesos (P16,000.00) plus Two Thousand Pesos (P2,000.00), which shall be adjusted to Twenty-Five Thousand Pesos (P25,000.00) at the end of the 6-month probationary period. After six (6) months, respondent continued to work for petitioner company but it made no salary adjustment.[3]

As part of her functions, respondent coordinated largely with her four (4) collectors and with clients, numbering more than two thousand (2,000), from whom she was collecting existing accounts for petitioner company. In the exercise of her functions, respondent made use of the company's old mobile phone. Extensive coordination with company employees and with clients compelled respondent to bring the cellular phone out of the company premises. No one told respondent that she had to get permission from higher management to bring out the said cellular phone. Respondent's job as a Collection Manager required her to be persistent with those whom she dealt with to collect badly needed funds for the company.[4]

In the course of her functions, respondent sent a memorandum chiding her Assistant Collection Manager for the latter's lack of dedication and her act of cheating on her timecard. Unfortunately, the Assistant Collection Manager made an issue out of this and complained to the Executive Assistant of petitioner company. The Executive Assistant favored the Assistant Collection Manager, who is his goddaughter, and ignored respondent's report.[5]

On September 20, 2004, respondent received a show-cause Memorandum for: "(A) Act of Dishonesty—unauthorized bringing into or taking out any article from company premises. From April 2004 to present, you have been bringing home the Company's mobile phone during weekends without prior approval and consent from higher authority/ies and allegedly using the same for your personal use; (B) Tardiness. For incurring excessive and habitual tardiness of more than five (5) times in a month without just and valid reasons." [6]

Respondent was stunned by such charges because, as early as March 2004, she had already expressed the urgent need of a cellular phone in the operation of her department. In April 2004, respondent even submitted to petitioner a formal request or requisition for a mobile phone for each collector, as well as a unit for herself, as Collection Manager. The request for a cellular phone for herself was specified to cover her personal calls, on the

understanding that the Collection Department would be able to increase its output or collections. No objection was expressed by petitioner to such request. Respondent rendered uncompensated overtime on weekdays, and reported for work on Saturdays and even on holidays, believing that her dedication, discipline, and hard work would be valued by petitioner. Respondent was hurt when she, a manager of petitioner company, was charged for minutes of tardiness, when she had rendered much more to the company.[7]

On September 21, 2004, respondent submitted her written explanation intensely denying the charges imputed to her. She requested for a formal confrontation with her accusers in order to address the issues against her. To her surprise, the Executive Assistant of petitioner company denied her request for a confrontation, while she was preventively suspended to make way for an administrative investigation.[8]

On September 28, 2004, respondent received a termination letter for alleged loss of trust and confidence, which termination was immediately effective.[9] The pertinent portion of the termination letter reads: “[T]he Management has found that you have patently violated our company rules and regulations with the unlawful use of company property, poor management style, misdemeanor and conduct unbecoming of an officer of the company.”[10]

Thus, respondent filed a case for illegal dismissal, nonpayment of 13th month pay, payment of damages and attorney’s fees against petitioner before the Arbitration Branch of the National Labor Relations Commission (NLRC).[11]

Version of the Employer

Respondent was hired as a probationary employee with the position of Collection Manager on February 16, 2004. She had a basic monthly salary of P16,000.00, with an allowance of P2,000.[12]

Prior to her engagement, respondent was duly apprised of her duties and responsibilities, pertinent company standards, company policies, rules, and regulations. Among such policies made known to respondent was the prohibition on the bringing home company properties and using the same for personal purposes. One such property was the cellular phone issued to respondent.[13]

According to petitioner:

As Collection Manager, respondent habitually exercised discretion and independent judgment in the supervision and control of company resources and properties assigned to her department, subject to existing company policies, rules, and regulations. She was charged with the care and safekeeping of these properties.[14]

Respondent was tasked to exercise discretion and independent judgment in areas involving the formulation of effective programs and measures to enhance the company’s collection of its receivables and to ensure that these receivables were all safely kept, accounted and properly endorsed to the proper company official. The said cellular phone was issued to respondent for her to use within the company premises and strictly for official purposes only.[15]

However, respondent, in deliberate disregard of and disobedience to company policy, repeatedly and habitually brought home the cellular phone issued to her by the company. She made several personal calls on said cellular phone during Saturdays and Sundays, which calls were paid for by the company to the latter’s damage and prejudice. Moreover, respondent, with abuse of her rank and influence in several instances, borrowed money from her subordinates for personal purposes. Respondent engaged in rumormongering involving her subordinates, sowing intrigues and discord among her subordinates. Respondent also incurred more than five (5) tardiness each month for several months, which were contrary to the company policies, rules, and regulations. These prompted

the company to formally ask respondent to explain her dishonesty, serious misconduct, and other violations in a Memorandum dated September 20, 2004.[16]

On September 21, 2004, respondent submitted her written explanation. She failed to satisfactorily explain her unauthorized use of the company's cellular phone even outside the office premises, including the charging of her personal calls. Respondent admitted her habitual tardiness, alleging that "the hours lost due to my tardiness are over compensated."[17]

On September 28, 2004, petitioner formally terminated respondent's employment.[18]

On May 28, 2005, the Labor Arbiter (LA) rendered a decision[19] in favor of respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal of complainant to be illegal. Accordingly, respondents are ordered jointly and severally:

- To reinstate complainant to her former position without loss of seniority rights and other privileges;
- To pay complainant full backwages from time of dismissal which up to date amounts to P225,000.00 up to actual reinstatement;
- To pay complainant moral damages in the amount of P20,000.00;
- To pay complainant exemplary damages in the amount of P20,000.00; and
- To pay complainant attorney's fees equivalent to ten percent (10%) of the total award.

All other claims are denied.

SO ORDERED.

On appeal, the NLRC affirmed in to the decision of the LA in a decision[20] dated November 17, 2006. Petitioner filed a motion for reconsideration. However, the NLRC denied the same in a resolution[21] dated June 18, 2007.

Undaunted, petitioner elevated the case to the CA. On June 26, 2008, the CA rendered a Decision[22] reversing the decision of the NLRC. The fallo of the Decision reads:

WHEREFORE, premises considered, the assailed issuances of the NLRC dated November 17, 2006, and June 18, 2007, are hereby REVERSED and SET ASIDE. Petitioner is ORDERED to pay the private respondent the amount of P30,000.00 as nominal damages for non-compliance with statutory due process.

SO ORDERED.[23]

Aggrieved, respondent filed a motion for reconsideration. On April 7, 2009, the CA rendered an Amended Decision[24] reinstating the decision and the resolution of the NLRC with modification, the dispositive portion of the said Amended Decision reads:

WHEREFORE, the Motion for Reconsideration is GRANTED. The assailed Decision dated June 26, 2008 of this Court is REVERSED and SET ASIDE. The NLRC decision dated November 17, 2006 and resolution dated June 18, 2007, affirming the Labor Arbiter's decision, are REINSTATED with the MODIFICATION that should private respondent Teresa Arugay opt not to be reinstated, petitioner is ordered to pay her separation pay in the amount equivalent to one (1) month pay for every year of service, plus backwages from the date of her termination, minus Nine (9.00) pesos representing the amount for the three personal calls made by private respondent. The award for moral and exemplary damages and all other money claims, are DELETED for lack of sufficient basis.

SO ORDERED.[25]

Petitioner filed a motion for reconsideration, however, the CA denied the same in a Resolution dated September 2, 2009.

Hence, this petition.

The Issue

Whether respondent was illegally dismissed from employment by petitioner company.

The Ruling of the Court

In an illegal dismissal case, the onus probandi rests on the employer to prove that its dismissal of an employee is for a valid cause.[26] Petitioner dismissed respondent from employment because of alleged loss of trust and confidence due to tardiness and for using the company issued cellular phone outside the company premises and for her own personal use.

Loss of trust and confidence to be a valid ground for dismissal must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. Otherwise stated, it must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices, or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or a subterfuge for causes that are improper, illegal, or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee that must be established by substantial evidence.[27]

In this case, petitioner failed to prove that respondent's dismissal was for a valid cause. The CA committed no reversible error in issuing the Amended Decision upholding the illegal dismissal of respondent. The penalty of dismissal is not commensurate to the infraction committed by the employee. Based on the findings of fact by the LA, which were affirmed by the NLRC and the CA, respondent made only three (3) personal calls using the company - issued cellular phone, and the total cost of the said calls was Nine Pesos (P9.00). Respondent herself duly recorded the said personal calls on the company logbook so that the same could be charged to her personal account, which disproves the imputation of her dishonesty. On the alleged tardiness committed by respondent, the same is not grave as to merit respondent's dismissal from service, considering that if it was true that respondent had been habitually tardy for several months, petitioner would not have retained her services beyond the probationary period. The LA amply explained the unjustifiable dismissal of respondent in this wise, viz.:

This Office does not subscribe to the idea that complainant who is a manager should be dismissed for making three personal mobile phone calls worth P9.00, or for being late a number of times. Nor does this Office believe that complainant's act of taking outside of company premises a mobile phone in the pursuit of her office functions is an act of dishonesty. Complainant stated that she declared the three calls worth P9.00 in the company logbook before making the calls so that they can be charged to her personal account; That she was not aware of any existing company policy prohibiting the taking out of company premises the cellular phone (Annex "10"); That she was not furnished with a copy of the company's written policies (Code of Good Behavior) despite her repeated requests; That prior to accusations being made against her, she expressed the need for, and formalized a request for the requisition of cellular phones for each collector in the company and one for herself for official use as well as for personal calls, and management did not object; That she had rendered much overtime, including work on her rest day and holidays; and that the company's Executive Assistant expressed his high regard of complainant's performance before accusations were made against her.

Respondents failed to controvert these allegations, and they are therefore deemed admitted. The records confirm that there is no proof that a copy of respondents' company policies (Annex "A" of respondents' reply) was furnished to complainant prior to the alleged violations.

Respondents stated that complainant was "a grossly dishonest managerial employee and the epitome of what is classically called a 'bad example'..." If this was true, respondents could have easily dismissed complainant during the probationary period that ended a month before complainant was dismissed. But respondents did not.

Finally, a lesser penalty should have been imposed by petitioner company to respondent considering that she has no history of previous infractions. The penalty of dismissal is not commensurate to the violation committed by her. It bears stressing that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules, and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must always be commensurate to the offense involved and to the degree of the infraction.[28]

WHEREFORE, in view of the foregoing, the instant petition is hereby DENIED. The Amended Decision dated April 7, 2009 and the Resolution dated September 2, 2009 of the Court of Appeals in CA-G.R. SP No. 100227 are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Carpio,Peralta, Abad and Mendoza, JJ., concur.

[1]Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rebecca de Guia-Salvador and Mariflor P. Punzalan Castillo, concurring; rollo, pp. 112-117.

[2]Id. at 25-27.

[3]Id. at 204.

[4]Id. at 204-205

[5]Id. at 205.

[6]Id.

[7]Id.

[8]Id. at 98.

[9]Id. at 205.

[10]Id. at 98.

[11]Id. at 206.

The case was entitled, "Teresa Arguelles Arugay v. Sunrise Holiday Concepts, Inc., and/or Arch. Enrique O. Olanan (owner)." (Petitioner's Position Paper before the Arbitration Branch of the NLRC; id. at 52.)

[12]Id. at 99.

[13]Id. at 206.

[14]Id.

[15]Id.

[16]Id.

[17]Id. at 100;

[18]Id.

[19]Penned by Labor Arbiter Felipe P. Pati; id. at 176-184.

[20]Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; id. at 96-103.

[21]Id. at 104-105.

[22] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo; id. at 204-211.

[23]Id. at 211.

[24]Supra note 1.

[25]Id. at 116-117.

[26]Pepsi Cola Products Philippines, Inc. v. Santos, G.R. No. 165968, April 14, 2008, 551 SCRA 245, 252.

[27]School of the Holy Spirit of Quezon City v. Taguiam, G.R. No. 1645565, July 14, 2008, 558 SCRA 224-225, 231-232.

[28]Moreno v. San Sebastian-Recoletos, Manila, G.R. No. 175283, March 28, 2008, 550 SCRA 416,

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