

TPG CORPORATION (FORMERLY THE PROFESSIONAL GROUP PLANS, INC.), PETITIONER, V. ESPERANZA B. PINAS, RESPONDENT.

G.R. No. 189714. January 25, 2017

Ponente: REYES, J.

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REYES, J.:

This is a petition for review on certiorari[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated September 15, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 100609 which dismissed the petition for certiorari[3] filed by petitioner TPG Corporation (formerly The Professional Group Plans, Inc.) (TPG) after finding no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) when it held that respondent Esperanza B. Pinas (Esperanza) was illegally dismissed from service.

Facts of the Case

Esperanza was hired by TPG as Regional Manager for the Cordillera Administrative Region sometime in June 1992. As regional manager, she was responsible in the recruitment, training and development of complete manpower for all the branch operations, delivery of expected requirement on revenue collections and supervision of the branch operations.[4] In January 1995, she was promoted to the position of Territorial Sales Head (TSH) which required her to visit all the branches of TPG within her area of coverage.[5]

Due, however, to her long trips from one area to another, Esperanza was diagnosed in February 1996 to be suffering from scoliosis and spine deformity. As such, she requested for transfer[6] from TSH to Training Officer, which TPG later approved.[7]

On January 5, 1997, Ernesto Pinas (Ernesto), husband of Esperanza and Area Manager of TPG's Baguio branch office, held a training session wherein a review on product knowledge were given to 15 old and new district managers.[8] Also, Esperanza conducted a sales clinic and presented a review and analysis of past performances.[9]

To provide meals for the participants, Ernesto ordered budget meals from the NTC Employees Multi-Purpose Cooperative, Inc. (NEMPCI) amounting to P750.00.[10]

Sometime in January 1997, however, Emily Balleras (Emily), an employee of Esperanza's personal business, requested TPG's cashier, Freda Lawangen, for reimbursement of training expense in the amount of P2,100.00 as supported by official receipt and attendance sheet purportedly for the January 5, 1997 training session. Upon learning, however, of the release of the said amount, Esperanza was surprised and claimed that she was not aware of such claim.[11]

On February 12, 1997, a memorandum was issued by Atty. Joel Rufino A. Nunez, TPG's Assistant Vice President and Legal Counsel, charging Esperanza with gross violation of company policy by tampering official receipt. Accordingly, an investigation hearing and field investigation was conducted which led to the dismissal of Esperanza on May 30, 1991.[12]

Consequently, Esperanza filed a Complaint[13] on July 25, 1997 against TPG for illegal dismissal, overtime pay, premium pay for holiday, rest day and night shift, separation pay, and damages.

Ruling of the Labor Arbiter

In a Decision[14] dated November 9, 1998, the Labor Arbiter (LA) dismissed the complaint after finding that there was sufficient evidence to sever Esperanza's employment with TPG for loss of trust and confidence. The dispositive portion of the LA's decision reads:

WHEREFORE, premises considered, the above-entitled case is hereby DISMISSED for lack of merit.

All other claims are also dismissed.

SO ORDERED.[15]

Aggrieved, Esperanza on December 4, 1998 filed an appeal to the NLRC arguing that the LA erred in declaring that her dismissal was valid and in denying her monetary claims against TPG.[16]

Ruling of the NLRC

On May 7, 2003, the NLRC issued a Decision[17] setting aside the LA's Decision dated November 9, 1998 after finding that Esperanza was illegally dismissed by TPG. Records show that the alleged tampering was merely a mistake of switching receipt not attributable to Esperanza.[18] Likewise, the NLRC found that TPG failed to observe due process in terminating Esperanza's employment.[19] The dispositive portion of the NLRC's decision reads:

WHEREFORE, the appealed decision is set aside. Finding [TPG] to be guilty of illegal dismissal, judgment is hereby rendered directing the reinstatement of [Esperanza] to [her] position last held, or equivalent position, and to pay her full backwages from the date her salary was withheld from her up to her actual reinstatement; as well as attorney's fee equivalent to ten (10%) percent of the total award hereof.

Other claims are dismissed for lack of merit.

SO ORDERED.[20]

TPG filed a Motion for Reconsideration,[21] but the same was denied by the NLRC in a Resolution[22] dated July 4, 2007. TPG elevated the matter to the CA via a petition for certiorari.[23]

Ruling of the CA

On September 15, 2009, the CA issued a Decision[24] denying the petition and affirming the NLRC's finding of illegal dismissal. It opined that there was no cause for Esperanza's dismissal considering that it was not her who requested for the reimbursement of the expenses conducted during the training session held on January 5, 1997 but her personal secretary, Emily, who was not even an employee of TPG.[25]

The dispositive portion of the CA decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the petition for certiorari is hereby DENIED and accordingly DISMISSED and the decision and resolution of the [NLRC] dated May 7, 2003 and July 4, 2007[, respectively,] are AFFIRMED. "

SO ORDERED.[26]

Issue

Hence, the instant petition for review on certiorari based on the lone assignment of error:

THE HONORABLE [CA'S] DECISION DATED 15 SEPTEMBER 2009 IS CONTRARY TO LAW AND JURISPRUDENCE. THERE IS OVERWHELMING EVIDENCE CLEARLY AND SUBSTANTIALLY PROVING [ESPERANZA'S] INVOLVEMENT IN THE TAMPERING OF O.R. 0256 AND INTRODUCING SPURIOUS DOCUMENTS TO SUPPORT HER CLAIM FOR TRAINING EXPENSES ALLEGEDLY CONDUCTED ON 05 JANUARY 1997. HENCE, [ESPERANZA'S] DISMISSAL BASED ON [TPG'S] LOSS OF TRUST AND CONFIDENCE IS LEGAL AND VALID.[27]

In a Resolution[28] dated December 14, 2011, considering that Esperanza's current address could not be ascertained, the Court dispensed with the filing of her comment on the petition.

Ruling of the Court

To begin with, it bears stressing that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law. It does not extend to questions of fact.[29] This rule, however, admits of exceptions, such as in the present case, where the finding of facts of the LA is inconsistent with those of the NLRC and the CA.[30]

After a review of the records of the case, however, the Court upholds the findings of the NLRC, as affirmed by the CA, that Esperanza was illegally dismissed from her employment with TPG.

Esperanza does not occupy a position
of trust and confidence

Loss of trust and confidence as a ground for dismissal of employees covers two (2) classes of positions of trust. The first class involves managerial employees, or those vested with the power to lay down management policies; and the second class involves cashiers, auditors, property custodians or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[31]

Here, as correctly observed by the CA, Esperanza's employment as Training Officer, is not a position of trust and confidence. The relevant decision of the CA in part states:

The training of recruits to become the company's new sales representatives is not and can not be considered a delicate matter that would require the repose of trust and confidence. [Esperanza's] work is not directly related to management policies of her employer, [TPG]. [Esperanza] does not exercise discretion and independent judgment in training new recruits. In this light, we don't consider [Esperanza] a managerial employee. She is a rank-and-file personnel.[32]

In any case, even assuming, for argument sake, that Esperanza was holding a position of trust and confidence, records show that TPG failed to present substantial evidence as well as to clearly establish the facts of Esperanza's involvement in the alleged tampering of official receipts.

In a plethora of cases, the Court consistently held that dismissal of rank-and-file personnel for loss of trust and confidence, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal, albeit the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests.[33]

Esperanza's dismissal was not for a
just or valid cause

It bears stressing that in termination cases against employees, the burden of proof rests upon the employer to

prove that the dismissal of the employee is for just or valid cause.[34]

In the present case, records are barren of any evidence to show that Esperanza was in cahoots with Emily in the alleged receipt tampering as charged by TPG.

On the contrary, Emily's letter proved that Esperanza has no participation or involvement in the incident. As sufficiently explained by Emily in her letter,[35] she was the one who effected the switching of Official Receipt (O.R.) No. 256 of El Paso Restaurant bearing the amount of P2,100.00 with O.R. No. 150 issued by NEMPCI for the amount of P780.00. She claimed that O.R. No. 256 is for the personal account of Ernesto chargeable to spouses Pinas' personal business.[36] Moreover, Emily confirmed that Esperanza was not aware that she switched the two receipts and attendance sheets.[37]

Clearly, TPG relied on mere suspicions and uncorroborated reports in terminating the services of Esperanza. As convincingly found by the NLRC, the perpetrator of the incident was Emily, who openly admitted to her wrongdoing. The relevant portion of the NLRC's decision in part states:

[Emily] committed the mistake. She admitted the switching or alleged tampering of official receipts. Such admission is a declaration against her interest and we agree with [Esperanza] that a person would not readily admit to the commission of a wrongdoing if it is not true regardless of whether one has moral ascendancy to the others. In fact, [TPG's] cashier Ms. Lawangen affirmatively testified that [Emily] personally presented the questioned documents for reimbursement of the training expenses but was at fault for releasing the amount to [Emily] instead of first notifying [Esperanza] about it and despite the standing warning not to release any cash receivables to [Emily] but to release the same only directly to [Esperanza].[38]

Hence, as between TPG's general allegation of receipt tampering vis-a-vis the defense presented by Esperanza, as corroborated by several witnesses, the Court is persuaded by the latter. Absent a clear showing of an overt act proving that Esperanza was involved in the alleged incident, TPG's claim of receipt tampering cannot be sustained. Indeed, a cursory examination of the records reveals that TPG was liable for Esperanza's illegal dismissal.

Esperanza is entitled to separation
pay in lieu of reinstatement

Additionally, Esperanza is entitled to separation pay in lieu of reinstatement on the ground of strained relationship.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[39]

In several instances, the Court has ruled that reinstatement is no longer viable where, among others, the relations between the employer and the employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement, or where the employee decides not to be reinstated. In this case, the resulting circumstances show that reinstatement would be impractical and would hardly promote the best interest of the parties. Actual animosity between TPG and Esperanza existed between them as a result of the filing of the illegal dismissal case. Besides, Esperanza expressly prayed for an award of separation pay from the very start of the proceedings before the LA. By so doing, she forecloses reinstatement as a relief by implication.[40]

Following the pronouncement of the Court in *Sagales v. Rustan's Commercial Corporation*,[41] the computation of separation pay in lieu of reinstatement includes the period for which backwages were awarded:

Thus, in lieu of reinstatement, it is but proper to award petitioner separation pay computed at one-month salary

for every year of service, a fraction of at least six (6) months considered as one whole year. In the computation of separation pay, the period where backwages are awarded must be included.[42] (Citations omitted)

In sum, Esperanza is entitled to both backwages and separation pay, in lieu of reinstatement, in the amount of one (1) month salary for every year of service to be computed from the date of her employment contract until the finality of this Resolution, with a fraction of at least six (6) months to be considered as one (1) whole year.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is DENIED. The Decision dated September 15, 2009 of the Court of Appeals in CA-G.R. SP No. 100609 is hereby AFFIRMED with MODIFICATION to the effect that, instead of reinstatement, TPG Corporation (formerly The Professional Group Plans, Inc.) is directed to pay Esperanza B. Pinas separation pay equivalent to one (1) month salary for every year of service from June 1992 until finality of this Resolution and backwages counted from May 30, 1997 until finality of this Resolution. In addition, legal interest shall be imposed on the monetary awards granted at the rate of six percent (6%) per annum from May 30, 1997 (date of termination) until fully paid.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Jardeleza, and Caguioa,[*] JJ., concur.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on January 25, 2017 a Resolution, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on February 10, 2017 at 2:00 p.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

[*] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

[1] Rollo, pp. 3-51.

[2] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Juan Q. Enriquez, Jr. and Francisco P. Acosta concurring; id. at 55-67.

[3] Id. at 336-380.

[4] Id. at 56.

[5] Id. at 110.

[6] Id. at 68.

[7] Id. at 56.

[8] Id. at 111.

- [9] Id. at 161.
- [10] Id. at 57.
- [11] Id.
- [12] Id. at 58.
- [13] Id. at 94.
- [14] Rendered by Labor Arbiter Monroe C. Tabingan; id. at 158-167.
- [15] Id. at 167.
- [16] Id. at 168-190.
- [17] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Seneres concurring; id. at 256-267.
- [18] Id. at 262.
- [19] Id. at 264-266.
- [20] Id. at 266-267.
- [21] Id. at 290-311.
- [22] Id. at 331-335.
- [23] Id. at 336-381.
- [24] Id. at 55-67.
- [25] Id. at 63-64.
- [26] Id. at 66.
- [27] Id. at 29.
- [28] Id. at 818.
- [29] *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 256 (2006).
- [30] *Nasipit Lumber Co. v. National Organization of Workingmen (NOWM) and its 30 members*, 486 Phil. 348, 360 (2004).
- [31] *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008).
- [32] Rollo, p. 62.
- [33] *Lima Land, Inc., et al. v. Cuevas*, 635 Phil. 36,48-49 (2010).
- [34] *Philippine Transmarine Carriers, Inc. v. Carilla*, 552 Phil. 652, 661 (2007).
- [35] Rollo, p. 77.
- [36] Id. at 263.
- [37] Id. at 64.

[38] Id. at 263.

[39] Bank of Lubao, Inc. v. Manabat, et al., 680 Phil. 792, 801 (2012).

[40] See DUP Sound Phil., and/or Tan v. CA, et al., 616 Phil. 472, 484-485 (2011).

[41] 592 Phil. 468 (2008).

[42] Id. at 484.

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