

DIWA ASIA PUBLISHING, INC. AND SATURNINO BELEN, PETITIONERS, V. MARY GRACE U. DE LEON RESPONDENT.

G.R. No. 203587. August 13, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

This is a petition for review[1] under Rule 45 of the Rules of Court filed by petitioners Diwa Asia Publishing, Inc. (Diwa) and Saturnino Belen, assailing the Decision[2] dated July 2, 2012 and the Resolution[3] dated September 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 99055, which reversed and set aside the Decision[4] dated November 29, 2006 and the Resolution[5] dated February 28, 2007 of the National Labor Relations Commission (NLRC) in NLRC NCR 06-07521-04 (CA No. 046593-05) which, in turn, affirmed the Decision[6] dated October 7, 2005 of the Labor Arbiter (LA) in NLRC NCR Case No. 06-07521-2004 dismissing the complaint filed by Mary Grace U. De Leon (respondent) for constructive dismissal.

The Facts

Diwa Learning Systems, Inc. (DLSI) is a subsidiary of Diwa.[7] It is part of a conglomeration of companies that include First Asia Ventures Company, Inc. (FAVCI) and Fastech Advanced. Assembly, Inc. (Fastech).[8] Petitioner Saturnino Belen[9] is the Chairman of Diwa's Board of Directors.[10]

Respondent was invited to join Fastech, but was not eventually hired due to a freeze order against the corporation. Gemma P. Asuncion (Asuncion), then Vice-President (VP) of Fastech, endorsed her to Diwa.[11]

Respondent was subsequently hired by DLSI and began working as its Human Resource (HR) Manager on August 2, 2001, becoming a regular employee on February 2, 2002. Although her contract was under DLSI, her work encompassed handling the HR Department of the other companies in the conglomeration.[12]

On June 23, 2004, respondent filed a Complaint against petitioners for constructive dismissal, docketed as NLRC NCR Case No. 06-07521-2004.[13]

Respondent's Averments

According to respondent, in March 2002, the employment status of Jayde Salvan (Salvan), an editor who had been working for Diwa for two (2) continuous years, was converted into "contractual status for the sole reason of 'incompetence.'" As HR Manager, she gave her opinion on the matter. The management found her opinion unacceptable and even construed it as an insult. From then on, her working relationship with the company turned sour. The management even made imputations that she took part in inciting employees to file labor cases against Diwa.[14]

In July 2003, respondent was informed that the FAVCI Executive Director for HR, Asuncion, would forthwith be regularly present in the former's office to provide guidance for six (6) months in the management of employees which was then perceived as pro-labor. On August 11, 2003, Asuncion informed respondent that the former

would assume the position of Diwa's President, Amada J. Javellana (Javellana), as her immediate supervisor. However, the company's hierarchical structure showed that she was under the supervision of no officer other than the President, and such was the situation for the past two years, before the incident involving Salvan.[15]

Respondent perceived that she was being demoted as Asuncion instructed her to submit all work and decisions, which she previously had the liberty to handle and make, for Asuncion's review and evaluation.[16]

Respondent nonetheless carried on with her job but management remained hostile towards her, blowing even the smallest issue out of proportion, faulting her for situations she had nothing to do with or beyond her control, and giving her directives which management would later deny.[17] Furthermore, she was unfairly accused of failing to properly perform her job, bypassed in important HR-related decisions, berated in front of her staff, and held accountable for the mistakes of others. These incidents are allegedly well-outlined in the exchanges of electronic mails (e-mails) among Asuncion, respondent and other parties. Respondent also averred that Asuncion would shout at her and would more often than not give sarcastic comments for everything she did and said.[18]

In support of her claim of a hostile and unbearable work environment, respondent submitted the affidavit of one Mary Grace A. Lusterio (Lusterio), a former Diwa employee.[19]

On October 2, 2003, while respondent was on a five (5)-day authorized sick leave, Mary Ann Noreen Dulig (Dulig), Fastech's Compensation and Information System Manager, was assigned to Diwa's HR Department to help respondent with the completion of the job evaluation. When respondent returned and even after the job evaluation was completed, Dulig continued to be involved in, and performed, respondent's tasks.[20]

Respondent also claimed that Javellana tried to give her a failing mark in her performance appraisal for June to December 2003. On March 15, 2004, Asuncion advised her that the management wanted her out because things were "not working out," but it was willing to give her separation pay. She rejected the offer, convinced she did nothing to warrant the termination of her employment. Asuncion then told respondent that she could go on vacation leave to think about the management's offer, but respondent declined.[21]

On March 15, 2004, respondent learned that the management was willing to give her P75,000.00 as separation pay, but because it did not give any justifiable reason to sever her employment, she continued to work as HR Manager even as she experienced cold treatment and verbal abuse from the management. In April 2004, she was bypassed when the company decided to terminate the employment of two employees.[22]

On May 7, 2004, Asuncion once again made an offer of separation pay, this time in the amount of P150,000.00, the additional P75,000.00 to be taken out of her own pocket, but respondent still refused to quit her employment.[23]

On June 22, 2004, she was informed by Dulig that Asuncion would like to discuss some matters with her and an IT personnel. When she arrived in Asuncion's office, nobody else was around except for Asuncion who had been reading a list of names on her laptop. As respondent could not recall all the names of the applicants set for interview, she leaned close to the laptop to have a clearer view of the screen. Finding the letters too small, she intimated to Asuncion that she could not read the names. Asuncion, however, rudely shoved the laptop to her and in an angry and high-pitched tone said, "O sige, eto! Eto! Tingnan mo!" As she could no longer stand the situation, she left the room while Asuncion angrily shouted for her to come back, saying that her act amounted to insubordination. The following day, respondent filed her complaint.[24]

Petitioners' Counter-Averments

Petitioners countered that respondent was dismissed for cause, i.e., for her unauthorized absences from June 23,

2004 to August 6, 2004, effective August 7, 2004.[25]

Petitioners argued that the e-mails submitted by respondent did not prove a hostile attitude of management towards her. They described the communications as mere replies to queries, opinions, advice, instructions, comments and a few reprimands couched in mild terms in response to respondent's oversight in the course of her work as HR Manager. They asserted that the occasional reprimands should be viewed as constructive criticisms that came with respondent's position which commanded great responsibility.[26]

Petitioners denied that respondent was demoted when Asuncion became her supervisor as the latter held a higher position in FAVCI and, in the exercise of management prerogative, was merely seconded to Diwa to improve its HR's functions. They further averred that respondent was never relegated to a lower position or suffered a diminution of benefits.[27]

Petitioners explained that Dulig was assigned to assist in the job evaluation project in Diwa because of her similar work experience in Fastech. She never performed any of respondent's tasks and was made to assume the functions of the HR Manager only after respondent left the company.[28]

Petitioners offered a different account of the incidents cited in Lusterio's affidavit, indicating that Lusterio's attack on Asuncion was too personal as to indicate that she had an axe to grind against the latter.[29]

Petitioners denied that Asuncion shoved her laptop to respondent on June 22, 2004, alleging that Asuncion merely turned the laptop "fronting" respondent so the latter could have a better view of the screen.[30]

Petitioners also denied offering monetary consideration to respondent.[31] According to petitioners, following the management's evaluation of her performance, respondent became overly sensitive, with a propensity to blow issues out of proportion. Her hostile attitude towards her work and co-employees affected the discharge of her functions, prompting Asuncion to call her to a meeting to discuss these problems.[32]

During their conversation, respondent claimed that it had become difficult and unbearable for her to work in such a hostile environment. Asuncion confirmed to her that the company was also not happy with her performance but reassured her that the comments on her were not meant as a direct and personal attack, but as an objective and well-meaning assessment of the problems besetting her department. When respondent insisted that she would not tolerate the hostile work environment, Asuncion told her that since both parties were no longer happy, parting ways was always an option.[33]

Respondent then told Asuncion to make her an offer. After Asuncion advised respondent to evaluate her financial requirements, respondent quoted the amount of P300,000.00 to represent her guaranteed salary up to the end of the year as she expected that it would not be easy to find another job. Asuncion told her that there was no basis for the amount as respondent merely speculated that her employment had been intolerable. Asuncion, however, stated that she could give respondent something from her personal funds as she felt "morally responsible" for the fact that respondent resigned from her previous job after she invited the latter to join Fastech but was not hired for economic reasons.[34]

Asuncion eventually informed respondent that the management refused to accede to her demand. From then on, respondent became even more defensive when dealing with the management.[35]

On June 23, 2004, respondent took flight from the office and no longer reported for work.[36]

Ruling of the LA

On October 7, 2005, the LA dismissed respondent's complaint for constructive dismissal for lack of merit.[37] She sustained petitioners' argument that if negative feedbacks and reprimand were a form of harassment, an

employer would virtually be powerless to call the attention of and correct their officers.[38]

Ruling of the NLRC

Respondent's appeal, docketed as NLRC NCR 06-07521-04 (CA No. 046593-05), was initially granted in the NLRC Decision[39] dated August 22, 2006, the dispositive portion of the Decision reads:

WHEREFORE, premises considered, the decision under review is hereby REVERSED and SET ASIDE, and another entered, declaring the complainant ILLEGALLY DISMISSED from her employment.

Accordingly, respondent Diwa Asia Publishing, Inc. is ordered to pay the complainant FULL BACKWAGES from June 23, 2004 up to the finality of this decision, and SEPARATION PAY at the rate of ONE MONTH for every year of complainant's service from August [2], 2001 until finality of this decision.

SO ORDERED.[40] (Citation omitted)

Petitioners sought reconsideration[41] and on November 29, 2006, the NLRC rendered another Decision[42] which set aside its August 22, 2006 ruling and affirmed the LA's dismissal of the complaint.[43] Respondent's motion for reconsideration[44] was denied in the NLRC Resolution[45] dated February 28, 2007.

Ruling of the CA

Respondent elevated the case to the CA via a petition for certiorari, docketed as CA-G.R. SP No. 99055, which was granted in the assailed Decision[46] dated July 2, 2012, the dispositive portion of the Decision reads:

WHEREFORE, premises considered, the present petition is hereby GRANTED. Accordingly, the assailed Decision of the NLRC dated 29 November 2006 is hereby SET ASIDE and its earlier Decision dated 22 August 2006 is ordered REINSTATED.

SO ORDERED.[47]

In a Resolution[48] dated September 20, 2012, the CA denied petitioners' motion for reconsideration for lack of merit. The CA ratiocinated that:

[T]he evidence submitted proving the hostility brought about by the SALVA issue, the [respondent's] humiliation by ASUNCION as corroborated by the sworn statement of [respondent's] co-employee, the offer of separation pay to the [respondent], the conversation threads in the electronic mails of the parties involved, the disregard of the [respondent's] input in effecting policies despite being the human resource manager, and [petitioners'] allegation that the [respondent] abandoned her work, without proving the requirements set forth by law and jurisprudence, all point to no conclusion other than that reached in the NLRC Decision dated 22 August 2006.[49]

Hence, this petition, grounded on the following arguments: (1) the issuance of communications to reprimand and/or correct an erring employee forms part of the employer's management prerogatives and is not tantamount to harassment, let alone illegal dismissal; and (2) the award of backwages should be deleted, if not minimized, given the company's good faith, or adjusted since, because of the fire that gutted the CA's records, said amount has ballooned through the years before the case could be resolved.[50]

Ruling of the Court

The petition lacks merit.

"[C]onstructive dismissal [is] a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee." [51] It is an act

amounting to dismissal but made to appear as if it were not. In other words, it is a dismissal in disguise.[52]

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[53] Considering the facts of this case, the Court agrees with the CA that respondent was constructively dismissed.

Asuncion's e-mails

We begin with the e-mails received by respondent from Asuncion. Petitioners would have this Court believe that they were mere replies, instructions and comments couched in "mild terms," to be viewed as constructive criticisms, but the communications, both as to language and tone, indicate a pattern of fault-finding and nitpicking, and an attitude of disdain. The correspondence between respondent and Asuncion also reveals that Asuncion had purposely left respondent out on HR matters.

When respondent at one time e-mailed a project manager, copy furnished (cc) Asuncion and others, Asuncion directed her to observe proper protocol by discussing the matter with her first because the project manager was also a VP of the company and respondent was merely a manager.[54] When respondent explained that she communicated directly to the VP as project manager because it was agreed in a meeting that all project concerns should be addressed directly to the latter to ensure swift response,[55] Asuncion replied by accusing her of simply "quibbling," thus:

JTT is a VP no matter what project he undertakes. Being called a Change Manager is just a nomenclature. He is VP by virtue of his employment contract. You are quibbling Grace.

He is a VP therefore it should only be proper that you raise whatever concern you may have to your immediate superior instead of addressing it to him. If time was a consideration then all you had to do was pick up the phone and call me which you prefer not to do nowadays – you ask your staff to ask me.[56] (Emphasis ours)

Answering the foregoing e-mail, respondent reiterated that it had been understood that anyone could go directly to the project manager, adding that:

In fact, it was also discouraged to pass the concerns from one person to another as JDE is time bounded. That's what others did before and there was no issue about it. After all, that was the primary reason why the position of Change Manager was established.

On your remarks that I prefer not to call you nowadays and I asked my staff to call you directly instead:

My staff were wondering why you sent and addressed your e-mail to them and not to me, not even a cc, which you usually do. Specifically, after we talked of your offer of separation, which left me uncertain (until this time, I have not received any updates from you), I allowed my staff to go directly to you instead.

Honestly, communicating with you has become rather awkward. We are both from HR, and as colleagues so we should be more better [sic] in our remarks. It does no good to hear blunt and insensitive criticisms, instead of constructive ones.

I have no other purpose writing this reply but for clarification. I just hope that this would be taken in good light.[57] (Emphasis ours)

Five days before the May 10 elections of 2004, respondent submitted to Asuncion a draft of a memorandum regarding the "May 10 holiday," telling her that she had been hanging on to said draft until the right announcement from Malacañang on whether it would be a legal or special holiday and indicating that HR had just inquired with Malacañang but still received no update. In response, Asuncion faulted her, first for not indicating her name, and then for submitting the memorandum knowing that it might be wrong, telling her to be more

resourceful and proactive by checking the DOLE or Malacanang's website and to ask HR practitioners.[58] Respondent consequently replied that HR had in fact made the inquiries, thus:

Yesterday, DOLE referred us to Malacañang. Up to this time, Malacañang has no declaration about the May 10 holiday. Also yesterday, I inquired to [sic] a number of HR practitioners. Likewise, they have no exact information. Despite the lack of announcement, others already declared May 10 as a special holiday, and others are still waiting for the exact announcement.[59]

Interestingly, petitioners, in arguing that Asuncion's comments were a mere reaction to respondent's alleged failure to properly discharge her duties, omitted to indicate the above-quoted e-mails in their petition.

On another occasion, Asuncion faulted respondent for not submitting two assigned tasks on time. In reply, respondent "beg[ged] to disagree" and forwarded to Asuncion the work she previously e-mailed, asking her to note that the tasks were submitted to her on the due date.[60] Despite this, Asuncion insisted that respondent did not meet the deadline and accused respondent of "quibbling." Asuncion wrote:

I am the sole recipient. I did not receive it.

As long as there is no proof that you sent it then you are considered not in compliance with the Monday deadline.

Let us avoid quibbling since there is no proof that you sent it. Just begging to disagree is not enough.[61]

It has not escaped this Court's attention that once again, petitioners failed to indicate in their petition material portions of the e-mail thread, particularly the e-mails respondent forwarded to correct Asuncion's claim that she failed to meet the deadline.[62]

We also note of another task assigned by Asuncion to respondent for accomplishment on a particular date, June 15, 2004. The petition itself shows that respondent e-mailed the assignment - a draft-memo on the attendance of managers and supervisors - on June 15, 2004 for Asuncion's review. This notwithstanding, Asuncion claimed that the draft was given one day late.[63]

On yet another occasion, Asuncion faulted respondent for not submitting her performance appraisal form, prompting respondent to point out that she had in fact e-mailed the form the day before.[64]

At one point, too, Asuncion admonished respondent for delay in the submission of an assigned work. Respondent explained that she had e-mailed her work on time but discovered the next day that her e-mail had remained in her Outbox. Upon such discovery, she re-sent the e-mail to Asuncion and asked another HR personnel, "Cholet," to do the same on her computer to be sure that it was delivered. The same HR personnel, according to respondent, saw that her message to Asuncion had still been in her Outbox.[65] Respondent's explanation, however, merited the following response from Asuncion:

Well, what can I say? Again, you have an excuse.

But it is not acceptable. You know why? I suggest you go through a briefing with IT regarding email use. If the message is in your Outbox and you turn your PC off then there is no way that the message will be sent. I am assuming that you turned your PC off because we have a rule on leaving PCs turned on.

Do you have to be told to wait for the message to pop up in your Sent Items to ensure that it was indeed sent? If yes, then I may have erred in assuming that you know how to use the email.

Consider this a warning for not complying with a deadline. Please review how to use your email.[66]

Not content with the foregoing reproof, Asuncion added:

P.S. I have to cc Cholet since you told me that she has been assigned to handle Records. I want this filed in your 201 file.[67] (Emphasis ours)

There was also the instance where Asuncion e-mailed respondent, faulting her for proceeding with the Job Evaluation without having the managers accomplish the Role Clarification. As it turned out, however, Asuncion had sent an e-mail advising respondent to go on with the job evaluation even without the role clarification requirements.[68]

Furthermore, when an HR consultant e-mailed respondent, cc Asuncion and other Diwa officers, in part thanking respondent for "following up the slotting of non-benchmark positions" and setting a revised timeline for the submission of evaluation forms,[69] Asuncion sent the following e-mail to respondent:

I find Ethel's email funny. Are you giving her the impression that you are just supposed to follow it up with me? Well, if this is true then we really have a problem. Me, and especially you are "owners" of this project together with Mads and the DIWA officers. I think you better correct this impression asap.

On the non-benchmark positions, please send me an update. How many are still pending? And, please do not tell me that you are conducting an orientation or taking a break or have to go home early. LFL and RMC said that they have already submitted everything. Try to email the update within today. Let us discuss the details tomorrow.[70]

Asuncion's e-mail prompted respondent to reply:

Regarding Ethel's email to you following up the slotting of the non-benchmark positions, I have not in any way given her the impression that you will be providing me or her with the evaluation forms. She was advised by AJJ that you will be handling the slotting of the non-benchmark position, thus her constant emails to you for updates. I have also forwarded her emails to you as requested by her for reasons that her emails bounced back or that she has not been receiving replies from you.

Furthermore, Ethel is also aware that I am the one following-up the submission of the evaluation forms from all the officers. In fact, I have already submitted the forms of six departments to her yesterday, Oct. 2. I will be sending you exchange of emails for your information.

If there are still other concerns that need further clarifications, I would be more than willing to discuss them in a meeting at your convenience.[71]

On another occasion, Asuncion faulted respondent for sending her the same e-mail twice with different attachments. It turned out, however, that respondent had been having difficulty with her computer and the IT technician erroneously attached the wrong file to her first e-mail. Respondent sent an SMS message to Asuncion precisely to inform her of the mistake and subsequently e-mailed the correct attachment. Asuncion, however, saw only the mistake, admonishing respondent and asking her which attachment was correct, despite the latter's prior notice and rectification.[72]

Records also show Asuncion admonishing respondent for not requiring an approved "MRF" for certain manpower requests, writing:

And, what is the remark, "as we have thought that all of ELR's manpower requirements are urgent" for? All manpower requirements are deemed important and urgent. But there should always be an approved MRF. It has to start with you.[73] (Italics in the original)

Asuncion's prior e-mail, however, clearly indicated that HR need not wait for an MRF for critical positions:

Treat like RSS. There should be qualified applicants available all year round. We should not wait for an MRF since it is a critical position.[74]

Furthermore, when respondent made a recommendation of penalties which did not sit well with Asuncion, the latter sent her the following e-mail:

Please. Are you not from HR? What would be the basis for the reprimand? Is it reasonable to reprimand the employee for failing the exams? What did the employee violate?

I hope I have triggered something in your thought process. Please review your recommendation again.[75]

Notably, the penalty of reprimand was itself suggested by a VP of Diwa.[76]

Even when respondent has shown initiative at work, Asuncion could not contain her sarcasm, stating in her e-mail: "Initiative is good. But it seems not worth highlighting." When respondent correctly pointed out an error in the payroll adjustment, Asuncion retorted: "Yup. You are right. Finally, you are able to contribute." [77]

Petitioners' efforts to discredit respondent are at once apparent in the foregoing e-mails. They are made even more evident by petitioners' selective reference to the e-mail correspondence between Asuncion and respondent. The above-cited circumstances clearly depict an atmosphere of "open disdain and hostility" [78] towards respondent, which is further established by the Affidavit [79] of respondent's co-employee, Lusterio, who corroborated respondent's assertion that the management made work difficult and unbearable for her.

Lusterio's Affidavit

Lusterio, who cited three specific instances of mistreatment, prefaced her Affidavit [80] by stating that there were other instances when Asuncion berated respondent in front of her or others; that she knew how difficult it was for respondent to bear everything that Asuncion was doing to her; and that Asuncion had been "cruel" to them.

Lusterio described an incident where Asuncion accused respondent of engaging the services of an online job posting site (Jobstreet) without her knowledge. At the meeting where Asuncion made the accusation in Lusterio's presence, respondent tried to explain to Asuncion that she approved the engagement, but Asuncion refused to listen and interrupted respondent's every sentence, telling respondent that she was a liar. Lusterio attested that Asuncion had, in fact, given her approval and even revised Diwa's posting format and approved the positions to be posted. [81]

At another time, said Lusterio, Asuncion accused her and respondent of giving Diwa's password to Jobstreet to an outsider. Asuncion also faulted respondent for posting a vacancy for a Magazine Editor and for publishing the wrong job requirements on the site. Lusterio and respondent denied disclosing the password to an outsider. Respondent also explained to Asuncion that she had e-mailed her approval of the posting, but Asuncion retorted: "wala kang pinadadala sa akin! And don't tell me that you don't know what's going on to [sic] your department! You always twist the story!" Respondent tried to explain herself once more but Asuncion interrupted her and instructed Lusterio to submit incident reports regarding the password and the job posting. Lusterio conferred with Jobstreet on the password and in her incident report explained that anyone could have seen the online posting as Jobstreet's website was open to the public. Lusterio also reported that she had, in fact, seen Asuncion's e-mail approving said posting. [82]

The third incident Lusterio described took place in the company's get-together party. Respondent was tasked to give away the raffle prizes but the singing contest had taken a long time to finish. Respondent told Lusterio that she would just go to the comfort room to urinate. Respondent had been gone for about six minutes when the singing contest ended and the host called on her to do the raffle. When respondent returned, Asuncion was already announcing the winners of the raffle. When the raffle was over, Asuncion approached respondent asking why she was nowhere to be found. Respondent apologized and told Asuncion that she had gone to the comfort room, but the latter berated respondent in front of Lusterio and other employees, telling her "next time pigilan mo pag punta

mo sa CR." [83]

Petitioners argue that Lusterio was not credible because she supposedly had an axe to grind against Asuncion. The Court does not agree.

Lusterio had been forthright in stating in her Affidavit that she resigned from Diwa because of Asuncion whom she described as a "liar," a "back-passer" and "cruel." Her statements, however, cannot be discredited simply for this reason. The Court notes that Lusterio's Affidavit was based on her own knowledge of the incidents she described, having personally witnessed them. Asuncion, in her own Affidavits, did not deny that Lusterio was privy to these incidents or that she was present during the meetings alluded to. Furthermore, the Court notes that Lusterio's statements, which were made under oath, were replete with consistent and positive details which were not substantially refuted by Asuncion.

As regards the engagement of Jobstreet, Asuncion, in her October 20, 2004 Affidavit, [84] claimed that she was merely clarifying some details with respondent in her e-mail, but she never particularly denied that her meeting with respondent and Lusterio took place or that she behaved towards respondent in the manner described by Lusterio.

Anent the password and online posting issues, Asuncion did not deny that she accused respondent and Lusterio of improperly disclosing their Jobstreet password to an outsider. While Asuncion denied berating respondent, claiming she merely told her and Lusterio that they could all just move on and learn from their mistake, the Court notes that Lusterio had particularly mentioned receiving Asuncion's instruction to submit separate explanations or incident reports on the password and posting issues – a claim Asuncion never specifically denied. Requiring such incident reports seems antithetical to the idea of simply moving on.

Asuncion averred that she did not shout at or berate respondent during the get-together party and that she used a requesting tone when she told respondent: "Kung pwede next time pigilan mo muna ang paninigarilyo mo at least while the awarding is going on." According to her, respondent was nowhere to be found every time she would look for her, and other employees informed her that respondent was smoking by the comfort room (CR). She claimed that she must have spoken at the top of her voice considering that the music was being loudly played at the time. The Court notes, however, that even as Asuncion claimed that "other employees told [her] that [respondent] was near the CR puffing a cigarette," petitioners submitted no corroborating statement from any of them.

"In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and actions were for valid and legitimate grounds." [85] "[Petitioners] must not rely on the weakness of [respondent's] evidence but must stand on the merits of [their] own defense." [86]

Absent convincing evidence showing any cogent reason why Lusterio should falsely testify, her testimony may be accorded full faith and credit. Besides, in judging the legality of an employee's dismissal, proof beyond reasonable doubt is not required. Neither is preponderance of evidence expected. It is sufficient that the finding of illegal dismissal is established by substantial evidence which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. [87]

The talk about separation

Petitioners averred that in a conversation with respondent, Asuncion acknowledged that the company was no longer happy with respondent and suggested parting ways. [88] By respondent's account, however, the conversation dealt with not just an option to leave but "management's decision of [her] separation from the company." [89] In either case, petitioners evidently preferred that respondent no longer worked for Diwa. Whether

or not there was in fact an offer of separation pay which respondent refused, it is clear that respondent had then chosen to stay. These circumstances, when viewed alongside petitioners' open disdain and hostility towards respondent, confirm that petitioners had been impelled by a desire to ease her out of employment.

Dulig's work at Diwa's HR

The Court also notes respondent's claim that when assigned to Diwa's HR, Dulig was performing functions that properly belonged to her as HR Manager, including representing HR in company meetings and handling the separation of Diwa employees.[90] Petitioners deny this, saying that even the HR staff could attest that Dulig was not discharging respondent's duties.[91] Curiously, however, not one testimony from such employees has been produced by petitioners. Not even a statement from Dulig herself was presented to directly refute respondent's claim. The absence of such corroborating statements despite the facility with which they could have been obtained, as well as petitioners' professed dissatisfaction with respondent, and the fact that Dulig assumed the position of HR Manager shortly after respondent left[92] serve to lend credence to respondent's assertion that petitioners placed Dulig in Diwa's HR Department to carry out functions pertaining to her position.

Respondent's demotion

Respondent was excluded from important HR decisions which she was expected not only to be privy to, but also to have a say in, by virtue of her position in the company.

Records show that petitioners made the decision to terminate the services of two (2) employees, Sheila Montemayor and Elline Pereys, without respondent's knowledge or participation.[93] The Court cannot sustain petitioners' claim that respondent's act of signing the Notice of Termination and her execution of affidavits for submission in the labor case, subsequently filed by said employees, constitute proof that she was given "substantial participation" and was aware of the facts and issues surrounding the termination.[94] Said actions were undertaken after the management already reached its decision to terminate.

The signing or issuance of the Notice of Termination was thus a ministerial function that simply conveyed said decision; it does not establish that respondent took part in the deliberation. In the same vein, respondent's execution of the affidavits does not by itself prove that she had been part of the decision-making process. In fact, petitioners have not pointed to any statement therein indicating that respondent had been involved or consulted pre-termination. For all petitioners' assertions that respondent knew of the facts and issues surrounding the termination, they never categorically declared that she was included in the deliberation. Besides, mere knowledge of such facts and issues does not equate to involvement in the decision as it could have been derived from records or secondhand information.

When Diwa subsequently considered and decided to terminate the services of two (2) more employees, respondent was once again excluded. This is clear from the following e-mail correspondence[95] between Asuncion and respondent.

Respondent wrote:

Re: Termination of:

Serrano, Jacqueline- November 17, 2003 (Probi)

Nicolas, Nicole- November 01, 2003 (Probi)

Both employees were terminated.

Jacqueline approached me this morning and asked if HR was aware of her termination and its procedures. Since I really have no idea and such was not discussed with me, I simply answered "no" and advised her to talk

to HVS, her supervisor, instead, FYI.[96] (Emphasis ours)

To this e-mail, Asuncion replied:

I am aware of it Grace and so is EAC. It seems that Meng preferred to just discuss it with the 2 of us.

So technically, someone in HR is aware of it. Not you, personally. You may want to check with Cholet the copies of the termination letter Meng gave her for filing in the 201.[97] (Emphasis ours)

Respondent e-mailed back to say:

It is not really a surprise, Miss. It's just an FYI anyway.[98] (Emphasis ours)

to which Asuncion's responded:

You just need to be careful about the statement that you issue.

Based on your email, her question was, "Is HR aware of it?" and that you said no.

Maybe it would have been better if you answered that you are not aware of it personally. And that you will check if I or any other employee in HR is aware of it. Or, simply say that you will look into it because you do not have personal knowledge of it.

Just a suggestion.[99] (Emphasis ours)

Respondent has likewise submitted evidence in the form of e-mails from Asuncion showing that although her job designation remained the same, she was relegated to performing mundane or clerical tasks such as preparing drafts of termination notices based on a standard format and ensuring that the last pay of employees was released and that termination notices were received by the Department of Labor and Employment.[100] As this Court previously held:

There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity.[101]

The reduction in respondent's duties and responsibilities as HR Manager amounted to a demotion that was tantamount to constructive dismissal.[102]

The laptop-shoving incident

Respondent averred that Asuncion shoved her laptop to her when she leaned to have a better view of the screen. Petitioners denied this, explaining that Asuncion merely turned the laptop "fronting" respondent. Petitioners' explanation, however, is unsupported by any testimony or evidence. Asuncion notably executed no less than two affidavits[103] but neither contained petitioners' version of the incident. In the calibration of evidence, petitioners' bare denial cannot outweigh respondent's sworn account. Respondent also filed her case for constructive dismissal the day after the incident took place, which further persuades this Court to believe that it was of such gravity as respondent described it to be.

The above-cited circumstances indubitably present a hostile and unbearable working environment that reasonably compelled respondent to leave her employment. Respondent, therefore, was constructively dismissed.

Granting, as petitioners claimed, that respondent's performance had been deficient or unsatisfactory, the management's actuations cannot be excused. As this Court previously held, no employee should be subjected to constant harassment and ridicule on the basis of management prerogative or even for poor performance at work.[104]

The CA's award of full backwages and separation pay is sustained. Under Article 279[105] of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Furthermore, inasmuch as reinstatement is no longer feasible given the strained relations between petitioners and respondent, the award of separation pay equivalent to one (1) month's salary for every year of service was just and reasonable as an alternative to reinstatement. As this Court previously held:

[O]ver and again, this Court has recognized that strained relations between the employer and employee is an exception to the rule requiring actual reinstatement for illegally dismissed employees for the practical reason that the already existing antagonism will only fester and deteriorate, and will only worsen with possible adverse effects on the parties if we shall compel reinstatement; thus, the use of a viable substitute that protects the interests of both parties while ensuring that the law is respected.[106]

Both the separation pay and backwages shall be computed up to the finality of the decision as it is at that point that the employment relationship is effectively ended.[107]

Respondent's backwages shall be paid with interest at twelve percent (12%) per annum from June 23, 2004 to June 30, 2013 and at six percent (6%) per annum from July 1, 2013 until their full satisfaction.[108] Her separation pay, in lieu of reinstatement, shall earn interest at six percent (6%) per annum from the finality of this Decision until full payment.[109]

Backwages are aimed to replenish the income that was lost by reason of the unlawful dismissal.[110] Together with the remedy of reinstatement, they make the dismissed employee whole who can then look forward to continued employment, thereby giving meaning and substance to the constitutional right of labor to security of tenure.[111] For this reason, the Court cannot sustain petitioners' argument that the award of backwages must be reduced owing to the period spent in reconstituting the CA's records of the case. In *Reyes v. NLRC, et al.*, [112] the Court held:

One of the natural consequences of a finding that an employee has been illegally dismissed is the payment of backwages corresponding to the period from his dismissal up to actual reinstatement. The statutory intent of this matter is clearly discernible. The payment of backwages allows the employee to recover from the employer that which he has lost by way of wages as a result of his dismissal. Logically, it must be computed from the date of petitioners illegal dismissal up to the time of actual reinstatement. There can be no gap or interruption, lest we defeat the very reason of the law in granting the same. x x x.[113] (Citation omitted and emphasis ours)

Having caused the unlawful dismissal, petitioners must assume the consequences of the application of the law and jurisprudence, no matter how unfavorable to them. The following pronouncement in *C.I.C.M. Mission Seminaries (Maryhurst, Maryheights, Maryshore and Maryhill) School of Theology, Inc. v. Perez*, [114] thus, finds relevance:

The petitioners, nonetheless, claim that it was not their fault why the amounts due ballooned to the present level. They are mistaken. Suffice it to state that had they not illegally dismissed respondent, they will not be where they are today. They took the risk and must suffer the consequences.[115]

WHEREFORE, the petition is DENIED. The Decision dated July 2, 2012 and the Resolution dated September 20, 2012 of the Court of Appeals in CA-G.R. SP No. 99055 are hereby AFFIRMED with MODIFICATION, in that respondent Mary Grace U. De Leon's full backwages shall be paid with interest at twelve percent (12%) per annum from June 23, 2004 to June 30, 2013 and at six percent (6%) per annum from July 1, 2013 until their full satisfaction, and her separation pay, in lieu of reinstatement, shall earn interest at six percent (6%) per annum from the finality of this Decision until full payment.

SO ORDERED.

Peralta,[*] Del Castillo, Jardeleza, and Gesmundo,**] JJ., concur.

[*] Designated Acting Chairperson per Special Order No. 2582 (Revised) dated August 8, 2018.

**] Designated Acting Member per Special Order No. 2560 (Revised) dated May 11, 2018.

[1] Rollo, pp. 16-93.

[2] Penned by Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court), concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier; id. at 850-868.

[3] Id. at 945-947.

[4] Penned by Presiding Commissioner Raul T. Aquino, concurred in by Commissioner Victoriano R. Calaycay. Commissioner Angelita A. Gacutan was on leave; id. at 477-487.

[5] Penned by Presiding Commissioner Raul T. Aquino, concurred in by Commissioner Angelita A. Gacutan; id. at 510-512.

[6] Rendered by Labor Arbiter Lutricia F. Quitevis-Alconcel; id. at 363-370.

[7] Also named as Diwa Asia Publishing Group, Inc. by respondent; id. at 120 and 407.

[8] Id. at 851-852.

[9] Also identified as Saturnino G. Belen, Jr. by respondent; id. at 120-121 and 407.

[10] Id. at 121.

[11] Id. at 124 and 852.

[12] Id. at 97 and 852-853.

[13] Id. at 363 and 856.

[14] Id. at 203-205 and 853.

[15] Id. at 33, 205-207, 335 and 853-854.

[16] Id. at 207 and 854.

[17] Id. at 208-210.

[18] Id. at 208-211 and 855.

[19] Id. at 250-252 and 276.

[20] Id. at 211-212, 300 and 854.

[21] Id. at 212-216 and 855.

[22] Id. at 216-218.

[23] Id. at 219.

[24] Id. at 220-221 and 856.

- [25] Id. at 856.
- [26] Id. at 131-132 and 856.
- [27] Id. at 271-272 and 856.
- [28] Id. at 277 and 856.
- [29] Id. at 276 and 285-286.
- [30] Id. at 220-221 and 278.
- [31] Id. at 856.
- [32] Id. at 121-122.
- [33] Id. at 122-123.
- [34] Id. at 123-124.
- [35] Id. at 147.
- [36] Id. at 124.
- [37] Id. at 363-370.
- [38] Id. at 857.
- [39] Id. at 436-452 and 856-857.
- [40] Id. at 451.
- [41] Id. at 453-464.
- [42] Id. at 477-487.
- [43] Id. at 857-858.
- [44] Id. at 488-503.
- [45] Id. at 510-512.
- [46] Id. at 850-868.
- [47] Id. at 868.
- [48] Id. at 945-947.
- [49] Id. at 946-947.
- [50] Id. at 61-62.
- [51] McMer Corporation, Inc., et al. v. NLRC, et al., 735 Phil. 204, 213 (2014).
- [52] Id. at 214.
- [53] Id.
- [54] Rollo, pp. 35 and 970.
- [55] Id. at 970-971.

[56] Id. at 971.

[57] Id.

[58] Id. at 975-976.

[59] Id. at 976.

[60] Id. at 977-979.

[61] Id. at 979.

[62] Id. at 977-979.

[63] Id. at 25-27.

[64] Id. at 679-680 and 983-984.

[65] Id. at 985-986.

[66] Id. at 986.

[67] Id.

[68] Id. at 981-982.

[69] Id. at 982-983.

[70] Id. at 983.

[71] Id.

[72] Id. at 208.

[73] Id. at 985.

[74] Id. at 984.

[75] Id. at 41.

[76] Id. at 41-42.

[77] Id. at 987-988.

[78] Id. at 861.

[79] Id. at 250-252.

[80] Id. at 250-252.

[81] Id. at 250-251.

[82] Id. at 251-252.

[83] Id. at 252.

[84] Id. at 285-286.

[85] Meatworld International, Inc. v. Dominique A. Hechanova, G.R. No. 208053, October 18, 2017.

[86] Arboleda v. NLRC, 362 Phil. 383, 389-390 (1999).

- [87] Id. at 391.
- [88] Rollo, pp. 79, 122-123 and 145.
- [89] Id. at 1004.
- [90] Id. at 863-864 and 1000.
- [91] Id. at 277.
- [92] Id. at 266, 277 and 863.
- [93] Id. at 331.
- [94] Id. at 416-417.
- [95] Id. at 997-998
- [96] Id. at 997.
- [97] Id. at 998.
- [98] Id.
- [99] Id.
- [100] Id. at 328-329.
- [101] Norkis Trading Co., Inc. and/or Albos, Jr. v. Gnilo, 568 Phil. 256, 268 (2008).
- [102] Globe Telecom, Inc. v. Florendo-Flores, 438 Phil. 756, 769 (2002).
- [103] Rollo, pp. 145-148 and 285-286.
- [104] McMer Corporation, Inc., et al. v. NLRC, et al., supra note 51, at 221.
- [105] ART. 279. Security of tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
- [106] McMer Corporation, Inc. v. NLRC, supra note 51, at 222.
- [107] U-Bix Corporation, et al. v. Hollero, 763 Phil. 668, 685 (2015), citing Bani Rural Bank, Inc., et al. v. De Guzman, et al., 721 Phil. 84, 102 (2013).
- [108] Laya, Jr. v. Court of Appeals, G.R. No. 205813, January 10, 2018, citing Nacar v. Gallery Frames, et al., 716 Phil. 267 (2013); ICT Marketing Services, Inc. v. Sales, 769 Phil. 498, 525 (2015).
- [109] Nacar v. Gallery Frames, et al., supra at 283.
- [110] PNCC v. NLRC, 349 Phil. 986, 992 (1998).
- [111] Flordaliza Llanes Grande v. Philippine Nautical Training College, G.R. No. 213137, March 1, 2017.
- [112] 598 Phil. 145 (2009).
- [113] Id. at 161-162.

[114] G.R. No. 220506, January 18, 2017, 815 SCRA 35.

[115] Id. at 46.

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