

LORNA DISING PUNZAL, PETITIONER, VS. ETSI TECHNOLOGIES, INC., WERNER GEISERT, AND CARMELO D. REMUDARO, RESPONDENTS.

G.R. NOS. 170384-85. March 09, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner, Lorna Dising Punzal, had been working for respondent, ETSI Technologies, Inc. (ETSI), for 12 years prior to the termination of her services on November 26, 2001 on which date she was holding the position of Department Secretary.

On October 30, 2001, petitioner sent an electronic mail (e-mail) message to her officemates announcing the holding of a Halloween party that was to be held in the office the following day. The e-mail message read verbatim:

Dear ETSI-JMT Colleagues,

Good day!

As you all know, tomorrow is the day before HALLOWEEN. And many of our kids will go around "TRICK OR TREATING". We will be dressing them up in costumes of all sorts, from cute to outrageous, from wild to "scary."

What we want to have is a similar activity here in the office. So we invite you to participate in this effort. You can also dress your kids up in funny costumes. Also the kids will then go around the office Trick or Treating. So, we ask you to prepare your Treats, like candies, biscuits, cookies, etc., (Cash is also welcome for parents like me . . . he he he)

Why are we doing this? Well, we just want the kids to have a good time. Kung gusto ninyo, mag-costume din kayo.

Alright! See you tomorrow morning, [October 31, 2001].[1] (Underscoring supplied)

Petitioner's immediate superior, respondent Carmelo Remudaro (Remudaro), who was one of those to whom the e-mail message was sent, advised petitioner to first secure the approval of the Senior Vice President, respondent Werner Geisert (Geisert), for the holding of the party in the office.

Petitioner soon learned that Geisert did not approve of the plan to hold a party in the office. She thereupon sent also on October 30, 2001 another e-mail message to her officemates, reading verbatim:

Sorry for the mail that I sent you, unfortunately the SVP of ETSI Technologies, Inc. did not agree to our idea to bring our children in the office for the TRICK or TREATING. He was so unfair...para bang palagi siyang iniisahan sa trabaho...bakit most of the parents na mag-joined ang anak ay naka-VL naman. Anyway, solohin na lang niya bukas ang office.

Anyway, to those parents who would like to bring their Kids in Megamall there will be Trick or Treating at Mc

Donalds Megamall Bldg. A at 10:00 AM tomorrow and let's not spoil the fun for our kids.[2] (Underscoring supplied)

Remudaro and Arnold Z. David (David), the Assistant Vice President of Human Resources/TQM of ETSI, later informed petitioner, by letter of November 13, 2001, that Geisert got a copy of her e-mail message and that he required her to explain in writing within 48 hours why she

. . . should not be given disciplinary action for committing Article IV, No. 5 & 8 Improper conduct or acts of discourtesy or disrespect and Making malicious statements concerning Company Officer, whereby such offenses may be subject to suspension to termination depending upon the gravity of the offense/s as specified in our ETSI's Code of Conduct and Discipline.[3] (Emphasis in the original)

Petitioner replied by letter of November 14, 2001 that she had no malicious intention in sending the second e-mail message and that she "never expected such kind of words can be called as "acts of discourtesy or disrespect."" [4]

On November 19, 2001, Geisert and Remudaro conferred with petitioner to give her a chance to explain her side.[5]

David and Remudaro subsequently sent petitioner a letter on November 26, 2001, finding her explanation "not acceptable" and terminating her services, effective immediately, "for committing Article IV, No[s]. 5 & 8, Improper conduct or act of discourtesy or disrespect and making malicious statements concerning company officer." [6]

On February 11, 2002, petitioner filed before the National Labor Relations Commission (NLRC) a complaint[7] for illegal dismissal against ETSI, Geisert, and Remudaro.

By Order of November 26, 2002, the Labor Arbiter dismissed petitioner's complaint, finding that she was legally dismissed for serious misconduct, and that she was afforded due process.[8]

On petitioner's appeal, the NLRC, by Resolution[9] dated October 27, 2003, found that while she was indeed guilty of misconduct, the penalty of dismissal was disproportionate to her infraction.[10] The NLRC thus ordered that petitioner was entitled to reinstatement which, however, was no longer feasible due to strained relations. The NLRC thus ordered that petitioner be awarded separation pay equivalent to one month pay for every year of service, a period of at least six months to be considered one whole year.[11]

Noting that petitioner was not entirely faultless, the NLRC denied her prayer for backwages[12] as well as her prayer for exemplary and moral damages and attorney's fees in the absence of the legal conditions justifying their award.[13]

Both parties filed their respective motions for reconsideration[14] which the NLRC denied.[15] Both parties thereupon filed their respective petitions for certiorari[16] with the Court of Appeals.

In the petition of petitioner, docketed as CA-G.R. SP No. 83296, she questioned the denial of her prayer for backwages.[17] Upon the other hand, in the petition of respondent ETSI, et al., docketed as CA-G.R. SP No. 83205, they questioned the finding of illegal dismissal, the grant of separation pay, and the imputation of liability to Geisert and Remudaro.[18]

In her comment to the petition of ETSI, et al. in CA-G.R. SP No. 83205, petitioner raised the issue of due process, alleging that her employer did not inform her of her right to be assisted by counsel during the conference with respondents Geisert and Remudaro.[19]

By Decision[20] of May 13, 2005, the Court of Appeals, which priorly consolidated the petitions of both parties,

held that petitioner's dismissal was in order:[21]

The gravity of Punzal's infraction is borne by the fact that her e-mail message to the workers of ETSI tended to cast scorn and disrespect toward a senior vice president of the company. The message itself resounds of subversion and undermines the authority and credibility of management.

x x x x

Also, this message was not a mere expression of dissatisfaction privately made by one person to another, but was circulated to everyone in the work area. The message was sent close at the heels of SVP Geisert's disapproval of Punzal's plan to hold a Halloween affair in the office, because the said event would disrupt the operations and peace and order in the office. Punzal therefore displayed a tendency to act without management's approval, and even against management's will, as she invited her co-workers to join a trick or treating activity at another venue during office hours.

The message also comes across as an encouragement to ignore SVP Geisert's authority, and portrayed him as unworthy of respect because of his unpopular personality.

This is in clear violation of Article IV, Section 5 of the company's Code of Conduct and Discipline, which clearly imposes the penalty of "suspension to dismissal, depending upon the gravity of the offense" in cases where an employee displays "improper conduct or acts of discourtesy or disrespect to fellow employees, visitors, guests, clients, at any time."

The imposition of the penalty of dismissal is proper, because of the gravity of Punzal's misconduct, as earlier pointed out, and considering that:

- (1) Punzal's statements were discourteous and disrespectful not only to a mere co-employee, but to a high ranking executive official of the company;
- (2) Punzal's statements tended to ridicule and undermine the credibility and authority of SVP Geisert, and even encouraged disobedience to the said officer;
- (3) Punzal's message was sent to a great number of employees of ETSI, which tended to sow dissent and disrespect to management among a great number of employees of ETSI;
- (4) Punzal's message could not have been made in good faith, because the message itself used language that placed SVP Geisert in ridicule and portrayed him as an object of scorn, betraying the sender's bad faith.

Given these circumstances, the fact that Punzal's infraction occurred only once should be largely insignificant. The gravity and publicity of the offense as well as its adverse impact in the workplace is more than sufficient to place the same in the level of a serious misconduct.[22] (Underscoring supplied)

Contrary to petitioner's contention, the Court of Appeals also found that due process was observed in her dismissal.[23]

The Court of Appeals thus reinstated the Labor Arbiter's Order. Thus it disposed:

WHEREFORE, premises considered, the petition filed by Lorna Dising Punzal in CA-G.R. SP No. 83296 is hereby DISMISSED, while the petition filed by ETSI, Werner Geisert and Carmelo D. Remudaro is hereby GRANTED. The assailed Resolutions, dated October 27, 2003 and January 28, 2004, of the respondent National Labor Relations Commission are hereby SET ASIDE. In lieu thereof, the Decision of Labor Arbiter Joel S. Lustria, dated November 26, 2002, dismissing the complaint filed by Lorna Dising Punzal is hereby REINSTATED.

SO ORDERED.[24] (Underscoring supplied)

Hence, petitioner's present Petition for Review on Certiorari,[25] faulting the appellate court to have erred

. . . WHEN IT RULED THAT PETITIONER'S STATEMENT WAS DISCOURTEOUS AND DISRESPECTFUL CONSTITUTING GROSS DISRESPECT AND SERIOUS MISCONDUCT;

. . . WHEN IT FOUND THAT DUE PROCESS WAS ACCORDED THE PETITIONER;

. . . WHEN IT FAILED TO AWARD THE PETITIONER HER RIGHT TO REINSTATEMENT AND BACKWAGES.[26]

Petitioner posits that her second e-mail message was merely an exercise of her right to freedom of expression without any malice on her part.[27]

On the other hand, ETSI, et al. maintain that petitioner's second e-mail message was tainted with bad faith and constituted a grave violation of the company's code of discipline.[28]

In *Philippines Today, Inc. v. NLRC*,[29] this Court, passing on the attitude or respect that an employee is expected to observe towards an employer, held:

Alegre's choice of words and way of expression betray his allegation that the memorandum was simply an "opportunity to open the eyes of (Petitioner) Belmonte to the work environment in petitioner's newspaper with the end in view of persuading (her) to take a hand at improving said environment." Apprising his employer (or top-level management) of his frustrations in his job and differences with his immediate superior is certainly not done in an abrasive, offensive, and disrespectful manner. A cordial or, at the very least, civil attitude, according due deference to one's superiors, is still observed, especially among high-ranking management officers. The Court takes judicial notice of the Filipino values of *pakikisama* and *paggalang* which are not only prevalent among members of a family and community but within organizations as well, including work sites. An employee is expected to extend due respect to management, the employer being the "proverbial hen that lays the golden egg," so to speak. An aggrieved employee who wants to unburden himself of his disappointments and frustrations in his job or relations with his immediate superior would normally approach said superior directly or otherwise ask some other officer possibly to mediate and discuss the problem with the end in view of settling their differences without causing ferocious conflicts. No matter how [much] the employee dislikes the employer professionally, and even if he is in a confrontational disposition, he cannot afford to be disrespectful and dare to talk with an unguarded tongue and/or with a bileful pen.[30] (Underscoring supplied)

A scrutiny of petitioner's second e-mail message shows that her remarks were not merely an expression of her opinion about Geisert's decision; they were directed against Geisert himself, viz: "He was so unfair . . . para bang palagi siyang iniisahan sa trabaho. . . Anyway, solohin na lang niya bukas ang office." (Emphasis supplied)[31]

As the Court of Appeals noted, petitioner, in her closing statement - "Anyway, to those parents who would like to bring their Kids in Megamall there will be Trick or Treating at Mc Donalds x x x tomorrow and let's not spoil the fun for our kids"[32] " even invited her co-workers to join a trick or treating activity at another venue during office hours[33] (10:00 AM), October 31, 2001 being a Wednesday and there is no showing that it was declared a holiday, encouraging them to ignore Geisert's authority.

Additionally, petitioner sent the e-mail message in reaction to Geisert's decision which he had all the right to make. That it has been a tradition in ETSI to celebrate occasions such as Christmas, birthdays, Halloween, and others[34] does not remove Geisert's prerogative to approve or disapprove plans to hold such celebrations in office premises and during company time. It is settled that

x x x it is the prerogative of management to regulate, according to its discretion and judgment, all aspects of employment. This flows from the established rule that labor law does not authorize the substitution of the

judgment of the employer in the conduct of its business. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employers' interest and not for the purpose of defeating or circumventing the rights of employees under special laws or valid agreement and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.[35] (Underscoring supplied)

In the case at bar, the disapproval of the plan to hold the Halloween party on October 31, 2001 may not be considered to have been actuated by bad faith. As the Labor Arbiter noted:

It may not be ignored that holding a trick or treat party in the office premises of respondent ETSI would certainly affect the operations of the office, since children will be freely roaming around the office premises, things may get misplaced and the noise in the office will simply be too hard to ignore. Contrary to complainant's position, it is immaterial if the parents of the children who will participate in the trick or treat will be on vacation leave, since it is the work of the employees who will not be on leave and who will be working on that day which will be disrupted, possibly resulting in the disruption of the operations of the company.[36] (Underscoring supplied)

Given the reasonableness of Geisert's decision that provoked petitioner to send the second e-mail message, the observations of the Court of Appeals that "the message x x x resounds of subversion and undermines the authority and credibility of management"[37] and that petitioner "displayed a tendency to act without management's approval, and even against management's will" are well taken.[38]

Moreover, in circulating the second e-mail message, petitioner violated Articles III (8) and IV (5) of ETSI's Code of Conduct on "making false or malicious statements concerning the Company, its officers and employees or its products and services"[39] and "improper conduct or acts of discourtesy or disrespect to fellow employees, visitors, guests, clients, at any time." [40]

Petitioner invokes *Samson v. National Labor Relations Commission*[41] where this Court held that the dismissal of the therein petitioner was too harsh a penalty for uttering "Si EDT [Epitacio D. Titong, the General Manager and President of the employer], bullshit yan," "sabihin mo kay EDT yan" and "sabihin mo kay EDT, bullshit yan," while making the "dirty finger" gesture, and warning that the forthcoming national sales conference of the company would be a "very bloody one."

Petitioner's reliance on *Samson* is misplaced. First, in that case, this Court found that the misconduct committed was not related with the employee's work as the offensive remarks were verbally made during an informal Christmas gathering of the employees, an occasion "where tongues are more often than not loosened by liquor or other alcoholic beverages"[42] and "it is to be expected x x x that employees freely express their grievances and gripes against their employers." [43]

In petitioner's case, her assailed conduct was related to her work. It reflects an unwillingness to comply with reasonable management directives.

While in *Samson*, *Samson* was held to be merely expressing his dissatisfaction over a management decision,[44] in this case, as earlier shown, petitioner's offensive remarks were directed against Geisert.

Additionally, in *Samson*, this Court found that unlike in *Autobus Workers' Union (AWU) v. NLRC*[45] where dismissal was held to be an appropriate penalty for uttering insulting remarks to the supervisor,[46] *Samson* uttered the insulting words against EDT in the latter's absence.[47] In the case at bar, while petitioner did not address her e-mail message to Geisert, she circulated it knowing - or at least, with reason to know - that it would reach him. As ETSI notes, "[t]hat [petitioner] circulated this e-mail message with the knowledge that it would reach the eyes of management may be reasonably concluded given that the first e-mail message reached her

immediate supervisor's attention." [48]

Finally, in *Samson*, this Court found that the "lack of urgency on the part of the respondent company in taking any disciplinary action against [the employee] negates its charge that the latter's misbehavior constituted serious misconduct." [49] In the case at bar, the management acted 14 days after petitioner circulated the quoted e-mail message. [50]

Petitioner asks that her 12 years of service to ETSI during which, so she claims, she committed no other offense be taken as a mitigating circumstance. [51] This Court has held, however, that "the longer an employee stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company." [52]

In fine, petitioner, having been dismissed for just cause, is neither entitled to reinstatement nor to backwages.

Petitioner's contention that she was denied due process is well-taken however, as the records do not show that she was informed of her right to be represented by counsel during the conference with Geisert and Remudaro.

The protestations of ETSI, et al. that the right to be informed of the right to counsel does not apply to investigations before administrative bodies and that law and jurisprudence merely give the employee the option to secure the services of counsel in a hearing or conference [53] fall in light of the clear provision of Article 277 (b) of the Labor Code that

the employer xxx shall afford [the worker whose employment is sought to be terminated] ample opportunity to be heard and to defend himself with the assistance of his representatives if he so desires in accordance with company rules and regulations pursuant to guidelines set by the Department of Labor and Employment,

and this Court's explicit pronouncement that "[a]mple opportunity connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense including legal representation." [54]

Following *Agabon, et al. v. National Labor Relations Commission*, [55] the violation of petitioner's statutory due process right entitles her to an award of nominal damage, which this Court fixes at P30,000. [56]

WHEREFORE, the petition is in part GRANTED. The questioned decision is AFFIRMED with the MODIFICATION that respondent ETSI Technologies, Inc. is ordered to pay petitioner, Lorna Punzal, nominal damages in the amount of P30,000.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] NLRC records, p. 21.

[2] *Id.* at 22.

[3] *Id.* at 23.

[4] *Id.* at 24.

[5] *Id.* at 49, 109, 243; CA rollo (CA-G.R. SP No. 83205), p. 293.

[6] *Id.* at 49.

[7] Id. at 2.

[8] Id. at 99-120.

[9] Id. at 241-250. Penned by Commissioner Tito F. Genilo, with the concurrence of Commissioner Ernesto C. Verceles, Presiding Commissioner Lourdes C. Javier, on leave.

[10] Id. at 247-248.

[11] Id. at 248-249.

[12] Ibid.

[13] Id. at 249.

[14] Id. at 256-275.

[15] Id. at 290.

[16] CA rollo (CA-G.R. SP No. 83296), pp. 2-14; CA rollo (CA-G.R. SP No. 83205), pp. 2-31.

[17] Id. at 9-11.

[18] CA rollo (CA-G.R. SP No. 83205), pp. 11-26.

[19] Id. at 136-137.

[20] Id. at 285-294. Penned by Associate Justice Rodrigo V. Cosico, with the concurrences of Associate Justices Danilo B. Pine and Arcangelita Romilla Lontok.

[21] Id. at 292-293.

[22] Ibid.

[23] Id. at 293.

[24] Id. at 293-294.

[25] Rollo, pp. 5-27.

[26] Id. at 10-11.

[27] Id. at 11-16.

[28] Id. at 71-78.

[29] 334 Phil. 854 (1997).

[30] Id. at 869.

[31] NLRC records, p. 46.

[32] Ibid.

[33] CA rollo (CA-G.R. SP No. 83205), p. 292.

[34] NLRC records, p. 14.

[35] *Wise and Co., Inc. v. Wise & Co., Inc. Employees Union*, G.R. No. 87672, October 13, 1989, 178 SCRA 536, 540.

[36] NLRC records, pp. 107-108.

[37] CA rollo (CA-G.R. SP No. 83205), p. 292.

[38] Ibid.

[39] NLRC records, p. 56.

[40] Ibid.

[41] 386 Phil. 669 (2000); Rollo, pp. 89-92.

[42] Id. at 683.

[43] Ibid.

[44] Ibid.

[45] 353 Phil. 419 (1998).

[46] Id. at 423-428; *Samson v. NLRC*, supra note 41 at 683.

[47] *Samson v. NLRC*, supra note 41 at 683-684.

[48] Rollo, p. 73.

[49] *Samson v. NLRC*, supra note 41 at 685.

[50] NLRC records, p. 23.

[51] Rollo, pp. 22-23.

[52] *Cruz v. Coca Cola, Inc.*, G.R. No. 165586, June 15, 2005, 460 SCRA 340; *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg*, 443 Phil. 866, 877 (2003); *Citibank, N.A. v. Gatchalian*, 310 Phil. 211, 220 (1995).

[53] Rollo, pp. 81-82.

[54] *Mañebo v. NLRC*, G.R. No. 107721, January 10, 1994, 229 SCRA 240, 251.

[55] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[56] Id. at 617. Vide *Aberdeen Court, Inc. v. Agustin, Jr.*, G.R. No. 149371, April 13, 2005, 456 SCRA 32, 43-44; *Aladdin Transit Corporation v. Court of Appeals*, G.R. No. 152123, June 21, 2005, 460 SCRA 468, 472.

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