

EDNA LUISA B. SIMON, PETITIONER, VS. THE RESULTS COMPANIES AND JOSELITO SUMCAD, RESPONDENTS.*G.R. Nos. 249351-52. March 29, 2022*

Ponente: INTING, J.

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Before the Court is a Petition for Review on Certiorari[1] assailing the Decision[2] dated March 28, 2019 and the Resolution dated September 12, 2019 of the Court of Appeals (CA) in CA-G.R. SP Nos. 151219 and 151323. The CA reversed and set aside the Decision[3] dated March 21, 2017 and the Resolution[4] dated April 17, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-001097-17 (NLRC NCR Case No. 10-12934-16).

The Antecedents

The instant case stemmed from the Complaint[5] dated October 18, 2016 filed by Edna Luisa B. Simon (petitioner) against The Results Companies (Results), a corporation engaged in business process outsourcing (BPO), and Joselito Sumcad for illegal dismissal, underpayment of salaries, nonpayment of separation pay, and discrimination; with claims for moral damages, exemplary damages, and attorney's fees.[6]

In her Position Paper[7], petitioner alleged that Results hired her as a Customer Service Representative on October 6, 2012 until it forced her to resign on December 13, 2012. To prove her employment, she submitted copies of her identification card[8] and payslips.[9]

In defense, Results averred in its Position Paper[10] that after being notified of petitioner's Complaint, it conducted a thorough search of her employment records but found none. Results attributed petitioner's lack of employment records to her short stint of service in the company, which was only two months and seven days, and the fact that she filed her complaint four years after her alleged dismissal from service.[11]

Results argued that petitioner's allegation of being forced to resign was incredible for the reason that if she was truly aggrieved by her alleged constructive dismissal, she should have immediately filed her Complaint; and she should have not waited for three years and ten months to lodge it.[12]

Results explained that it could not have terminated petitioner from employment because a two-month probationary employment was insufficient for the company to assess her fitness for regularization.[13] As such, her separation from work was possibly brought by her voluntary resignation or absence without official leave (AWOL), a common occurrence among call center agents transferring from one BPO company to another.[14]

Ruling of the Labor Arbiter (LA)

In the Decision[15] dated January 31, 2017, the LA ruled in favor of petitioner and held that Results illegally dismissed her from employment. However, the LA ruled that considering petitioner was a mere probationary employee, she was entitled to backwages only for the remaining months of her probationary period.[16]

The LA further held that petitioner's monetary claims already prescribed as the complaint was filed beyond the three-year prescriptive period from the time the cause of action accrued.[17]

Both parties appealed before the NLRC.

Results argued that petitioner was not entitled to backwages as she failed to prove the fact of her dismissal from employment. For her part, petitioner questioned the LA's computation of her backwages and her non-entitlement to moral damages, exemplary damages, and attorney's fees.[18]

Ruling of the NLRC

In the Decision[19] dated March 21, 2017, the NLRC agreed with the LA that petitioner was a probationary employee of Results and that she was illegally dismissed from employment. As such, the NLRC held that her backwages should be computed only for the remaining period of her probationary employment.

Nevertheless, the NLRC partially granted the appeal of petitioner by adjusting the rate of her backwages from P13,500.00 to P15,200.00 a month.[20]

On the other hand, the NLRC dismissed the appeal of Results for lack of merit.

Petitioner and Results both moved for reconsideration[21] of the NLRC ruling, but the NLRC dismissed their respective motions in the Resolutions dated April 17, 2017[22] and June 29, 2017.[23]

Aggrieved, both parties filed their respective Petitions for Certiorari[24] before the CA.

Ruling of the CA

In the assailed Decision[25] dated March 28, 2019, the CA reversed and set aside the ruling of the NLRC and held that petitioner was actually a regular employee of Results for the following reasons: (1) her job was necessary and desirable to the line of business of Results;[26] and (2) Results did not inform petitioner of the reasonable standards for her regularization.[27]

However, while the CA found that petitioner was a regular employee of Results, it ruled that she failed to prove the fact of her dismissal from employment and held that "the present case falls under a situation wherein there is neither dismissal nor abandonment. There being no dismissal nor abandonment to speak of, the status quo between employer and employee should be maintained as a matter of course." [28]

Thus, the CA ordered Results to reinstate petitioner to her previous position without payment of backwages.[29]

Hence, the instant petition before the Court.[30]

Issue

The issue in the case is whether the CA erred in declaring that petitioner was a regular employee of Results and that she was illegally dismissed from employment.

Ruling of the Court

While the Court may resolve only questions of law in a petition for review on certiorari under Rule 45 of the Rules of Court, an exception may be made when the factual findings of the CA and the labor tribunals are contradictory, such as in the case.[31] Here the labor tribunals found that petitioner was a probationary employee of Results when she was illegally dismissed from her employment. On the other hand, the CA held that petitioner is deemed a regular employee of Results but failed to prove the fact of her dismissal from employment.

Equally important, "in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of

whether, [in a petition for certiorari,] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision." [32]

There is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, i.e., that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. [33] Such grave abuse of discretion on the part of the NLRC warrants the grant of the extraordinary remedy of certiorari. [34]

The CA correctly imputed grave abuse of discretion on the part of the NLRC insofar as the latter ruled that petitioner was a mere probationary employee.

A probationary employee is one who is placed on trial by an employer, during which the employer determines whether such employee is fit for regularization. [35]

During the period of probationary employment, the objective of the employer is to observe the fitness of the employee, while the purpose of the latter is to prove his or her qualification for permanent employment. [36] To accomplish these goals, it is essential in probationary employment that the employer informs the employee of the reasonable standards for his or her regularization at the time of engagement. [37] An employer is deemed to have made known the regularization standards when it has exerted reasonable efforts to apprise the employee of what he or she is expected to do or accomplish during the trial period of probation. [38] Otherwise, the probationary employee shall be considered a regular employee. [39]

Thus, Section 6(d), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code of the Philippines (Labor Code), as amended by Department Order No. 147-15, provides:

Section 6. x x x x

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

In *Moral v. Momentum Properties Management Corp.*, [40] the Court, expounding on the said provision declared:

In other words, the employer is mandated to comply with two requirements when dealing with a probationary employee, viz.: (1) the employer must communicate the regularization standards to the probationary employee; and (2) the employer must make such communication at the time of the probationary employee's engagement. If the employer fails to abide by any of the aforementioned obligations, the employee is deemed as a regular, and not a probationary employee. An employer is deemed to have made known the regularization standards when it has exerted reasonable efforts to apprise the employee of what he or she is expected to do or accomplish during the trial period of probation. The exception to the foregoing is when the job is self-descriptive in nature, such as in the case of maids, cooks, drivers, and messengers. (emphasis supplied)

In the case, Results initially denied that petitioner was its employee. However, after petitioner presented her identification card and payslips, Results took a different stance and argued that petitioner was its former probationary employee who either voluntarily resigned or abandoned her job. Having admitted that petitioner was its probationary employee, it was incumbent upon Results to prove or at least allege that it communicated to petitioner the standards under which she would qualify as a regular employee. However, Results neither presented any evidence such as policy handbook, operations manual, performance appraisal document nor at least alleged that it informed petitioner of the criteria for regularization. Indubitably, the ruling of the NLRC that petitioner was

a mere probationary employee was not supported by substantial evidence. Thus, the CA correctly imputed grave abuse of discretion on the part of the NLRC insofar as the latter ruled that petitioner was merely on probation is concerned. The Court agrees with the CA that petitioner was deemed a regular employee of Results by operation of law.[41]

However, the CA erred in concluding that petitioner was not able to prove the fact of her dismissal for her failure to state the name of the Operations Manager who allegedly ordered her termination.[42] On this score, the Court agrees with the labor tribunals that Simon was indeed illegally dismissed from employment.

Petitioner was illegally dismissed from employment.

While it is an established rule that the employer bears the burden of proof to prove that the employee's dismissal was for a valid or authorized cause, the employee must first establish by substantial evidence that indeed he or she was dismissed.[43] If there is no dismissal, then there can be no question as to the legality or illegality thereof.[44]

To prove the fact of her dismissal, petitioner alleges that the Operations Manager of Results verbally informed her not to report to work anymore. To support her allegation, petitioner presented the photocopy[45] of her SMS conversation with a certain Lester, her supervisor, wherein the latter explained that it was the managers of Results who decided to terminate her, viz.:

results lester:

Hindi aka nagsubmit nun mommy (petitioner) immediate mini supervisor mo ako pero si boss roy lahat nagdecide at lahat ng pirma galing sa kanya Manager ang nagdedecide kung non[-]rehireable ang agent at hindi nila ako sinabihan kung may nateterminate na agent[.]

Gusto mo kausapin mo si boss roy[?]

Received: April 1, 2013.

results lester:

Kahit itanong mo kay ralph hindi supervisor magdedecide nun either si boss marick, mike, shihata, program manager[,] Assistant program manager or poc manage[r].

Received: April 1, 2013.[46]

While petitioner never knew the name of the particular manager who decided to dismiss her from work, it could be gleaned from the above-quoted text messages that she was included in the list of the non-rehirable call center agents. To the Court, this itself proves the fact of petitioner's dismissal from employment. The name of the specific manager who verbally terminated her or placed her in the list of those to be dismissed is inconsequential.

Moreover, as Results did not present a copy of petitioner's resignation letter or any evidence that petitioner went on AWOL,[47] the Court cannot consider its allegations that petitioner voluntarily resigned or abandoned her work. The Court also disagrees with the finding of the CA that petitioner could have stopped reporting to work for having the mistaken belief that she was dismissed from employment.[48] If such were the case, Results could have directed her to report back to work or charged her with abandonment.

All told, there is substantial evidence to support the finding of the NLRC that "[petitioner] was forced to resign, nay simply left her job without benefit of a written letter because she was dismissed in a casual manner." [49] Thus, the CA erred in imputing grave abuse of discretion against the NLRC insofar as the latter ruled that petitioner was illegally dismissed from employment is concerned. The Court agrees with the labor tribunals that

petitioner was illegally terminated from her job.

Petitioner's entitlement to monetary awards.

The right of employees to security of tenure, as enshrined under Article XIII, Section 3[50] of the Constitution, is further guarded by Article 294 (formerly Article 279) of the Labor Code, which states:

Art. 294. 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.

From the foregoing, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[51]

Still separation pay may be awarded to an illegally dismissed employee in lieu of reinstatement when reinstatement can no longer be effected in view of the long passage of time or because of the realities of the situation.[52]

In the case, reinstatement is no longer possible for petitioner. As she was born on August 19, 1955, she is now 66 years old and therefore well over the statutory compulsory retirement age of 65. For this reason, the Court grants her separation pay in lieu of reinstatement. Consequently, the computation of her backwages should be from the time of her illegal dismissal on December 13, 2012 up to her compulsory retirement age on August 19, 2020.[53]

It should be stressed that the award of moral and exemplary damages is not justified by the sole fact that the employer dismissed its employee without just or authorized cause and due process.[54] While a dismissal may be considered illegal, it does not, by itself, establish bad faith to automatically entitle the dismissed employee to moral and exemplary damages. To be entitled to such, there must be proof of a dishonest purpose or conscious doing of wrong on the part of the employer.[55] Here, there is no evidence or at least a narration of facts showing that petitioner's dismissal was tainted with some moral obliquity. Thus, the Court finds that petitioner was not entitled to moral and exemplary damages.

However, for having been compelled to litigate, petitioner is entitled to reasonable attorney's fees at the rate of 10% of the total monetary award pursuant to Article 2208(2)[56] of the Civil Code.

The Court hereby imposes legal interest rate on the monetary awards of 6% per annum reckoned from the finality of this Decision until its full payment.

WHEREFORE, the petition is GRANTED. The Decision dated March 28, 2019 and the Resolution dated September 12, 2019 of the Court of Appeals in CA-G.R. SP Nos. 151219 and 151323 are hereby AFFIRMED with MODIFICATION. Respondent The Results Companies is declared liable for illegal dismissal and is ordered to pay petitioner Edna Luisa B. Simon separation pay, in lieu of her reinstatement; backwages computed from the time of her dismissal on December 13, 2012 up to her compulsory retirement on August 19, 2020; and attorney's fees at the rate of 10% of the total monetary award.

The total monetary award shall earn legal interest rate of 6% per annum from the date of finality of this Decision

until full satisfaction.

The case is hereby REMANDED to the Labor Arbiter for the proper computation of the monetary awards.

SO ORDERED.

Gesmundo, C.J., (Chairperson), Caguioa, Hernando,[*] and Dimaampao, JJ., concur.

[*] Designated additional Member per Raffle dated March 14, 2022.

[1] Rollo, pp. 11-29.

[2] Id. at 37-50; penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court) and with the concurrence of Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez.

[3] Id. at 74-83; penned by Presiding Commissioner Alex A. Lopez and with the concurrence of Commissioners Pablo C. Espiritu, Jr. and Cecilio Alejandro C. Villanueva.

[4] Id. at 85-86.

[5] Id. at 87-88.

[6] Id. at 233.

[7] Id. at 98-106.

[8] Id. at 107.

[9] Id. at 108-110.

[10] Id. at 89-95.

[11] Id. at 90.

[12] Id. at 92.

[13] Id.

[14] Id.

[15] Id. at 120-126.

[16] Id. at 126.

[17] Id.

[18] See Notice of Appeal and Memorandum of Appeal dated February 28, 2017 of The Results Companies and/or Joselito Sumcad, id. at 133-140; see also Notice of Partial Appeal and Memorandum of Partial Appeal with Motion to Litigate as Pauper dated February 20, 2017 of Edna Luis B. Simon, id. at 144-150.

[19] Id. at 74-83.

[20] Id. at 81.

[21] See Motion for Reconsideration of The Results Companies and/or Joselito Sumcad, id. at 166-171; see also Partial Motion for Reconsideration of Edna Luis B. Simon, id. at 172-179.

[22] Id. at 85-86.

[23] Id. at 228-229.

[24] See Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction dated June 6, 2017 of The Results Companies and/or Joselito Sumcad, id. at 54-68; see also Petition for Certiorari dated June 22, 2017 of Edna Luis B. Simon, id. at 232-246.

[25] Id. at 37-50.

[26] Id. at 43.

[27] Id. at 44.

[28] Id. at 47.

[29] Id. at 48.

[30] Id. at 11-29.

[31] See Lufthansa Technik Philippines, Inc. v. Cuizon, G.R. No. 184452, February 12, 2020.

[32] Slord Development Corporation v. Noya, G.R. No. 232687, February 4, 2019; see also Maricalum Mining Corp. v. Florentino, 836 Phil. 655, 677 (2018).

[33] Ace Navigation Company v. Garcia, 760 Phil. 924, 932 (2015); Mercado v. AMA Computer College-Paranaque City, Inc., 632 Phil. 228 (2010).

[34] Ace Navigation Company v. Garcia, Id.

[35] See Moral v. Momentum Properties Management Corp., G.R. No. 226240, March 6, 2019.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] G.R. No. 226240, March 6, 2019.

[41] Rollo, pp. 43-44.

[42] Id. at 45.

[43] Albaño v. Dipolog Rose Basic Learning School, G.R. No. 226602 (Notice), June 17, 2020.

[44] Id.

[45] Rollo, p. 154.

[46] Id.

[47] Id. at 47.

[48] Id.

[49] Id. at 80.

[50] Section 3 of the Constitution provides:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. x x x x. (Italics supplied.)

[51] *Abbott Laboratories (Philippines), Inc. v. Torralba*, 820 Phil. 196, 216-217 (2017).

[52] *Id.* at 217.

[53] See *Jaculbe v. Silliman University*, 547 Phil. 352, 359 (2007).

[54] See *Solidbank Corp. v. Court of Appeals*, 774 Phil. 211 (2015).

[55] *Id.*

[56] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

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