



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GLOBE TELECOM, INC.,
Petitioner,

G.R. No. 242286

Present:

GESMUNDO, C.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

KAY ABASTILLAS EBITNER,
Respondent.

Promulgated:

JAN 16 2023

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DECISION

HERNANDO, J.:

This is a Petition for Review on *Certiorari*¹ assailing the July 26, 2018 Decision² and the October 1, 2018 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 145471 which awarded separation pay in lieu of reinstatement to respondent, and denied petitioner's Motion for Partial Reconsideration,⁴ respectively.

¹ *Rollo*, pp. 1-12.

² *Id.* at 13-36. Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court) and concurred in by Associate Justices Fernanda Lampas Peralta and Maria Luisa C. Quijano-Padilla.

³ *Id.* at 37.

⁴ *Id.*

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The Factual Antecedents

Petitioner Globe Telecom, Inc. is a corporation engaged in the business of providing telecommunication services. Meanwhile, respondent Kay Abastillas Ebitner was petitioner's employee, hired in June 2005.⁵ Respondent rose from the rank through the years until she was eventually promoted as Retail Shop Specialist.

On March 16, 2015, petitioner served on respondent a Notice to Explain, directing her to give details as to why she facilitated a credit adjustment on her father's account without proper notation on its justification.⁶ The pertinent portion of the notice reads:

A report has been provided by Fraud Risk Management in relation to their findings that you have facilitated an invalid credit adjustment to the account of Mr. Leon Ebitner with mobile number 09178798805 amounting to Php998.99 using your own userID.

In this regard, you are hereby directed to explain in writing within five (5) days from receipt of this memo why no disciplinary action should be given to you on your alleged violation on our Code of Conduct (COC) specifically on Non-Observance of SOP, Fraud against the Company and for Serious Misconduct when you have facilitated the credit adjustment that was deemed invalid, to which the said account belonged to a person connected to you.

Failure on your part to submit your explanation shall waive your right to be heard, and management shall decide on the case based on the documents it has.

In the meantime, you are hereby placed under PREVENTIVE SUSPENSION effective upon receipt of this memo. You are also directed to turn-over your tools of work for the duration of the preventive suspension.

For your strict compliance.⁷

In response, respondent submitted on March 19, 2015 her written explanation, admitting that she was the one who facilitated the credit adjustment on October 24, 2014, using her own userID;⁸ however, respondent claimed that she could no longer remember the circumstances surrounding the transaction and why she did it. Thus, she requested that she be allowed to check the transaction records hoping to remember why she made the adjustment. Respondent also maintained that had the transaction been invalid, she would have received an e-mail from the management within one month after the date

⁵ Id. at 14.

⁶ Id.

⁷ Id. at 97-98.

⁸ Id. at 15.

of the transaction, as per company policy. Lastly, respondent expressed willingness to reimburse the amount involved in case the transaction was proved invalid.⁹

During the administrative hearing held on March 30, 2015, respondent admitted that the account involved was under her father's name, but the end-user was her mother, who complained of dropped calls every time she made a phone call.¹⁰ Thus, as a sign of goodwill, she adjusted the "MSF" (monthly service fee). Respondent maintained, however, that she made the proper notation upon adjusting the amount due.¹¹

Despite respondent's explanations, on April 30, 2015, petitioner served upon the former a Notice of Decision, stating that she was found to have failed to follow basic standard procedures and that there were lapses in relation to the credit adjustment made.¹² Moreover, petitioner found that while respondent claimed during the hearing that a notation to support the credit adjustment was made, no such notation was retrieved. Therefore, respondent was dismissed from service on the ground of fraud against the company and serious misconduct.¹³

Deeply aggrieved, respondent filed a Complaint for illegal dismissal, illegal suspension, and damages against petitioner.¹⁴

Ruling of the Labor Arbiter

In a Decision¹⁵ dated August 28, 2015, Labor Arbiter Julio R. Gayaman ruled in favor of respondent and held that while she may have failed to follow company procedures, "the penalty of dismissal is too harsh and unreasonable under the circumstances."¹⁶ The dispositive portion reads:

WHEREFORE, Globe Telecom is hereby ordered to reinstate Kay Abastillas Ebitner to her former position, immediately upon receipt of this Decision. The forfeiture of backwages should be an equitable penalty for her misdeed of making a credit adjustment, without following the standard operating procedure.

All other claims are dismissed for lack of factual or legal basis.

⁹ Id. at 14-15.

¹⁰ Id.

¹¹ Id.

¹² Id. at 99.

¹³ Id. at 100.

¹⁴ Id. at 38.

¹⁵ Id. at 74-77.

¹⁶ Id. at 76.

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SO ORDERED.¹⁷

Curiously however, the arbiter did not categorically declare respondent to have been illegally dismissed.

Dissatisfied, both parties appealed to the NLRC.¹⁸ Respondent prayed that she be declared illegally dismissed and thus entitled to full backwages, separation pay in lieu of reinstatement, and attorney's fees. Meanwhile, petitioner sought for the reversal of the arbiter's decision.

Ruling of the National Labor Relations Commission (NLRC)

In its Decision¹⁹ dated November 25, 2015, the NLRC found that respondent was illegally dismissed and granted her full backwages. It however denied respondent's claim for attorney's fees and separation pay. The NLRC likewise denied petitioner's appeal. The dispositive portion reads:

WHEREFORE, premises considered, complainant's appeal is **PARTLY GRANTED** and respondent's appeal is **DENIED**. The assailed Decision dated August 28, 2015, is hereby **MODIFIED** to the extent that Globe Telecom is **DIRECTED** to pay to complainant her full backwages from the date of her illegal dismissal, or from April 30, 2015 up to the date of her actual reinstatement, computed as follows:

Backwages (tentative):		
Basic Pay		
04/30/15 – 11/16/15 = 6.53 mos.		
P25,000.00 x 6.53	=	P163,250.00
13 th Month Pay		
P163,250.00/12	=	13,604.17
SILP		
04/30/15 – 11/16/15 = 6.53 mos.		
P25,000.00 / 26 days = P961.54		
P961.54 x 5/12 x 6.53	=	<u>2,616.20</u>
	TOTAL	P179,470.37

All other claims are **DENIED** for lack of factual or legal basis.

SO ORDERED.²⁰

¹⁷ Id. at 77.

¹⁸ Id. at 97.

¹⁹ Id. at 96-110. Penned by Commissioner Erlinda T. Agus and concurred in by Presiding Commissioner Gregorio O. Bilog III and Commissioner Alan A. Ventura.

²⁰ Id. at 108-109.

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Surprisingly however, in a Resolution²¹ dated February 19, 2016, the NLRC granted petitioner's motion for reconsideration and reversed its earlier decision by declaring petitioner not guilty of illegal dismissal. Thus, it deleted all the monetary awards it earlier granted to respondent.²²

This prompted respondent to file a Petition for *Certiorari*²³ before the CA.

Ruling of the Court of Appeals

In its Decision dated July 26, 2018, the CA modified the NLRC resolution and reinstated the monetary awards granted to respondent. The dispositive portion reads:

ACCORDINGLY, the Resolution dated February 19, 2016 is **AFFIRMED with MODIFICATION**. Petitioner is **GRANTED** separation pay of one month salary for every year of service, less one month salary as penalty for petitioner's infraction. An interest of 6% per annum is imposed on this money award from finality of this decision until full payment thereof. Petitioner is further required to **REIMBURSE** Globe Telecom Inc. the amount of Php998.99 with 6% interest from October 24, 2014 until the same is fully paid.

SO ORDERED.²⁴

In its ruling, the CA affirmed the finding of the NLRC that there was just cause for respondent's dismissal. The appellate court, however, found the penalty of dismissal too harsh, considering that petitioner has been working with respondent for already 10 years at the time of the incident, with an unblemished record. Thus, it found the grant of separation pay proper. Petitioner's Motion for Partial Reconsideration²⁵ was likewise denied in a Resolution²⁶ dated October 1, 2018.

Aggrieved by the CA Decision and Resolution, petitioner filed the present petition.

In its Memorandum,²⁷ petitioner claims that the CA committed error in awarding separation pay, arguing that such may only be done if the employee was validly dismissed for causes other than serious misconduct or those reflecting on their moral character.

²¹ Id. at 118-134.

²² Id.

²³ CA rollo, pp. 3-17.

²⁴ Rollo, p. 35.

²⁵ Id. at 37.

²⁶ Id.

²⁷ Id. at 174-183.

Meanwhile, respondent contends that she was illegally dismissed, and that the award of separation pay was proper.²⁸

Issues

1. Is petitioner guilty of illegal dismissal?
2. Is respondent entitled to separation pay?

Our Ruling

At the outset, petitioner contends that the issue on illegal dismissal is already settled; that respondent "committed an act of dishonesty is an established fact, x x x conclusive at this stage of the proceedings."²⁹

The Court disagrees.

In *Laya v. Philippine Veterans Bank*,³⁰ We held:

There is now no dispute that the CA can make a determination whether the factual findings by the NLRC or the Labor Arbiter were based on the evidence and in accord with the pertinent laws and jurisprudence.

The significance of this clarification is that whenever the decision of the CA in a labor case is appealed by a petition for review on *certiorari*, the Court can competently delve into the propriety of the factual review not only by the CA but also by the NLRC. Such ability is still in pursuance to the exercise of our review jurisdiction over administrative findings of fact that we have discoursed on in several rulings, including *Aklan Electric Cooperative, Inc. v. National Labor Relations Commission*, where we have pointed out:

While administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court has not hesitated to reverse their factual findings. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness.³¹ (Citations omitted)

Moreover, in *Agabon v. National Labor Relations Commission*,³² it was declared:

²⁸ Records, pp. 185-200.

²⁹ *Rollo*, p. 164.

³⁰ 823 Phil. 302 (2018).

³¹ *Id.* at 335.

³² 485 Phil. 248 (2004).

It is well-settled that findings of fact of quasi-judicial agencies like the NLRC are accorded not only respect but even finality if the findings are supported by substantial evidence. This is especially so when such findings were affirmed by the Court of Appeals. **However, if the factual findings of the NLRC and the Labor Arbiter are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.**³³ (Emphasis supplied)

Thus, guided by the foregoing, and considering that the issue on the legality of respondent's dismissal is paramount, We shall proceed to rule on the same.

Going now to the substantive issues, the Court finds the appeal lacking in merit.

Petitioner is guilty of illegal dismissal

To recap, the dismissal was predicated on "serious misconduct" and "fraud against the company," as stated in the Notice to Explain sent to respondent. In *Sterling Paper Products Enterprises, Inc. vs. KMM-Katipunan*,³⁴ misconduct as basis for dismissal was further explained:

To summarize, for misconduct or improper behavior to be a just cause for dismissal, the following elements must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.³⁵

Meanwhile, fraud or dishonesty as a ground for dismissal is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."³⁶

We find that petitioner failed to fully establish these grounds.

a. Petitioner failed to prove serious misconduct on the part of respondent

³³ Id. at 277.

³⁴ 815 Phil. 425 (2017).

³⁵ Id. at 436.

³⁶ *National Power Corporation v. Olandesca*, 633 Phil. 278, 288 (2010), citing *Philippine Amusement and Gaming Corporation v. Rilloraza*, 412 Phil. 114, 133 (2001).

In justifying the dismissal, petitioner alleges that respondent's failure to follow the SOP in credit adjustments – by indicating a notation – constituted serious misconduct. We disagree.

As discussed above, the alleged serious misconduct must have been done with wrongful intent. In the present case, however, petitioner failed to convincingly prove that the credit adjustment made by respondent was done with wrongful intent.

Petitioner repeatedly mentions that the credit adjustment was "invalid." In fact, in the Notice to Explain, petitioner claims that respondent facilitated an "invalid credit adjustment." Despite these accusations however, petitioner not even once bothered to explain why the credit adjustment was deemed invalid, notwithstanding the fact that respondent, as Retail Shop Specialist, was authorized to do so as part of her job. Was the credit adjustment invalid due to respondent's relationship with the account holder? Was it because of the lack of notation, which, by the way, petitioner also failed to prove? Was the adjustment completely baseless? The Court is at a loss. Unfortunately for petitioner, the lack of clarity as to why the adjustment was deemed invalid makes it difficult for the Court to determine whether respondent was indeed motivated by wrongful intent or not, considering that the same cannot be presumed.

Another circumstance which militates against petitioner's accusations is the fact that, as already mentioned, respondent was authorized to make credit adjustments as Retail Shop Specialist. Thus, her actions, such as making credit adjustments, must be presumed regular unless otherwise clearly proven. In the present case, petitioner faults respondent for making a credit adjustment without the proper notation. However, petitioner again failed to illustrate how the lack of notation, assuming true, translated to serious misconduct.

To reiterate, while a violation of a company procedure may constitute misconduct in the ordinary sense, serious misconduct as a ground for dismissal requires wrongful intent. Therefore, even granting that respondent indeed failed to indicate the proper notation in the credit adjustment, petitioner was not able to clearly show what was the effect of this lack of notation. Did the lack of notation conceal the adjustment? Did it hide the identity of the person who made the adjustment? While it may have relieved her father from paying, was it really unwarranted, therefore depriving petitioner of its lawful income? Again, petitioner's failure to clarify these matters leaves the Court in the dark. For all We know, the adjustment may have been perfectly valid and justified, only without the proper notation. Further, We just cannot agree with the assumption of the CA that the lack of notation leads to the conclusion that respondent intended to make the adjustment undetected. There is no evidence presented by petitioner supporting such assumption.

Lastly, the fact that respondent herself made the adjustment on her own father's account cannot be taken against her for the simple reason that petitioner failed to prove, much less allege, that such is against company policy.

In all, what is only firmly established by the proceedings below is that respondent made a credit adjustment on her father's account in the amount of ₱998.99. By no stretch of imagination can this be considered serious misconduct. Indeed, even the presence or absence of the notation on the adjustment – upon which petitioner anchors its position – is disputed. As found by the NLRC:

Significantly, however, neither party actually presented proof of their conflicting claims. On one hand, complainant did not present the notation that she claimed to have made to justify her granting the credit adjustment in favor of her father's account. On the other hand, respondents did not also present any evidence, such as transaction documents or records, or even screenshots of the company database, to show that the complainant did not provide any justification, by way of a notation, for the credit adjustment. Respondents did not even indicate the amount by which they were allegedly defrauded. Both parties merely relied on their respective sworn allegations in their pleadings.³⁷

b. Petitioner failed to prove fraud committed by respondent

Similar to the discussion above, petitioner contends that respondent's act constituted fraud which warranted her dismissal. Again, We disagree.

Article 282 (c) of Presidential Decree No. 442, also known as the Labor Code of the Philippines, provides:

Article 282. Termination by employer. An employer may terminate an employment for any of the following causes:

x x x x

c. Fraud or willful breach by the employee of the trust reposed in him [or her] by his [or her] employer or duly authorized representative;

Although written together, fraud is actually a separate and distinct ground for dismissal from the other ground provided which is loss of trust and confidence.³⁸ Further, although fraud necessarily results in loss of trust and

³⁷ *Rollo*, pp. 104-105.

³⁸ *Sanden Aircon Philippines v. Rosales*, 661 Phil. 584, 594 (2011).

confidence, the reverse is not always true; *i.e.*, loss of trust and confidence does not always stem from fraud. Thus, for purposes of the present case, We shall limit the discussion on fraud, as alleged by petitioner.

Petitioner makes the following strong accusations:

The offense committed by the respondent herein is a serious misconduct that reflects on her moral character. By adjusting the bill of her father from ₱998.99 to zero thereby relieving her father from paying his bill, the respondent committed an act of dishonesty. x x x³⁹

x x x x

It should be realized that it is not easy to catch this [sic] kind of offenders. The petitioner should not be expected to wait for the respondent herein to commit the same offense for the second time. The herein petitioner trusts all of its employees. It does not, and cannot, watch the acts of every employee. Offenses like this are discovered only through random checks. Thus, it is difficult to determine whether the respondent herein has done the same thing in the past. That is precisely the reason why a strict norm of discipline is enforced against this [sic] kind of offenders. The seriousness of the offense cannot, therefore, be trivialized. One could just imagine the far-reaching consequences if more than 5,000 employees of the petitioner company would every now and then adjust the bills of their relatives and friends.⁴⁰

Petitioner's contentions are highly speculative. First, it erroneously assumes that respondent has already done the misdeed in the past and second, it falsely speculates that all of its 5,000 employees are predisposed to unduly adjust the bills of their friends and relatives. It thus concludes that because of these circumstances, as a measure of self-preservation, the dismissal of respondent was warranted. It does not take much to see that petitioner's position is shallow at best. While petitioner is perfectly free to take precautionary measures to protect its interests, it certainly cannot do so at the expense of its employees.

Further and more importantly, We stress that respondent was authorized to make credit adjustments as part of her job. Note that petitioner does not complain about the credit adjustment, only that the respondent did not make the proper notation. Once again, We cannot see how this – a mere violation in SOP – in itself translates to fraud and/or dishonesty and wish to highlight that petitioner failed to clearly demonstrate such. We cannot simply assume fraud or dishonesty on the part of respondent, as the same implies a “conscious and

³⁹ *Rollo*, p. 178.

⁴⁰ *Id.* at 179.

intentional design to evade the normal fulfillment of existing obligations.”⁴¹ Moreover, fraud must be proven to have been done intentionally, knowingly, and purposely; it must not be simply a result of carelessness, negligence, or inattention.⁴²

In other words, the burden was upon petitioner to prove all these things. Unfortunately, it failed to do so.

Respondent is entitled to full backwages and separation pay

Normally, an illegally dismissed employee is entitled to full backwages and reinstatement. In view however of the strained relations between the parties, the reinstatement is no longer feasible and therefore separation pay in its lieu is more appropriate.

Meanwhile, backwages are awarded on grounds of equity for earnings which a worker or employee has lost due to his or her illegal dismissal.⁴³ Thus, in view of the finding of respondent’s illegal dismissal, the award of backwages is proper.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated July 26, 2018 is **AFFIRMED** with the following **MODIFICATIONS**:

1. Petitioner Globe Telecom, Inc. is ordered to **PAY** respondent Kay Abastillas Ebitner separation pay equivalent to one (1) month salary for every year of service, with a fraction of six (6) months considered as one whole year, counted from the commencement of employment up to the finality of this Decision;

2. Petitioner Globe Telecom, Inc. is ordered to **PAY** respondent Kay Abastillas Ebitner full backwages, counted from the time of dismissal up to the finality of this Decision; and

3. The portion requiring reimbursement to petitioner Globe Telecom, Inc. is **DELETED**.

All other matters not modified stand.

⁴¹ *Sps. Tumibay v. Sps. Lopez*, 710 Phil. 19, 38 (2013).

⁴² See *San Miguel Corporation v. Gomez*, G.R. No. 200815, August 24, 2020.

⁴³ *Torillo v. Leogardo*, 274 Phil. 758, 765 (1991).

SO ORDERED.

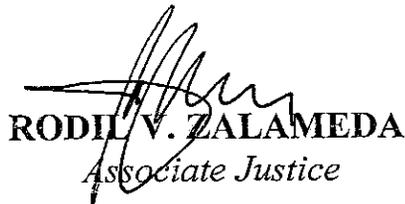


RAMON PAUL L. HERNANDO
Associate Justice

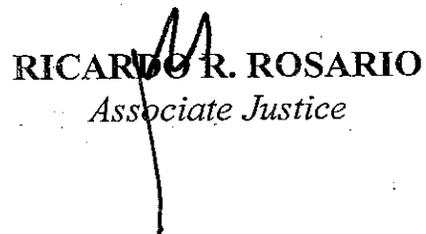
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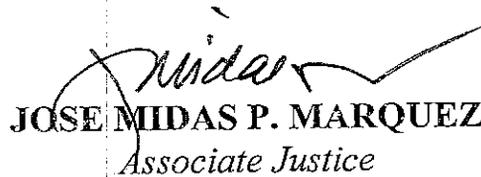
ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



RODIL V. ZALAMEDA
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

