

FIRST DIVISION

[G.R. No. 244388, March 03, 2021]

JAYRALDIN F. EBUS, PETITIONER, VS. THE RESULTS COMPANY, INC., * MICHAEL KALAW, SHERRA DE GUZMAN, ** SUMMER DOMBROWSKI, * JAY MORENTE AND FRANCIS LACUNA, RESPONDENTS.**

DECISION

CAGUIOA, J:

This is a petition for review on *certiorari*^[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision^[2] dated June 13, 2018 and Resolution^[3] dated January 29, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 148300, which affirmed the National Labor Relations Commission's. (NLRC) dismissal of petitioner Jayraldin Ebus's (Ebus) complaint for constructive dismissal.

Facts

Ebus has been an employee of respondent The Results Company, Inc. (TRCI), a business process outsourcing company, since August 13, 2012.^[4] He was hired as a sales representative and was promoted several times until he became a Team Leader in 2014.^[5] As a Team Leader, Ebus had the duty of supervising agents assigned to a program handling TRCI's US-based telecommunication service provider.^[6] During Ebus's employment, he was recognized for his accomplishments and was given various awards and travel incentives.^[7]

On December 30, 2014, Ebus received an email from John Christopher P. David (David), a consultant of TRCI, informing him of two company infractions allegedly committed by one of Ebus's agents — Ruby De Leon (De Leon).^[8] Allegedly, based on a quality call monitoring, De Leon incorrectly processed a customer's order and failed to fully apprise the customer of the products that TRCI offers. David recommended that coaching be provided to De Leon. Several program managers, one of whom was Operations Manager Summer Dombrowski (Dombrowski), were furnished a copy of the email.^[9]

On the same day, Dombrowski replied to the group email that a final written warning must be given to De Leon, stating that De Leon's employment should be terminated if it would be later found out that the same process has become a trend in past transactions.^[10] However, the other program managers disagreed with Dombrowski and recommended only coaching as there seemed to have been no fraud committed.^[11]

One program manager — Maria Aguilar (Aguilar) — likewise recommended coaching, after having listened to the calls, but advised that De Leon would not be receiving her commission pursuant to TRCI's Zero Tolerance Policy (ZTP) which authorizes the imposition of automatic penalty. Ebus answered the email of Aguilar and clarified that De Leon did not have any intention to defraud and that her infraction is not covered by the ZTP.^[12]

On January 1, 2015, Ebus issued a Notice to Explain to De Leon, pursuant to Dombrowski's instructions, but without mentioning any sanctions as Ebus was still awaiting the recommendation of Aguilar who was his immediate supervisor.^[13] He gave Aguilar a copy of the Notice to Explain and De Leon's explanation and informed Aguilar that he had yet to convey the sanction to De Leon as he was not yet sure of the corrective measure to impose.^[14]

Later, Ebus was also handed a Notice to Explain with Preventive Suspension, stating that he committed the following acts inimical to TRCI: (1) failure to act on an infraction by a supervisor; (2) gross negligence in the performance of an assigned task; (3) willful disobedience of the orders of a superior; and (4) serious misconduct. The same notice placed him under preventive suspension for 30 days and summoned him to an administrative hearing.^[15]

Ebus submitted his explanation, stating that all the support staff concurred that coaching was the sanction to be imposed on De Leon and that he was not grossly negligent as he fulfilled his duty to issue the Notice to Explain to De Leon.^[16]

Administrative proceedings ensued on January 13, 2015.^[17] Subsequently, on February 9, 2015, TRCI issued a Notice of Decision, wherein Ebus was admonished with a warning that another similar violation of TRCI's Code of Discipline might lead to his dismissal. He was found to have committed insubordination for failing to issue a Notice to Explain to De Leon and to inform her that it should be deemed a final warning for the infractions she committed.^[18] The notice likewise informed Ebus that he would be re-profiled to another account. Hence, along with the Notice of Decision, the HR Department issued a Redeployment Notice, placing Ebus on temporary lay-off (TLO) until he was re-assigned to another account after being processed and after having qualified therefor. During the lay-off, which should not exceed six months, Ebus would not receive any compensation.^[19]

Ebus thus filed a Complaint^[20] for constructive dismissal and other monetary claims and damages on March 20, 2015 before the Labor Arbiter (LA).

LA Decision

In a Decision^[21] dated February 1, 2016, the LA found Ebus to have been constructively dismissed and ordered payment of full separation pay and backwages.^[22] According to the LA, respondents failed to establish any factual and legal basis for placing Ebus under preventive suspension and to issue the final written warning. Moreover, the transfer of Ebus to another program for re-profiling, characterized by uncertainty and indefiniteness, constitutes constructive dismissal.^[23] The dispositive

portion of the Decision states:

WHEREFORE, premises considered, judgment is hereby rendered declaring herein Complainant to have been constructively dismissed and, correspondingly, holding all herein Respondents jointly and severally liable to pay said Complainant his full separation pay and backwages counted from the time of his relief until finality of this Decision, plus moral and exemplary damages of P50,000 each and attorney's fees equal to 10% of the total judgment awards, as contained in the Computation and Examination Unit's schedule of computation herein adopted and attached as Annex "A".

All other claims are dismissed for lack of merit.

SO ORDERED.^[24]

Only respondents appealed to the NLRC.

NLRC Decision

In a Decision^[25] dated July 29, 2016, the NLRC reversed and set aside the LA's Decision, ruling that the actions taken by TRCI were valid management prerogatives, as follows: (1) placing Ebus under preventive suspension to protect TRCI from further losses; (2) issuing several memoranda as disciplinary actions for Ebus's various violations of company rules and regulations; and (3) placing Ebus on a TLO status for a period not exceeding six months.^[26] The dispositive portion of the NLRC Decision states:

WHEREFORE, premises considered, the Appeal dated 29 February 2016 is GRANTED. The assailed Decision dated 1 February 2016 is REVERSED AND SET ASIDE.

Complainant-appellee Jayraldin F. Ebus was not constructively dismissed, but validly placed under preventive suspension.

SO ORDERED.^[27]

Ebus filed a motion for reconsideration, which was denied in the NLRC's Resolution^[28] dated September 9, 2016. Hence, Ebus filed a petition for *certiorari* with the CA.^[29]

CA Decision

In the assailed Decision, the CA denied Ebus's petition and affirmed the ruling of the NLRC.^[30] According to the CA, Ebus failed to demonstrate how he was demoted in rank or salaries by his transfer to a new account which may lead to the conclusion

that he was constructively dismissed.^[31] The CA believed TRCI's argument that Ebus cannot claim to have been constructively dismissed since he would retain the same position, salary and benefits, and would not lose any seniority rights as a result of his transfer.^[32] According to the CA, it was not shown that respondents perpetrated acts of clear discrimination, insensibility or disdain that have become so unbearable that Ebus was compelled to sever his ties with the company.^[33] As to his preventive suspension, the same was legal for it did not exceed 30 days pending investigation and that it was to protect the business of TRCI since Ebus held a position engaged in providing guidance, supervision, and leadership, and has strong influence on his subordinates whose performance will impact on TRCI's revenues.^[34]

The dispositive portion of the CA Decision states:

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated July 29, 2016 and the Resolution dated September 9, 2016 of the NLRC (Fourth Division) in NLRC LAC 03-000946-16/NLRC NCR Case No. 03-03497-15 are hereby **AFFIRMED**.

SO ORDERED.^[35]

Ebus moved for reconsideration but this was denied.

Hence, this Petition.

In due course, TRCI filed its Comment^[36] and in turn, Ebus filed his Reply.^[37]

Issue

The only issue raised in the Petition is as follows:

THE [CA] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR x x x EXCESS OF ITS JURISDICTION IN CONCLUDING THAT [EBUS] WAS NOT CONSTRUCTIVELY DISMISSED.^[38]

The Court's Ruling

The Petition is granted.

TRCI failed to prove the propriety of putting Ebus on TLO.

The Court's examination of a CA decision in a labor case elevated via a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to whether the CA correctly determined the existence of grave abuse of discretion on the part of the NLRC.^[39]

As defined, grave abuse of discretion may arise when the NLRC violates or contravenes the Constitution, the law or existing jurisprudence.^[40] It is "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."^[41]

It is with this lens that the Court examines this case.

To recall, TRCI, as a result of Ebus's transgressions, found it proper to penalize him with an admonition with a warning and re-profiling. It is the latter that gave rise to the issuance of the Redeployment Notice, which states:

REDEPLOYMENT NOTICE

Be this as it may, and pursuant to the Company's philosophy to retrain its employees, you are to be placed on Temporary Lay Off (TLO) until such time as you are reassigned to an account after being processed and qualified. Such TLO shall in no case be more than 6 months. Your TLO shall take effect x x x on Feb. 9, wherein which re-profiling opportunities will commence. In case you fail to qualify for an account within the period, we shall assess the most suitable opportunities available to you.

You are expected to exercise full cooperation, honesty and good faith to be re-profiled and transferred to other programs/department which shall be subject to applicable recruitment process and policies. Should you refuse to participate, fail to satisfy or comply with the requirements of the Recruitment Team, the same shall be deemed as an opportunity for you to be re-profiled.

You shall not be compensated while on TLO. You may, however, opt to file as Vacation Leave a certain number of days depending on your available vacation leave credits.

You are likewise advised that once re-profiled, the applicable training standards shall also apply to you.^[42] (Italics omitted)

Ebus argues that he was constructively dismissed when he was issued his Redeployment Notice as it constituted a demotion,^[43] his employment status was placed in a vague and indefinite status,^[44] and the transfer was invalid.^[45]

On the other hand, TRCI argues that it was a valid exercise of management prerogative when it transferred, redeployed, and placed Ebus on TLO.^[46] TRCI argues that it was only validly regulating the employment of Ebus and putting him on TLO was an opportunity for TRCI to assess Ebus's qualifications and re-assign