

SECOND DIVISION

[G.R. No. 233999, February 18, 2019]

TELEPHILIPPINES, INC.,[*] PETITIONER, V. FERRANDO H. JACOLBE, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated September 8, 2016 and the Resolution^[3] dated August 7, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 08600 which set aside the Decision^[4] dated March 31, 2014 and the Resolution^[5] dated May 20, 2014 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-02-000080-2014 and accordingly, reinstated the Decision^[6] dated November 25, 2013 of the Labor Arbiter (LA) finding respondent Ferrando H. Jacolbe (Jacolbe) to have been illegally dismissed by petitioner Telephilippines, Inc. (TP).

The Facts

TP^[7] is a corporation engaged in the business of providing contact center services to its various offshore corporate clients through its customer service representatives (CSRs).^[8] On June 18, 2007, TP hired Jacolbe as a CSR tasked to resolve customer's questions and issues promptly and efficiently, among others, in accordance with set performance standards and protocol.^[9]

Sometime in May 2009, TP assigned Jacolbe to its Priceline account. For TP to properly assess his work performance, Jacolbe was required to meet the key performance metric targets^[10] of, among others, an Average Handle Time (AHT) of 7.0 minutes or below.^[11] The AHT refers to the average time spent by a CSR with the customer on the phone; it is computed using the formula: $(\text{Average Talk Time} + \text{Hold Time}) / \text{Number of Calls} = \text{AHT}$, and is recorded on a daily and weekly basis.^[12]

On January 22, 2013, Jacolbe's supervisor, Mr. Philip Charles Go, issued an Incident Report^[13] for failure of Jacolbe to hit the 7-minute AHT goal agreed upon for the 3rd week of January while he was under TP's Performance Improvement Plan (PIP).^[14] Records show that Jacolbe was placed under the PIP after he failed to meet the 7-minute AHT target in two (2) previous instances, *i.e.*, January 5 and 12, 2013.^[15]

Subsequently, TP's Human Resources Department (HRD) sent Jacolbe a letter^[16] dated February 13, 2013 (Notice to Explain) informing him of its receipt of the Incident Report, and further stating that his "*work performance for the last 6 months is unsatisfactory due to [his] consistent failure to meet the [AHT] Goal in*

spite of being enrolled in [its PIP]"^[17] which, if proven true, would constitute as an offense against its code of conduct warranting the termination of his employment. The Notice also directed him to explain, in writing, why he should not be subjected to appropriate corrective action.

In compliance with the directive, Jacolbe submitted letters^[18] dated February 19 and 25, 2013, explaining that since he was hired in 2007, he had never intentionally disconnected a call to meet the prescribed AHT mark. Unsatisfied with his explanations, TP issued Jacolbe a Letter^[19] dated March 18, 2013 (Notice of Termination) dismissing him from work for failure to meet account specific performance metrics or certification requirements under Section V.B.4 of its Code of Conduct and Zero Tolerance Policy.

Aggrieved, Jacolbe filed a complaint^[20] for illegal dismissal and monetary claims^[21] against TP, pointing out that while the Incident Report noted his failure to hit the 7-minute AHT mark in two (2) instances, TP dismissed him allegedly for unsatisfactory work performance for the last six (6) months based on the HRD's Notice to Explain. He argued that if indeed he committed the said infractions, the same did not constitute serious misconduct warranting his dismissal, citing his award as Top Agent for December 2012,^[22] which negated the alleged unsatisfactory work performance for the last six (6) months.^[23]

In its defense, TP argued that Jacolbe's actual AHT scores^[24] from January 2012 up to his dismissal in March 2013 were consistently beyond the 7-minute AHT mark, despite his enrollment in its PIP and SMART Action Plan programs.^[25] TP explained that the PIP and SMART Action Plan programs are the company's tools designed to help "poor performing" CSRs improve their work performance.^[26] Under these programs, the enrolled CSRs are given "step goals" or targets that are considerably lower (or higher, as the case may be) than the prescribed metrics which are then gradually increased (or decreased) until they meet the same. Thus, under these circumstances, TP argued that Jacolbe's consistent failure to meet the 7-minute AHT mark over a prolonged period of time undoubtedly showed inefficient and poor call handling justifying his dismissal under its code of conduct.^[27]

The LA Ruling

In a Decision^[28] dated November 25, 2013, the LA found Jacolbe to have been illegally dismissed and ordered TP to pay the latter P319,089.09, representing his backwages, separation pay in lieu of reinstatement, moral and exemplary damages, as well as attorney's fees.^[29]

The LA held that Jacolbe's failure to meet the 7-minute AHT mark in two (2) instances could hardly be considered as habitual and gross neglect of duties that would warrant his dismissal, especially since Jacolbe was awarded as Top Agent in December 2012.^[30] Moreover, the LA found that TP failed to fully apprise Jacolbe of the specific violation of company rules he had committed, explaining that while the Incident Report cited only two (2) instances that he failed to meet the AHT target, the Notice to Explain, on the other hand, pointed to a six (6)-month unsatisfactory work performance. Finally, it observed that Jacolbe had been working for TP as a CSR for over five (5) years without any record of infractions.^[31] Accordingly, it held that Jacolbe's failure to meet the AHT target in the two (2) cited instances cannot be

construed to have been done habitually and grossly so as to warrant the imposition of the penalty of dismissal.^[32]

Dissatisfied, TP appealed^[33] to the NLRC.

The NLRC Ruling

In a Decision^[34] dated March 31, 2014, the NLRC reversed and set aside the LA ruling and held Jacolbe's dismissal valid. Contrary to the LA's findings, the NLRC found that Jacolbe had, in fact, consistently failed to meet the 7-minute AHT mark, starting from January 2012 up to his dismissal in March 2013, in violation of company-prescribed work standards. The NLRC noted that under TP's classification of offenses, such violation is considered gross negligence punishable by termination of employment on the fourth offense.^[35] Notwithstanding this company rule, the NLRC pointed out that TP had in fact afforded Jacolbe with some measures of leniency by continuing his employment and even enrolling him in its coaching and performance improvement programs, under the PIP and SMART Action Plan during the 3rd quarter of 2012 and again in January of 2013, to help him improve his AHT scores.^[36] Despite TP's assistance and leniency, however, Jacolbe still failed to meet the prescribed AHT mark. Thus, the NLRC held that Jacolbe's consistent failure to meet the reasonable work standards set by TP for a prolonged period of time exhibited incompetence, inefficiency, and inability to proficiently resolve customer's problems that justified his dismissal.^[37]

Aggrieved, Jacolbe sought reconsideration^[38] which the NLRC denied in a Resolution^[39] dated May 20, 2014. Thus, he filed a petition for *certiorari*^[40] before the CA.

The CA Ruling

In a Decision^[41] dated September 8, 2016, the CA set aside the NLRC ruling, and accordingly, ordered TP to reinstate Jacolbe or pay him separation pay in lieu thereof, as well as full backwages, inclusive of allowances, 13th month pay, salary differentials, holiday and rest day premium pays, as well as service incentive leaves. It also remanded the case to the LA for the computation of the monetary awards.^[42]

According to the CA, meeting the prescribed AHT metric is only one of the determining factors in evaluating a CSR's performance and, in fact, Jacolbe was awarded as Top Agent in December 2012 which thus contradicts the charge of poor performance. In any case, assuming that his failure to meet the 7-minute AHT mark from January 2012 to March 2013 showed inefficiency, the CA held that the same does not appear to be gross and habitual so as to warrant dismissal from employment.^[43]

Determined, TP sought reconsideration^[44] which the CA denied in a Resolution^[45] dated August 7, 2017; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly set aside the NLRC ruling, and accordingly, held that Jacolbe was illegally dismissed.

The Court's Ruling

The petition is meritorious.

At the outset, the Court stresses that the review in this Rule 45 petition of the CA's ruling in a labor case via a Rule 65 petition carries a distinct approach. In a Rule 45 review, the Court examines the correctness of the CA's decision in contrast with the review of jurisdictional errors under Rule 65.^[46] Further, Rule 45 limits the review to questions of law.^[47] In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* was presented to the CA.^[48] Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.^[49]

Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being 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.^[50]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.^[51] Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and accordingly, dismiss the petition.^[52]

With these standards in mind, the Court finds that the NLRC Decision in this case was supported by substantial evidence and is consistent with law and jurisprudence as to the issues raised in the petition. Hence, the CA erroneously ascribed grave abuse of discretion on the part of the NLRC in declaring that Jacolbe was validly dismissed. Accordingly, the NLRC's ruling must be reinstated.

In its petition, TP maintains that the CA erred in declaring Jacolbe's dismissal invalid, ratiocinating that the latter had consistently failed to meet the reasonable company-imposed performance targets, specifically the 7-minute AHT mark, for sixty-two (62) consecutive weeks despite the opportunities and assistance extended to him to improve his performance. It argues that Jacolbe's continued and persistent failure to meet the key performance metrics clearly illustrated gross inefficiency which is analogous to gross and habitual neglect of duties justifying his dismissal.^[53] Moreover, it stresses that Jacolbe's isolated Top Agent award which is completely unrelated to his AHT scores – as it merely recognized him as having achieved a satisfactory score based on a survey feedback from one customer in one day and during one call only – could not negate nor override his repeated poor work performance for the 62 consecutive weeks that led to his dismissal.^[54] For his part, Jacolbe simply maintains that there was no valid ground for his dismissal.^[55]

A valid dismissal necessitates compliance with both substantive and procedural due process requirements. Substantive due process mandates that an employee may be dismissed based only on just or authorized causes under Articles 297, 298, and 299 (formerly Articles 282, 283, and 284) of the Labor Code, as amended.^[56] On the other hand, procedural due process requires the employer to comply with the

requirements of notice and hearing before effecting the dismissal. In all cases involving termination of employment, the burden of proving the existence of the above valid causes rests upon the employer.^[57] The quantum of proof required in these cases is substantial evidence as discussed above.

In this relation, jurisprudence^[58] instructs that gross inefficiency is analogous to gross and habitual neglect of duty^[59] under Article 297 (e) in relation to Article 297 (b) of the Labor Code, as amended,^[60] for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business, and constituting, therefore, just cause to dismiss an employee, thus:

"[G]ross inefficiency" falls within the purview of "other causes analogous to the foregoing," [and] constitutes, therefore, just cause to terminate an employee under Article 282 [now under Article 297] of the Labor Code[, as amended]. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the latter. **"Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business.**^[61] (Emphasis supplied)

In *Buiser v. Leogardo, Jr.*,^[62] the Court explained that such inefficiency is understood to mean *failure to attain work goals* or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results.^[63] Further, in *San Miguel Corporation v. NLRC*,^[64] the Court held that an employer is entitled to prescribe reasonable work standards, rules, and regulations necessary for the conduct of its business, to provide certain disciplinary measures in order to implement them, and to assure that the same would be complied with.^[65] This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest.^[66]

In this case, records reveal that Jacolbe's AHT scores for 62 consecutive weeks, or from January 2012 up to his dismissal in March 2013, were well above the 7 minutes or lower AHT mark.^[67] As he had been having difficulty meeting the same, TP allowed him to continue in its employ and even enrolled him in its SMART Action and Performance Improvement Plans^[68] twice – in July to August 2012 and again in January 2013 – to help him improve his AHT scores.^[69] This notwithstanding, Jacolbe's AHT scores remained well above the 7-minute AHT mark.^[70] Undoubtedly, Jacolbe's repeated and consistent failure to meet the prescribed AHT mark over a prolonged period of time falls squarely under the concept of gross inefficiency and is analogous to gross and habitual neglect of duty under Article 297 of the Labor Code which justified his dismissal.

Moreover, the Court observes that the 7-minute AHT metric is not unique to Jacolbe as it is in fact a key performance metric, which measures the effectivity and efficiency of a CSR in handling customer's concerns in each call. It applies to all employees assigned to the Priceline account who, save for a few including Jacolbe, have all been able to meet the same.^[71] Along with the other key performance metrics, it was employed by TP to properly and reasonably assess the overall work