

## SECOND DIVISION

[ G.R. No. 207315, November 23, 2016 ]

**INTERADENT ZAHNTECHNIK PHILIPPINES, INC., BERNARDINO G. BANTEGUI, JR. AND SONIA J. GRANDEA, PETITIONERS, V. REBECCA F. SIMBILLO, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the January 4, 2013 Decision<sup>[2]</sup> and May 24, 2013 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA G.R SP No. 120474, which set aside the March 24, 2011<sup>[4]</sup> and May 19, 2011<sup>[5]</sup> Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC No. 12-003076-10. The NLRC affirmed the October 29, 2010 Decision<sup>[6]</sup> of the Labor Arbiter declaring respondent Rebecca F. Simbillo's (Simbillo) dismissal by petitioners Interadent Zahntechnik Philippines, Inc. (Interadent) and its officers Bernardino G. Bantegui, Jr. (Bantegui) and Sonia J. Grandea (Grande), as President and Human Resource & Organizational Development Manager, respectively, valid on the ground of loss of trust and confidence.

#### ***Antecedent Facts***

Simbillo worked at Interadent as a rank-and-file employee from May 2, 2004 up to March 2006. In April 2008, she was rehired by Interadent as Accounting Manager. On April 16, 2010, she was promoted to the position of Finance and Accounting Manager. She was also Interadent's Treasurer upon being elected by the Board of Directors on March 31, 2010.

On July 23, 2010, Interadent sought a company-wide implementation of the following security measures: body frisking and bag/personal items inspection of all employees upon ingress and egress of office, disconnection of all USB ports and prohibition of cellular phone usage.<sup>[7]</sup> The immediate implementation of these security procedures was brought about by an alleged leakage of security information uncovered by Interadent's external auditors.

On July 28, 2010, upon the directive of Bantegui, all network and internet connections in Interadent's Accounting Department were removed and disabled. Simbillo's electronic mail (email) account was likewise suspended.<sup>[8]</sup>

On July 29, 2010, petitioners served Simbillo a Memorandum<sup>[9]</sup> (Notice to Explain) requiring her to submit a written explanation and to attend an administrative hearing on August 2, 2010, regarding a message she posted on her Facebook account "referring to company concerns with the Bureau of Internal Revenue (BIR) and insulting statements against a co-worker." In the Notice to Explain, Simbillo was reminded that as Treasurer, as well as Finance and Accounting Manager, he should

observe the highest degree of confidentiality in handling sensitive information. She was preventively suspended for seven days effective July 29, 2010 to August 6, 2010.

On the following day, Simbillo, through counsel, wrote a reply-letter<sup>[10]</sup> arguing that she was already constructively dismissed even prior to her receipt of the Notice to Explain considering the discriminatory acts committed by petitioners starting July 23, 2010 when certain security procedures were directed exclusively and solely against her. Simbillo claimed that the Notice to Explain was defective and was only used to disguise the intent to dismiss her; hence there was no need for her to submit an answer or attend the hearing. Simbillo further asserted that she committed no violation of any rule or law relative to the message she posted on her personal and private Facebook account that would justify any disciplinary action.

In a letter<sup>[11]</sup> dated August 6, 2010, petitioners extended Simbillo's suspension up to August 25, 2010 in view of her failure to submit a written explanation and to attend the scheduled hearing. In a reply-letter<sup>[12]</sup> dated August 9, 2010, Simbillo reiterated her claim of constructive dismissal and that there was no need for her to answer and attend the hearing.

On August 9, 2010, Simbillo filed with the Labor Arbiter a Complaint<sup>[13]</sup> for constructive illegal dismissal, non-payment of service incentive leave pay, 13<sup>th</sup> month pay, illegal suspension, claims for moral and exemplary damages and attorney's fees against petitioners.

On August 24, 2010, petitioners issued a Second Notice<sup>[14]</sup> informing Simbillo of her termination from service effective August 25, 2010 on the ground of loss of trust and confidence. Petitioners found Simbillo to have disclosed sensitive and confidential information when she posted on her Facebook account on July 15, 2010, the following:

*Sana maisip din nila na ang kompanya kailangan ng mga taong di tulad nila, nagtatrabaho at di puro #\$, \*% ang pinaggagagawa, na kapag super demotivated na yung tao nayun baka iwan narin nya ang kawawang kumpanya na pinagpepyestahan ng mga b\_i\_r\_. Wala na ngang credibility wala pang conscience, portraying so respectable and so religious pa. Hay naku talaga, nakakasuka, puro nalang animus lucrandi ang laman ng isip.*<sup>[15]</sup>

### **Parties' Respective Positions**

Simbillo asserted that her dismissal was without just cause or compliance with procedural due process since the alleged loss of trust and confidence was based on self-serving allegations and mere speculation. She averred that the Facebook entry cannot support the charge of breach of trust since it did not mention Interadent or any of its personnel. She maintained that the message actually pertained to a friend's predicament in another company. She explained that the term "*ng mga b\_i\_r\_*" in the Facebook message was short for "*bwitre*" and certainly did not refer to the BIR. She claimed that the sentiments that she expressed did not refer to herself or her work. She denied having been penalized for a past infraction which involved disclosure of confidential information.

Petitioners, for their part, denied Simbillo's claim of constructive dismissal for absence of proof. They asserted that the security measures were implemented company-wide without favoring or discriminating against anyone.

Moreover, Simbillo was terminated for a valid and just cause and with compliance with procedural due process. As a managerial and confidential employee of Interadent, the highest degree of professionalism and confidentiality was expected of Simbillo and the presence of the basis for the loss of the trust and confidence reposed upon her has warranted her dismissal. Petitioners posited that Simbillo's Facebook message implying that the BIR is "feasting on" the company was derogatory because it compromised the company's reputation, making it vulnerable to ridicule and suspicion particularly in its dealings with government agencies. Such act violated the company's Code of Conduct as well as the Code of Ethics for Professional Accountants. Furthermore, Simbillo's second infraction of divulging sensitive and confidential financial information has merited the penalty of termination.

Petitioners maintained that they observed due process by serving Simbillo both the Notice to Explain and the Second Notice of Termination. Simbillo was afforded the opportunity to answer but instead waived her chance to do so by opting not to submit an answer and attend the hearing.

### ***Ruling of the Labor Arbiter***

In a Decision<sup>[16]</sup> dated October 29, 2010, the Labor Arbiter ruled that Simbillo was not constructively dismissed because she failed to prove her claim of discrimination. The security measures were implemented as part of management prerogative to preserve the integrity of Interadent's network system and encompassed all employees as gleaned from a poster<sup>[17]</sup> Simbillo herself submitted. The Labor Arbiter sustained Simbillo's preventive suspension since her continued presence during investigation posed an imminent threat to the company's confidential information and records.

The Labor Arbiter also ruled that Simbillo was validly dismissed. He held that there was no need for an actual leakage of confidential information for Simbillo to be held accountable; her mere laxity and carelessness in posting a statement on her Facebook account that exposed the company to ridicule already rendered her unworthy of the trust and confidence reposed on her. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, we uphold the legality of the dismissal of complainant No pronouncement as to costs.<sup>[18]</sup>

### ***Ruling of the National Labor Relations Commission***

In a Resolution<sup>[19]</sup> dated March 24, 2011, the NLRC affirmed the ruling of the Labor Arbiter that Simbillo was not constructively dismissed but was validly dismissed for loss of trust and confidence. The NLRC held that the Facebook entry was "indeed alarming" as it compromised Interadent's reputation and was sufficient basis for the finding of willful breach of trust. It also ruled that Simbillo was not denied due process and that she was the one who did not avail herself of the opportunity to explain her side. The dispositive portion of the NLRC ruling reads as follows:

WHEREFORE, premises considered, the appeal is hereby DISMISSED, and the appealed decision AFFIRMED.

SO ORDERED.<sup>[20]</sup>

Simbillo filed a Motion for Reconsideration which was, however, denied in the NLRC Resolution<sup>[21]</sup> dated May 19, 2011.

### ***Ruling of the Court of Appeals***

Aggrieved, Simbillo filed a Petition for *Certiorari*<sup>[22]</sup> before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction in upholding the legality of her dismissal.

The CA, in a Decision<sup>[23]</sup> dated January 4, 2013, found merit in Simbillo's Petition. It ruled that to constitute a valid cause for dismissal, the breach of trust should be willful and intentional, which petitioners failed to prove in this case. It rejected petitioners' allegation that Simbillo divulged confidential company information. It noted that the Facebook entry did not contain any corporate record or confidential information but was merely "a vague expression of feelings or opinion towards a person or entity, which was not even identified with certainty."<sup>[24]</sup> It pointed out that the term "*b\_i\_r\_*" in the entry cannot be construed as the acronym "B.I.R." or the Bureau of Internal Revenue. Finding no willful breach of trust, the CA held that Simbillo's dismissal was illegal and ordered the payment of her separation pay in lieu of reinstatement due to strained relations of the parties plus backwages. The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition of GRANTED. The Resolutions dated March 24, 2011 and May 19, 2011 of the National Labor Relations Commission, are hereby SET ASIDE. Finding private respondent InteraDent Zahntechnik Philippines, Inc. to have dismissed petitioner Rebecca Simbillo without valid or just cause, InteraDent is hereby ordered to pay her a separation pay in lieu of reinstatement, of one (1) month salary for every year of service plus full backwages, inclusive of allowances and other benefits or their monetary equivalent from the time her compensation was withheld until finality of this decision.

SO ORDERED.<sup>[25]</sup>

Petitioners filed a Motion for Reconsideration but was denied by the CA in its Resolution<sup>[26]</sup> dated May 24, 2013.

Hence, petitioners filed this Petition for Review on *Certiorari*<sup>[27]</sup> and a Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction<sup>[28]</sup> to restrain the implementation of the CA Decision and Resolution.

### **Issues**

Petitioners raise the question on whether the CA may reverse the factual declarations of both the Labor Arbiter and the NLRC that there was substantial evidence of willful and intentional breach of trust. According to petitioners, the CA has no power to revisit the findings of fact of the NLRC by making the following erroneous interpretations in its Decision: a) that the Facebook entry "does not