

SECOND DIVISION

[G.R. No. 209559, December 09, 2015]

ENCHANTED KINGDOM, INC., PETITIONER, VS. MIGUEL J. VERZO, RESPONDENT.

DECISION

MENDOZA, J.:

Before this Court is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court filed by petitioner Enchanted Kingdom, Inc. (*Enchanted*), assailing the March 26, 2013 Decision^[2] and the October 11, 2013 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 118075. Through the assailed dispositions, the CA *reversed* the September 27, 2010^[4] and November 30, 2010^[5] Resolutions of the National Labor Relations Commission (NLRC), concurring in the finding of the Labor Arbiter (LA), that the complaint for illegal dismissal, damages and attorney's fees filed by respondent Miguel J. Verzo (*Verzo*) against Enchanted was without merit.^[6]

Position of Enchanted

On August 19, 2009, Verzo was hired by Enchanted to work as Section Head - Mechanical & Instrumentation Maintenance (*SH-MIM*) for its theme park in Sta. Rosa City, Laguna, for a period of six (6) months on probationary status. He was tasked to conduct "mechanical and structural system assessments," as well as to inspect and evaluate the "conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards."^[7] He was also provided with a detailed list^[8] of responsibilities that he should fulfill.

During the probationary period, Enchanted assessed Verzo's performance as not up to par. On January 26, 2010, Robert M. Schoefield (*Schoefield*), one of Verzo's fellow section heads, made his recommendation to Rizalito M. Velesrubio (*Velesrubio*), Verzo's immediate supervisor, that he should not be considered for regularization. In his memorandum,^[9] Schoefield noted the following: Verzo failed to take action to replace the faucets in the lavatories of the park and to ensure that the proximity brackets of one of the rides were properly installed; he mishandled the operation of the park's submersible pump, which resulted in the overflow of the sludge from Enchanted's sewage treatment plant towards the parking entrance; he once reported that the ZORB Ball pond had sufficient water for its operation, but the following day, one of Enchanted's patrons got injured due to the pond's low water level; and he often used company time browsing the internet for his personal use.

Schoefield's evaluation was shared by another section head, Jun Montemayor (*Montemayor*). In his memorandum,^[10] addressed to Velesrubio, Montemayor made the following observations^[11]:

1. His performance was more of a "rank and file" rather than that of a Section Head because even if there was a need for him to start or there was urgent work to attend, he would still go home or take his "lunchtime."
2. He had no initiative or even if he was called for certain activities, project or work, he would disappear or would not involve himself at all.
3. In several instances, he was observed using company computers during office hours, searching for motorcycle models and clubs which were all not related to his work, as he admitted during their meeting.
4. He was very slow in making decisions or very slow to act resulting in delayed results or "no result" at all.
5. Punctuality was also a concern. Oftentimes, he would report at 9:00 o'clock in the morning, affecting productivity.
6. He was afraid of giving orders/instruction to his subordinates.

Velesrubio agreed with the observations of Schoefield and Montemayor that Verzo was lax in the performance of his duties. In his memorandum^[12] addressed to Nympha C. Maduli (*Maduli*), head of Enchanted's Human Resources Department, Velesrubio reported that Verzo failed to check a problem with a lift for several days despite earlier instructions to him to fix it. Due to his failure, Velesrubio had no recourse but to check and undertake the repair of the lift himself with the assistance of other technicians.

Velesrubio added that, in another attraction, Verzo did not immediately comply with his instructions to check and repair a malfunctioning water pump for several weeks. The problem was only resolved when Velesrubio did a follow up on his instruction.^[13]

According to Velesrubio, Verzo's incompetence extended to his lack of the pertinent technical knowledge needed for the position. In one instance, Velesrubio instructed Verzo to check the expansion valve of the air-conditioning unit in one of the attractions. He was surprised, however, to find out that Verzo was unaware that the air-conditioning unit had an expansion valve.^[14]

Taking all these into consideration, on February 3, 2010, Enchanted furnished Verzo a copy of the Cast Member Performance Appraisal^[15] for Regularization which reported that he only obtained a score of 70 out of 100. Aside from indicating the numerical score, Enchanted's evaluation of his performance contained the following notations under Supervisor's Over-All Assessment:

Lacking in supervisory skill;
Incompetent technically;
Lacking in initiative/sense of responsibility.^[16]

On February 15, 2010, Enchanted formally informed Verzo that he did not qualify for regularization because his work performance for the past five (5) months "did not meet the requirements of the position of Section Head for Mechanical and Instrumentation Maintenance. xxx."^[17]

Position of Verzo

Believing that he was arbitrarily deprived of his employment, Verzo filed a complaint for illegal dismissal, damages and attorney's fees before the LA.

In his complaint, Verzo claimed that it was only after he was formally hired by Enchanted that he was informed of his probationary status. And even after despite being placed on a probationary status, he was not advised as to the standards required for his regularization.^[18]

Notwithstanding the status of his employment, Verzo believed that he performed his job well.^[19] Not only was he always punctual and regular in his attendance, but he was also respectful of his superiors and he maintained a good working relationship with his subordinates. In addition, during his tenure with Enchanted, he was able to introduce useful innovations in the maintenance procedures of the park.^[20]

For Verzo, the controversy began on January 5, 2010, when Schoefield approached and told him that Enchanted had decided not to continue with his employment. While Velesrubio confirmed the news relayed by Schoefield, he refused to provide any explanation therefor. Instead, Velesrubio advised him to resign so that he could be provided with a certificate of employment that he could use in the future.^[21]

Verzo asked Velesrubio several times to explain why he could not be considered for regularization, but to no avail. Verzo then approached Federico Juliano (*Juliano*), Enchanted's Executive Vice President for operations, to seek advice on his dilemma. Aside from telling Verzo that he apparently lacked control over the personnel under his supervision, Juliano did not give any explanation why Enchanted would not consider him for regularization and only advised him to just resign.^[22]

It was only after Verzo submitted a letter,^[23] dated January 26, 2010, to Velesrubio that the latter called for a meeting on that same day. Instead of discussing the reason why he could not be regularized, however, Velesrubio, together with Schoefield and Montemayor, proceeded to accuse him of imagined transgressions. Aside from the fact that it was the first time that he heard of such allegations, he was not given the chance to explain his side either.^[24]

On February 3, 2010, Verzo went to the office of Maduli to receive his performance appraisal. He was again advised to just resign in exchange for a certificate of employment. Maduli then showed him a copy of his performance appraisal and the memoranda submitted by Velesrubio, Schoefield and Montemayor which cited his shortcomings. Verzo then asked for time to answer the allegations in writing.^[25]

To his surprise, before he was able to submit his written reply to the allegations hurled against him, Verzo received a letter, dated February 15, 2010, from Enchanted, informing him that he was being terminated for his failure to qualify for

regularization.

The Decision of the LA

On June 8, 2010, the LA rendered its decision dismissing Verzo's complaint for lack of merit. The LA explained that his status being probationary, his employment was only temporary and, thus, could be terminated at any time. The LA stated that as long as the termination was made before the end of the six-month probationary period, Enchanted was well within its rights to sever the employer-employee relationship with Verzo.^[26]

The Decision of the NLRC

On September 27, 2010, the NLRC issued a resolution denying Verzo's appeal for lack of merit. According to the NLRC, his contention that he was not furnished or shown a probationary contract so that he could have been advised of the standards for regularization was belied by the fact that he himself attached to his position paper his signed contract of employment informing him of his probationary status and the job description of his position at Enchanted.^[27]

The NLRC opined that Verzo's position as SH-MIM was not highly technical as to require that his contract with Enchanted specify the reasonable standards for regularization. Assuming that it was required, the NLRC considered the fact that he signed his employment contract detailing the standards expected of him.^[28] The NLRC stated that as a licensed engineer, Verzo had a better comprehension of things compared to an average worker. Thus, the NLRC found it incredible that he was unaware of what was professionally expected of him for his regularization.^[29]

In concluding that Verzo was rightfully severed from his employment, the NLRC took into consideration the Cast Member Performance Appraisal for Regularization which showed that he failed to meet the qualifications or requirements set by Enchanted.^[30] The NLRC concluded that Enchanted acted within its rights when it dismissed him, considering that his inability to perform his job concerned the very safety and security of Enchanted's patrons.^[31]

Verzo sought reconsideration but his motion was denied.^[32]

The Decision of the CA

The CA, in the assailed decision, *reversed* the findings of the NLRC and the LA. It was of the view that the probationary contract between the parties failed to set the standards that would gauge Verzo's fitness and qualification for regular employment. According to the CA, "the NLRC's supposition that Verzo may not be apprised of the standard for regularization - on the assumption that given his itinerary and education, he has wider comprehension of what is expected of him professionally - is misplaced."^[33] For said reason, the CA opined that he should be considered a regular employee of Enchanted.

The CA further stated that even if Verzo was considered a probationary employee, his termination was tainted with bad faith. The appellate court gave weight to the

conversation between Velesrubio and Verzo prior to the release of the actual performance evaluation, where the former intimated to the latter that he would not be regularized and even advised him to resign. It also pointed out that the performance evaluation by Enchanted failed to specify the instances of Verzo's unfitness and to indicate that the numerical rating of 70 out of 100, given by Enchanted, was unsatisfactory or poor or that it was below the rating required for regularization. The CA concluded that Enchanted's dismissal of Verzo was arbitrary.
[34]

Enchanted sought reconsideration, but was rebuffed.^[35]

Hence, this petition with the following

ASSIGNMENT OF ERRORS^[36]

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT, IN THAT IT SERIOUSLY ERRED IN NULLIFYING THE RESOLUTIONS OF THE NLRC WHICH UNIFORMLY FOUND RESPONDENT A PROBATIONARY EMPLOYEE WHO FAILED TO QUALIFY FOR REGULAR EMPLOYMENT, CONSIDERING THAT:

- A) AT THE TIME OF ENGAGEMENT, RESPONDENT WAS INFORMED OF THE STANDARDS FOR HIS REGULARIZATION.**
- B) RESPONDENT'S PERFORMANCE WAS DULY EVALUATED BEFORE HE WAS DISMISSED FROM EMPLOYMENT FOR FAILING TO QUALIFY FOR REGULAR EMPLOYMENT.**
- C) RESPONDENT IS NOT ENTITLED TO REINSTATEMENT, BACKWAGES, MORAL DAMAGES, AND ATTORNEY'S FEES.**
- D) FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION COINCIDING WITH THAT OF THE LABOR ARBITER ARE ACCORDED GREAT RESPECT, IF NOT FINALITY.**

Enchanted asserts that the CA committed a palpable error for failing to accord respect and finality to the findings of the LA and the NLRC that it validly terminated Verzo for failure to qualify for regular employment. The findings of the labor officials should have been respected by the CA.^[37]

On the merits of the case, Enchanted insists that Verzo was apprised of his probationary status and the standards that were expected of him at the time of his employment. Its letter, dated August 26, 2009, specifically mentioned that he was being placed on probationary status from August 19, 2009 to February 18, 2010. The same letter was also accompanied by a Job Description of his position which detailed his duties and responsibilities. Enchanted also points out that both the probationary contract and Job Description were signed by Verzo to signify his conformity.^[38] Enchanted argues that his dismissal was valid because he failed to adhere to the dictates of common sense that required him to act in accordance with