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[G.R. No. 181490, April 23, 2014]

MIRANT (PHILIPPINES) CORPORATION AND EDGARDO A. BAUTISTA, PETITIONERS, VS. JOSELITO A. CARO, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

At bar is a petition[1] under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) dated June 26, 2007 and January 11, 2008, respectively, which reversed and set aside the Decision[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 046551-05 (NCR-00-03-02511-05). The NLRC decision vacated and set aside the Decision[5] of the Labor Arbiter which found that respondent Joselito A. Caro (Caro) was illegally dismissed by petitioner Mirant (Philippines) Corporation (Mirant).

Petitioner corporation is organized and operating under and by virtue of the laws of the Republic of the Philippines. It is a holding company that owns shares in project companies such as Mirant Sual Corporation and Mirant Pagbilao Corporation (Mirant Pagbilao) which operate and maintain power stations located in Sual, Pangasinan and Pagbilao, Quezon, respectively. Petitioner corporation and its related companies maintain around 2,000 employees detailed in its main office and other sites. Petitioner corporation had changed its name to CEPA Operations in 1996 and to Southern Company in 2001. In 2002, Southern Company was sold to petitioner Mirant whose corporate parent is an Atlanta-based power producer in the United States of America.[6] Petitioner corporation is now known as Team Energy Corporation.[7]

Petitioner Edgardo A. Bautista (Bautista) was the President of petitioner corporation when respondent was terminated from employment.[8]

Respondent was hired by Mirant Pagbilao on January 3, 1994 as its Logistics Officer. In 2002, when Southern Company was sold to Mirant, respondent was already a Supervisor of the Logistics and Purchasing Department of petitioner. At the time of the severance of his employment, respondent was the Procurement Supervisor of Mirant Pagbilao assigned at petitioner corporation's corporate office. As Procurement Supervisor, his main task was to serve as the link between the Materials Management Department of petitioner corporation and its staff, and the suppliers and service contractors in order to ensure that procurement is carried out in conformity with set policies, procedures and practices. In addition, respondent was put incharge of ensuring the timely, economical, safe and expeditious delivery of materials at the right quality and quantity to petitioner corporation's plant. Respondent was also responsible for guiding and overseeing the welfare and training needs of the staff of the Materials Management Department. Due to the nature of respondent's functions, petitioner corporation considers his position as confidential.

[9]

The antecedent facts follow:

Respondent filed a complaint[10] for illegal dismissal and money claims for 13th and 14th month pay, bonuses and other benefits, as well as the payment of moral and exemplary damages and attorney's fees. Respondent posits the following allegations in his Position Paper:[11]

On January 3, 1994, respondent was hired by petitioner corporation as its Logistics Officer and was assigned at petitioner corporation's corporate office in Pasay City. At the time of the filing of the complaint, respondent was already a Supervisor at the Logistics and Purchasing Department with a monthly salary of P39,815.00.

On November 3, 2004, petitioner corporation conducted a random drug test where respondent was randomly chosen among its employees who would be tested for illegal drug use. Through an Intracompany Correspondence,[12] these employees were informed that they were selected for random drug testing to be conducted on the same day that they received the correspondence. Respondent was duly notified that he was scheduled to be tested after lunch on that day. His receipt of the notice was evidenced by his signature on the correspondence.

Respondent avers that at around 11:30 a.m. of the same day, he received a phone call from his wife's colleague who informed him that a bombing incident occurred near his wife's work station in Tel Aviv, Israel where his wife was then working as a caregiver. Respondent attached to his Position Paper a Press Release[13] of the Department of Foreign Affairs (DFA) in Manila to prove the occurrence of the bombing incident and a letter[14] from the colleague of his wife who allegedly gave him a phone call from Tel Aviv.

Respondent claims that after the said phone call, he proceeded to the Israeli Embassy to confirm the news on the alleged bombing incident. Respondent further claims that before he left the office on the day of the random drug test, he first informed the secretary of his Department, Irene Torres (Torres), at around 12:30 p.m. that he will give preferential attention to the emergency phone call that he just received. He also told Torres that he would be back at the office as soon as he has resolved his predicament. Respondent recounts that he tried to contact his wife by phone but he could not reach her. He then had to go to the Israeli Embassy to confirm the bombing incident. However, he was told by Eveth Salvador (Salvador), a lobby attendant at the Israeli Embassy, that he could not be allowed entry due to security reasons.

On that same day, at around 6:15 p.m., respondent returned to petitioner corporation's office. When he was finally able to charge his cellphone at the office, he received a text message from Tina Cecilia (Cecilia), a member of the Drug Watch Committee that conducted the drug test, informing him to participate in the said drug test. He immediately called up Cecilia to explain the reasons for his failure to submit himself to the random drug test that day. He also proposed that he would submit to a drug test the following day at his own expense. Respondent never heard from Cecilia again.

On November 8, 2004, respondent received a Show Cause Notice[15] from petitioner corporation through Jaime Dulot (Dulot), his immediate supervisor, requiring him to explain in writing why he should not be charged with "unjustified refusal to submit to random drug testing." Respondent submitted his written explanation[16] on November 11, 2004. Petitioner corporation further required respondent on December 14, 2004 to submit additional pieces of supporting documents to prove that respondent was at the Israeli Embassy in the afternoon of November 3, 2004 and that the said bombing incident actually occurred. Respondent requested for a hearing to explain that he could not submit proof that he was indeed present at the Israeli Embassy during the said day because he was not allegedly allowed entry by the embassy due to security reasons. On January 3, 2005, respondent submitted the required additional supporting documents.[17]

On January 13, 2005, petitioner corporation's Investigating Panel issued an Investigating Report[18] finding respondent guilty of "unjustified refusal to submit to random drug testing" and recommended a penalty of four working weeks suspension without pay, instead of termination, due to the presence of mitigating circumstances. In the same Report, the Investigating Panel also recommended that petitioner corporation should review its policy on random drug testing, especially of the ambiguities cast by the term "unjustified refusal."

On January 19, 2005, petitioner corporation's Asst. Vice President for Material Management Department, George K. Lamela, Jr. (Lamela), recommended[19] that respondent be terminated from employment instead of merely being suspended. Lamela argued that even if respondent did not outrightly refuse to take the random drug test, he avoided the same. Lamela averred that "avoidance" was synonymous with "refusal."

On February 14, 2005, respondent received a letter[20] from petitioner corporation's Vice President for Operations, Tommy J. Sliman (Sliman), terminating him on the same date. Respondent filed a Motion to Appeal[21] his termination on February 23, 2005. The motion was denied by petitioner corporation on March 1, 2005.

It is the contention of respondent that he was illegally dismissed by petitioner corporation due to the latter's non-compliance with the twin requirements of notice and hearing. He asserts that while there was a notice charging him of "unjustified refusal to submit to random drug testing," there was no notice of hearing and petitioner corporation's investigation was not the equivalent of the "hearing" required under the law which should have accorded respondent the opportunity to be heard.

Respondent further asserts that he was illegally dismissed due to the following circumstances:

1. He signed the notice that he was randomly selected as a participant to the company drug testing;

2. Even the Investigating Panel was at a loss in interpreting the charge because it believed that the term "refusal" was ambiguous, and therefore such doubt

must be construed in his favor; and

3. He agreed to take the drug test the following day at his own expense, which he says was clearly not an indication of evasion from the drug test.

Petitioner corporation counters with the following allegations:

On November 3, 2004, a random drug test was conducted on petitioner corporation's employees at its Corporate Office at the CTC Bldg. in Roxas Blvd., Pasay City. The random drug test was conducted pursuant to Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." Respondent was randomly selected among petitioner's employees to undergo the said drug test which was to be carried out by Drug Check Philippines, Inc.[22]

When respondent failed to appear at the scheduled drug test, Cecilia prepared an incident report addressed to Dulot, the Logistics Manager of the Materials Management Department.[23] Since it was stated under petitioner corporation's Mirant Drugs Policy Employee Handbook to terminate an employee for "unjustified refusal to submit to a random drug test" for the first offense, Dulot sent respondent a Show Cause Notice[24] dated November 8, 2004, requiring him to explain why no disciplinary action should be imposed for his failure to take the random drug test. Respondent, in a letter dated November 11, 2004, explained that he attended to an emergency call from his wife's colleague and apologized for the inconvenience he had caused. He offered to submit to a drug test the next day even at his expense.[25] Finding respondent's explanation unsatisfactory, petitioner corporation formed a panel to investigate and recommend the penalty to be imposed on respondent.[26] The Investigating Panel found respondent's explanations as to his whereabouts on that day to be inconsistent, and recommended that he be suspended for four weeks without pay. The Investigating Panel took into account that respondent did not directly refuse to be subjected to the drug test and that he had been serving the company for ten years without any record of violation of its policies. The Investigating Panel further recommended that the Mirant Drug Policy be reviewed to clearly define the phrase "unjustified refusal to submit to random drug testing."[27] Petitioner corporation's Vice-President for Operations, Sliman, however disagreed with the Investigating Panel's recommendations and terminated the services of respondent in accordance with the subject drug policy. Sliman likewise stated that respondent's violation of the policy amounted to willful breach of trust and loss of confidence.[28]

A cursory examination of the pleadings of petitioner corporation would show that it concurs with the narration of facts of respondent on material events from the time that Cecilia sent an electronic mail at about 9:23 a.m. on November 3, 2004 to all employees of petitioner corporation assigned at its Corporate Office advising them of the details of the drug test – up to the time of respondent's missing his schedule to take the drug test. Petitioner corporation and respondent's point of disagreement, however, is whether respondent's proffered reasons for not being able to take the drug test on the scheduled day constituted valid defenses that would have taken his failure to undergo the drug test out of the category of "unjustified refusal." Petitioner corporation argues that respondent's omission amounted to "unjustified refusal" to submit to the random drug test as he could not proffer a satisfactory

explanation why he failed to submit to the drug test:

1. Petitioner corporation is not convinced that there was indeed such a phone call at noon of November 3, 2004 as respondent could not even tell who called him up.

2. Respondent could not even tell if he received the call via the landline telephone service at petitioner corporation's office or at his mobile phone.

3. Petitioner corporation was also of the opinion that granting there was such a phone call, there was no compelling reason for respondent to act on it at the expense of his scheduled drug testing. Petitioner corporation principally pointed out that the call merely stated that a bomb exploded near his wife's work station without stating that his wife was affected. Hence, it found no point in confirming it with extraordinary haste and forego the drug test which would have taken only a few minutes to accomplish. If at all, respondent should have undergone the drug testing first before proceeding to confirm the news so as to leave his mind free from this obligation.

4. Petitioner corporation maintained that respondent could have easily asked permission from the Drug Watch Committee that he was leaving the office since the place where the activity was conducted was very close to his work station.[29]

To the mind of petitioners, they are not liable for illegal dismissal because all of these circumstances prove that respondent really eluded the random drug test and was therefore validly terminated for cause after being properly accorded with due process. Petitioners further argue that they have already fully settled the claim of respondent as evidenced by a Quitclaim which he duly executed. Lastly, petitioners maintain that they are not guilty of unfair labor practice as respondent's dismissal was not intended to curtail his right to self-organization; that respondent is not entitled to the payment of his 13th and 14th month bonuses and other incentives as he failed to show that he is entitled to these amounts according to company policy; that respondent is not entitled to reinstatement, payment of full back wages, moral and exemplary damages and attorney's fees due to his termination for cause.

In a decision dated August 31, 2005, Labor Arbiter Aliman D. Mangandog found respondent to have been illegally dismissed. The Labor Arbiter also found that the quitclaim purportedly executed by respondent was not a *bona fide* quitclaim which effectively discharged petitioners of all the claims of respondent in the case at bar. If at all, the Labor Arbiter considered the execution of the quitclaim as a clear attempt on the part of petitioners to mislead its office into thinking that respondent no longer had any cause of action against petitioner corporation. The decision stated, *viz.*:

> **WHEREFORE**, premises considered, this Office finds respondents GUILTY of illegal dismissal, and hereby ordered to jointly and severally reinstate complainant back to his former position without loss on seniority rights and benefits and to pay him his backwages and other benefits from the