

## SECOND DIVISION

[ G.R. No. 178125, March 18, 2013 ]

**THE ORCHARD GOLF AND COUNTRY CLUB, PETITIONER, VS.  
AMELIA R. FRANCISCO, RESPONDENT.**

### DECISION

#### **DEL CASTILLO, J.:**

Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.

Assailed in this Petition for Review<sup>[1]</sup> is the January 25, 2007 Decision<sup>[2]</sup> of the Court of Appeals (CA) which dismissed the Petition in CA-G.R. SP No. 80968 and affirmed the November 19, 2002 Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC). Likewise assailed is the May 23, 2007 CA Resolution<sup>[4]</sup> denying petitioner's Motion for Reconsideration.

#### ***Factual Antecedents***

Petitioner, The Orchard Golf and Country Club (the Club), operates and maintains two golf courses in Dasmariñas, Cavite for Club members and their guests. The Club likewise has a swimming pool, bowling alley, cinema, fitness center, courts for tennis, badminton and basketball, restaurants, and function rooms.

On March 17, 1997, respondent Amelia R. Francisco (Francisco) was employed as Club Accountant, to head the Club's General Accounting Division and the four divisions under it, namely: 1) Revenue and Audit Division, 2) Billing/ Accounts Receivable Division, 3) Accounts Payable Division, and 4) Fixed Assets Division. Each of these four divisions has its own Supervisor and Assistant Supervisor. As General Accounting Division head, respondent reports directly to the Club's Financial Comptroller, Jose Ernilo P. Famy (Famy).

On May 18, 2000, Famy directed Francisco to draft a letter to SGV & Co. (SGV), the Club's external auditor, inquiring about the accounting treatment that should be accorded property that will be sold or donated to the Club. Francisco failed to prepare the letter, even after Famy's repeated verbal and written reminders, the last of which was made on June 22, 2000.

On June 27, 2000, Famy issued a memorandum<sup>[5]</sup> requiring Francisco's written

explanation, under pain of an insubordination charge, relative to her failure to prepare the letter. Instead of complying with the memorandum, Francisco went to the Club's General Manager, Tomas B. Clemente III (Clemente), and personally explained to the latter that due to the alleged heavy volume of work that needed her attention, she was unable to draft the letter. Clemente assured her that he would discuss the matter with Famy personally. On this assurance, Francisco did not submit the required written explanation. For this reason, Famy issued a June 29, 2000 memorandum<sup>[6]</sup> suspending Francisco without pay for a period of 15 days. The memorandum reads, as follows:

Considering the fact that you did [sic] explain in writing within 24 hours from the date and time of my memorandum to you dated June 27, 2000 the reason why you should not be charged with "Insubordination" as specified in Rule 5 Section 2a of our handbook, it has been found that:

Findings: You willfully refused to carry out a legitimate and reasonable instruction of your Department Head.

Act/Offense: Insubordination

Under the circumstances and pursuant to the rules and regulations of the Club, you are hereby suspended for 15 working days without pay. Effective dates of which shall be determined by the undersigned depending on the exigency of your work.

(Signed)

Nilo P. Famy<sup>[7]</sup>

On July 1, 2000, Famy issued another memorandum<sup>[8]</sup> informing Francisco that her suspension shall be effective from July 3 to 19, 2000. On July 3, 2000 Francisco wrote to the Club's General and Administrative Manager, Ma. Irma Corazon A. Nuevo (Nuevo), questioning Famy's act of charging, investigating, and suspending her without coursing the same through the Club's Personnel Department. Pertinent portions of her memorandum to Nuevo read:

This has reference to the [memoranda] of the Financial Controller, Mr. Ernilo Famy of June 27, June 29 & July 1, 2000 x x x. I would like to know under what authority x x x a department head [could] issue a memorandum and make decisions without the intervention of the [P]ersonnel [D]epartment.

I believe that if ever a department head or superior has complaints against his subordinate then he has to course them through the [P]ersonnel [D]epartment [which] will be the one to initiate and conduct an inquiry and investigation. A mere furnishing of the memorandum to the [P]ersonnel [D]epartment does not substitute [sic] the actual authority and functions of the [P]ersonnel [D]epartment because there will be no due process x x x. Nilo Famy decided on his own complaint without merit (sic) x x x. Also I believe x x x Nilo Famy abuse [sic] his

authority as superior with full disregard of the Personnel Department because he acted as the complainant, the investigator and the judge, **all by himself. For this I would like to file this complaint against him for abuse of authority** x x x.

x x x During our departmental meetings listed in his letter, I always made him aware of the lined-up priorities that need to be given attention first and pending works which during the year-end audit by the auditors [were] put on hold and [were] not x x x finish[ed] by the assigned staff. In fact, he commented that I should do something about the pending work. Also, if he really feels [sic] the importance of that letter and [sic] cognizant of my present work load, then why [did] he went [sic] on leave from June 23 until June 26. (his leave was cut because of the board meeting. His leave [sic] supposed to be until June 30) x x x.

Also, I would like to formally inform you that whenever we have some disagreement or he has dissatisfaction [sic] he is creating [sic] a feeling of job insecurity; it is very easy for Mr. Nilo Famy to directly tell me and the staff to resign. The last time we had a talk prior to this issue, he made it clear that he can transfer me to lower positions like the position of the cashier, cost controller and the like. He is confident he can do it because he had done it to the former Club Accountant. What do you think is the kind of authority you expect from him if you always hear these wordings [sic].<sup>[9]</sup>

That very same day, Nuevo replied,<sup>[10]</sup> exonerating Famy and justifying the latter's actions as falling within his power and authority as department head. Nuevo said that Francisco was accorded due process when she was given the opportunity to explain her side; that she deliberately ignored her superior's directive when she did not submit a written explanation, which act constitutes insubordination; that Famy acted prudently though he did not course his actions through the Personnel Department, for ultimately, he would decide the case; and that she was consulted by Famy and that she gave her assent to Famy's proposed actions, which he later carried out. Nuevo likewise brushed aside Francisco's accusation of abuse of authority against Famy, and instead blamed Francisco for her predicament.

On July 5, 2000, Francisco wrote a letter<sup>[11]</sup> to Clemente requesting an investigation into Famy's possible involvement in the commission in 1997 of alleged fraudulent and negligent acts relative to the questionable approval and release of Club checks in payment of Bureau of Internal Revenue (BIR) taxes, in which her counter-signature though required was not obtained. Famy belied Francisco's claims in a reply memorandum, saying the charges were baseless and intended to malign him.

On July 20, 2000, or a day after Francisco's period of suspension expired, Famy issued separate memoranda<sup>[12]</sup> to Francisco and Clemente informing them of Francisco's transfer, without diminution in salary and benefits, to the Club's Cost Accounting Section while the investigation on Famy's alleged illegal activities is pending. Relevant portions of these memoranda state:

## **MEMORANDUM TO CLEMENTE**

In view of the recent developments, i.e. the suspension of Ms. Amelia Francisco and her letter of July 5, 2000 x x x, I would like to formally inform you that effective today, July 20, 2000, Ms. Francisco shall be temporarily given a new assignment in my department pending the result of the investigation she lodged against the undersigned.

x x x. She shall remain directly reporting to the Financial Comptroller (Famy).<sup>[13]</sup>

## **MEMORANDUM TO FRANCISCO**

This is to inform you that effective today, July 20, 2000, Management has approved your temporary transfer of assignment pending the completion of the investigation you lodged against the undersigned.

You shall be handling the Cost Accounting Section together with six (6) Accounting Staffs and shall remain reporting directly to the undersigned.  
<sup>[14]</sup>

Yet again, in another memorandum<sup>[15]</sup> dated August 1, 2000 addressed to Nuevo, Famy sought an investigation into Francisco's alleged insubordination, this time for her alleged unauthorized change of day-off from July 30 to August 4, 2000, and for being absent on said date (August 4, 2000) despite disapproval of her leave/offset application therefor. In an August 2, 2000 memorandum,<sup>[16]</sup> Francisco was required to explain these charges. In another memorandum<sup>[17]</sup> dated August 5, 2000, Francisco was asked to submit her explanation on the foregoing charges of insubordination, negligence, inefficiency and violation of work standards relative to the unauthorized change of day-off and disapproved offset/ leave. To these, Francisco replied on August 8, 2000 claiming that her presence on July 30, 2000 which was a Sunday and supposedly her day-off, was nonetheless necessary because it was the Club's scheduled month-end inventory, and she was assigned as one of the officers-in-charge thereof. She added that her actions were in accord with past experience, where she would take a leave during the first week of each month to make payments to Pag-Ibig, and Famy very well knew about this. She accused Famy of waging a personal vendetta against her for her seeking an inquiry into claimed anomalies embodied in her July 5, 2000 letter. She also took exception to her transfer to Cost Accounting Section, claiming that the same was humiliating and demeaning and that it constituted constructive dismissal, and threatened to take legal action or seek assistance from Club members to insure that Famy's impropriety is investigated.<sup>[18]</sup>

On August 11, 2000, Francisco filed a Complaint for illegal dismissal against the Club, impleading Famy, Clemente and Nuevo as additional respondents. The case was docketed as NLRC Case No. RAB-IV-812780-00-C. She prayed, among others, for damages and attorney's fees.

On August 16, 2000, Francisco received another memorandum requiring her to explain why she should not be charged with betrayal of company trust, allegedly for

the act of one Ernie Yu, a Club member, who was seen distributing copies of Francisco's letter to the Club's Chairman of the Board of Directors.<sup>[19]</sup> On August 18, 2000, Francisco submitted her written explanation to the charges.<sup>[20]</sup> On August 19, 2000, with the Club finding no merit in her explanation, Clemente handed her a Notice of Disciplinary Action<sup>[21]</sup> dated August 16, 2000 relative to her July 30, 2000 unauthorized change of day-off and her August 4, 2000 unauthorized leave/absence. She was suspended for another fifteen days, or from August 21 to September 6, 2000.<sup>[22]</sup>

Francisco amended her illegal dismissal Complaint to one for illegal suspension. Meanwhile, she continued to report for work.

On September 7, 2000, or a day after serving her suspension, Francisco again received a September 6, 2000 memorandum from Nuevo, duly noted and approved by Clemente, this time placing her on forced leave with pay for 30 days, or from September 7, 2000 up to October 11, 2000, for the alleged reason that the case filed against her has strained her relationship with her superiors.<sup>[23]</sup> On even date, Francisco wrote a letter to Nuevo seeking clarification as to what case was filed against her, to which Nuevo immediately sent a reply memorandum stating that the case referred to her alleged "betrayal of company trust".<sup>[24]</sup>

After the expiration of her forced leave, or on October 12, 2000, Francisco reported back to work. This time she was handed an October 11, 2000 memorandum<sup>[25]</sup> from Clemente informing her that, due to strained relations between her and Famy and the pending evaluation of her betrayal of company trust charge, she has been permanently transferred, without diminution of benefits, to the Club's Cost Accounting Section effective October 12, 2000. Notably, even as Clemente claimed in the memorandum that Francisco's transfer was necessary on account of the strained relations between her and Famy, Francisco's position at the Cost Accounting Section was to remain under Famy's direct supervision. The pertinent portion of the memorandum in this regard reads:

Because of the strained relationship between you and your department head, Mr. Ernilo Famy, we deem it necessary to transfer you permanently to Cost Accounting effective October 12, 2000. You shall however continue to receive the same benefits and **shall remain under the supervision of Mr. Famy.** x x x<sup>[26]</sup>

In an October 13, 2000 memorandum<sup>[27]</sup> to Clemente, Francisco protested her permanent transfer, claiming that it was made in bad faith. She also bewailed Clemente's inaction on her July 5, 2000 letter charging Famy with irregularities relative to BIR tax payments. Likewise, on account of her transfer, Francisco once more amended her Complaint to include illegal/constructive dismissal. And in her prayer, she sought to be reinstated to her former position as Club Accountant.

On October 17, 2000, Clemente issued a memorandum<sup>[28]</sup> addressed to Francisco denying that her transfer was done in bad faith, and affirming instead that it was made in the proper exercise of management prerogative. In addition, Clemente