

THIRD DIVISION

[G.R. No. 201701, June 03, 2013]

UNILEVER PHILIPPINES, INC., PETITIONER, VS. MARIA RUBY M. RIVERA, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Subject of this disposition is the petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court filed by petitioner Unilever Philippines, Inc. (*Unilever*) questioning the June 22, 2011 Decision^[2] and the April 25, 2012 Resolution^[3] of the Court of Appeals (CA)-Cagayan de Oro City, in CA-G.R. SP No. 02963-MIN, an Illegal Dismissal case filed by respondent Maria Ruby M. Rivera (*Rivera*). The CA affirmed with modification the March 31, 2009 Resolution of the National Labor Relations Commission (*NLRC*) finding Rivera's dismissal from work to be valid as it was for a just cause and declaring that she was not entitled to any retirement benefit. The CA, however, awarded separation pay in her favor as a measure of social justice.

The Facts

Unilever is a company engaged in the production, manufacture, sale, and distribution of various food, home and personal care products, while Rivera was employed as its Area Activation Executive for Area 9 South in the cities of Cotabato and Davao. She was primarily tasked with managing the sales, distribution and promotional activities in her area and supervising Ventureslink International, Inc. (*Ventureslink*), a third party service provider for the company's activation projects. Unilever enforces a strict policy that every trade activity must be accompanied by a Trade Development Program (*TDP*) and that the allocated budget for a specific activity must be used for such activity only.^[4]

Sometime in 2007, Unilever's internal auditor conducted a random audit and found out that there were fictitious billings and fabricated receipts supposedly from Ventureslink amounting to P11,200,000.00. It was also discovered that some funds were diverted from the original intended projects. Upon further verification, Ventureslink reported that the fund deviations were upon the instruction of Rivera.

On July 16, 2007, Unilever issued a show-cause notice to Rivera asking her to explain the following charges, to wit: a) Conversion and Misappropriation of Resources; b) Breach of Fiduciary Trust; c) Policy Breaches; and d) Integrity Issues.

Responding through an email, dated July 16, 2007, Rivera admitted the fund diversions, but explained that such actions were mere resourceful utilization of budget because of the difficulty of procuring funds from the head office.^[5] She insisted that the diverted funds were all utilized in the company's promotional ventures in her area of coverage.

Through a letter, dated August 23, 2007, Unilever found Rivera guilty of serious breach of the company's Code of Business Principles compelling it to sever their professional relations. In a letter, dated September 20, 2007, Rivera asked for reconsideration and requested Unilever to allow her to receive retirement benefits having served the company for fourteen (14) years already. Unilever denied her request, reasoning that the forfeiture of retirement benefits was a legal consequence of her dismissal from work.

On October 19, 2007, Rivera filed a complaint for Illegal Dismissal and other monetary claims against Unilever.

On April 28, 2008, the Labor Arbiter (LA) dismissed her complaint for lack of merit and denied her claim for retirement benefits, but ordered Unilever to pay a proportionate 13th month pay and the corresponding cash equivalent of her unused leave credits. The decretal portion of the LA decision reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing for lack of merit the illegal dismissal complaint. However, UNILEVER PHILIPPINES, INC. is hereby ordered to pay complainant the total amount of PESOS: FIFTY SEVEN THOUSAND EIGHTY TWO & 90/100 ONLY (P57,082.90) representing proportionate 13th month pay and unused leave credits.

The complaint against individual respondents Recto Sampang and Alejandro Concha are likewise dismissed for it was not shown that they acted in bad faith in the dismissal of complainant. Moreover, their legal personality is separate and distinct from that of the corporation.

All other money claims are dismissed for lack of basis.^[6]

On appeal, the NLRC partially granted Rivera's prayer. In its Resolution, dated November 28, 2008, the NLRC held that although she was legally dismissed from the service for a just cause, Unilever was guilty of violating the twin notice requirement in labor cases. Thus, Unilever was ordered to pay her P30,000.00 as nominal damages, retirement benefits and separation pay. The dispositive portion reads:

WHEREFORE, foregoing premises considered, the appeal is PARTIALLY GRANTED. The assailed Decision dated 28 April 2008 is hereby MODIFIED in the sense that respondent UNILEVER PHILIPPINES, INC. is hereby ordered *to pay* the following *sums*:

1. The amount of P30,000.00 representing nominal damages for violation of complainant's right to procedural due process;
2. Retirement benefits under the company's applicable retirement policy or written agreement, and in the absence of which, *to pay* complainant her retirement pay equivalent to at least one-half (1/2) month salary for

every year of service, a fraction of at least six (6) months being considered as one whole year;

3. Separation pay under the company's applicable policy or written agreement, and in the absence of which, *to pay* separation pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

The rest of the Decision is hereby AFFIRMED.

SO ORDERED.^[7]

Unilever asked for a reconsideration of the NLRC decision. In its Resolution, dated March 31, 2009, the NLRC modified its earlier ruling by deleting the award of separation pay and reducing the nominal damages from P30,000.00 to P20,000.00, but affirmed the award of retirement benefits to Rivera. The *fallo* reads:

WHEREFORE, foregoing premises considered, the instant Motion for Partial Reconsideration is PARTLY GRANTED. The Resolution dated 28 November 2008 of the Commission is hereby RECONSIDERED as follows:

(1)The award of separation pay is hereby *deleted* for lack of factual and legal basis; and

(2)The award of nominal damages is hereby *tempered* and *reduced* to the amount of P20,000.00.

The rest of the award for retirement benefits is *affirmed in toto*.

SO ORDERED.^[8]

Unsatisfied with the ruling, Unilever elevated the case to CA-Cagayan de Oro City via a petition for *certiorari* under Rule 65 of the Rules of Court.

On June 22, 2011, the CA affirmed with modification the NLRC resolution. Justifying the deletion of the award of retirement benefits, the CA explained that, indeed, under Unilever's Retirement Plan, a validly dismissed employee cannot claim any retirement benefit regardless of the length of service. Thus, Rivera is not entitled to any retirement benefit. It stated, however, that there was no proof that she personally gained any pecuniary benefit from her infractions, as her instructions were aimed at increasing the sales efficiency of the company and competing in the local market. For said reason, the CA awarded separation pay in her favor as a measure of social justice.^[9] The decretal portion of the CA decision reads:

WHEREFORE, the assailed *Resolution* dated March 31, 2009 of the NLRC (Branch 5), Cagayan De Oro City is hereby **AFFIRMED with MODIFICATION**. Consequently, UNILEVER is directed to pay MARIA

RUBY M. RIVERA the following:

a) Separation pay, to be computed based on the company's applicable policy or written agreement, or in the absence thereof, the equivalent of at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year;

b) P20,000.00 as nominal damages; and

c) Proportionate 13th month pay and unused leave credits, to be computed based on her salary during the period relevant to the case.

The award of retirement benefits is hereby **DELETED**.

SO ORDERED.^[10]

Unilever filed a motion for partial reconsideration,^[11] but it was denied in a Resolution, dated April 25, 2012.

Hence, this petition.^[12]

In support of its position, Unilever submits for consideration the following

GROUND

I.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN GRANTING AFFIRMATIVE RELIEFS IN FAVOR OF RIVERA EVEN IF SHE DID NOT FILE ANY PETITION FOR *CERTIORARI* TO CHALLENGE THE NLRC RESOLUTIONS.

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AWARDING SEPARATION PAY IN FAVOR OF RIVERA CONSIDERING THAT THE LATTER WAS VALIDLY DISMISSED FROM EMPLOYMENT BASED ON JUST CAUSES UNDER THE LAW.

III.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE COMPANY VIOLATED RIVERA'S RIGHT TO PROCEDURAL DUE PROCESS BEFORE TERMINATING HER EMPLOYMENT, AND CONSEQUENTLY, IN AWARDING NOMINAL DAMAGES.^[13]

Unilever argues that Rivera did not file any separate petition for *certiorari* before the CA. Neither did she file any comment on its petition. Hence, it was erroneous for the

CA to grant an affirmative relief because it was inconsistent with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. The petitioner stresses that Rivera misappropriated company funds amounting to millions of pesos and that granting her separation pay undermines the serious misdeeds she committed against the company. Moreover, the length of her service with Unilever does not mitigate her offense, but even aggravates the depravity of her acts.^[14]

The petition is partly meritorious.

The pivotal issue in the case at bench is whether or not a validly dismissed employee, like Rivera, is entitled to an award of separation pay.

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282^[15] of the Labor Code is not entitled to a separation pay.^[16] Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.^[17] The leading case of *Philippine Long Distance Telephone Co. vs. NLRC*^[18] is instructive on this point:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he