

THIRD DIVISION

[G.R. No. 170454, October 11, 2012]

CECILIA T. MANESE, JULIETES E. CRUZ, AND EUFEMIO PEÑANO II, PETITIONERS, VS. JOLLIBEE FOODS CORPORATION, TONY TAN CAKTIONG, ELIZABETH DELA CRUZ, DIVINA EVANGELISTA, AND SYLVIA M. MARIANO, RESPONDENTS.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari*^[1] of the Decision^[2] of the Court of Appeals, dated August 30, 2005, in CA-G.R. SP No. 88223, and its Resolution^[3] dated November 16, 2005 denying petitioners' motion for reconsideration.

The Decision of the Court of Appeals affirmed the Resolution^[4] of the National Labor Relations Commission (NLRC) dated June 30, 2004, with the following modifications: (1) declaring petitioner Julietes Cruz as legally dismissed in accordance with Article 282, paragraph (c) of the Labor Code, and (2) holding respondent Jollibee Foods Corporation liable for the payment of the unpaid salary of petitioner Cecilia Manese from June 1 to 15, 2001; the payment of sick leave from May 16 to 31, 2001; and the payment of cooperative savings. It also directed the Labor Arbiter to compute the monetary claims.

The facts, culled from the decisions of the Court of Appeals and the Labor Arbiter, are as follows:

Petitioners were employees of respondent Jollibee Foods Corporation (Jollibee). At the time of their termination, petitioner Cecilia T. Manese (Manese), hired on September 16, 1996, was First Assistant Store Manager Trainee with the latest monthly salary of P21,040.00; petitioner Julietes E. Cruz (Cruz), hired on May 7, 1996, was Second Assistant Store Manager with the latest monthly salary of P16,729.00; and Eufemio M. Peñano II (Peñano), hired on June 22, 1998, was Shift Manager, who functioned as Assistant Store Manager Trainee (equivalent to Kitchen Manager), with the latest monthly salary of P10,330.00.

Petitioners were part of the team tasked to open a new Jollibee branch at Festival Mall, Level 4, in Alabang, Muntinlupa City on December 12, 2000. In preparation for the opening of the new branch, petitioner Cruz requested the Commissary Warehouse and Distribution (commissary) for the delivery of wet and frozen goods on December 9, 2000 to comply with the 30-day thawing process of the wet goods, particularly the Jollibee product called "Chickenjoy."

However, the opening of the store was postponed thrice. When the opening was rescheduled to December 24, 2000, petitioner Cruz made another requisition for the delivery of the food on December 23, 2000, but the opening date was again

postponed. Thereafter, Jollibee's Engineering Team assured the operations manager, respondent Elizabeth dela Cruz, that the new store could proceed to open on December 28, 2000. Petitioner Cruz, upon the advice of their Opening Team Manager Jun Reonal, did not cancel the request for delivery of the products.

On December 23, 2000, 450 packs of Chickenjoy were delivered and petitioners placed them in the freezer. On December 26, 2000, petitioner Cruz thawed the 450 packs of Chickenjoy (ten pieces in each pack), or 4,500 pieces of Chickenjoy, in time for the branch opening on December 28, 2000. The shelf life of the Chickenjoy is 25 days from the time it is marinated; and, once thawed, it should be served on the third day. Its shelf life cannot go beyond three days from thawing. After that, the remaining Chickenjoy products are no longer served, and they are packed in plastic, ten pieces in each pack, and placed in a garbage bag to be stored in the freezer. Within the period provided for in the company policy, valid Chickenjoy rejects are usually returned to the commissary, while rejects which are unreturnable are wasted and disposed of properly.

Despite postponements of the store's opening, the store's sales targets for December 28 and 29, 2000, considered peak times, were not revised by the operations manager. The sales targets of P200,000.00 for the first day and P225,000.00 for the second day were not reached, as the store's actual sales were only P164,000.00 and P159,000.00, respectively.

Sometime in January 2001, petitioner Cruz attempted to return 150 pieces of Chickenjoy rejects to the commissary, but the driver of the commissary refused to accept them due to the discoloration and deteriorated condition of the Chickenjoy rejects, and for fear that the rejects may be charged against him. Thus, the Chickenjoy rejects were returned to the freezer.

On February 13, 2001, the area manager conducted a store audit in all departments. The audit's results, which included food stocks and safety, were fair and satisfactory for petitioners' branch.

During the first week of March 2001, the team of petitioners had a meeting on what to do with the stored Chickenjoy rejects. They decided to soak and clean the Chickenjoy rejects in soda water and segregate the valid rejects from the wastes.

On April 2, 2001, petitioner Cruz was transferred to Jollibee Shell South Luzon Tollway branch in Alabang, Muntinlupa. She estimated that the total undisposed Chickenjoy rejects from the 450 packs (4,500 pieces of Chickenjoy) delivered on December 23, 2000 was only about 1,140 pieces as of January 2001. She failed to make the proper indorsement as the area manager directed her to report immediately to her new assignment.

On May 3, 2001, the area manager, Divina Evangelista, visited four stores, including the subject Jollibee branch at Festival Mall, Level 4. When Evangelista arrived at the subject Jollibee branch, she saw petitioner Peñano cleaning the Chickenjoy rejects. Evangelista told petitioner Manese to dispose of the Chickenjoy rejects, but Manese replied that they be allowed to find a way to return them to the Commissary. [5]

On May 8, 2001, Evangelista required petitioners Cruz and Manese to submit an incident report on the Chickenjoy rejects. On May 10, 2001, a corporate audit was

conducted to spot check the waste products. According to the audit, 2,130 pieces of Chickenjoy rejects were declared wastage.

On May 15, 2001, Evangelista issued a memorandum with a charge sheet,^[6] requiring petitioners to explain in writing within 48 hours from receipt why they should not be meted the appropriate penalty under the respondent company's Code of Discipline for extremely serious misconduct, gross negligence, product tampering, fraud or falsification of company records and insubordination in connection with their findings that 2,130 pieces of Chickenjoy rejects were kept inside the walk-in freezer, which could cause product contamination and threat to food safety.

The petitioners and other store managers submitted their respective letters of explanation.

In her letter^[7] of explanation dated May 20, 2001, petitioner Manese said that the foul smell and discoloration of the Chickenjoy rejects were due to the breakdown of the walk-in facilities prior to the store's grand opening. During that time, the store was using temporary power supply, so that it could open during Christmas Day and the Metro Manila Film Festival. She admitted that she was not able to immediately inform Area Manager Divina Evangelista about it. She appealed that they be not accused of gross negligence, because they did their best, but they were not able to save a bulk of the said Chickenjoy due to the holiday season. Manese explained that petitioner Peñano, the kitchen manager at that time, asked for assistance from other stores, but they could only accommodate a few stocks, as most of their storage areas were filled with their own stocks. She said that they did not immediately dispose of the Chickenjoy rejects out of fear of being reprimanded and it would add to the existing problems of the branch regarding low sales and profit. She explained that the Chickenjoy rejects were not disposed immediately, as instructed by Evangelista on May 3, out of desperation and fear. She admitted that this was wrong, but wasting such a big amount made her so worried, considering that the store was already suffering from cost problems. Manese pleaded with respondent corporation to try to understand their situation, and that they did their best for the sake of Jollibee; that they did not intend to hide something or neglect their respective jobs; that some things were just beyond their control; that some of them were not well trained in the kitchen and that she tried training them, but she could only do so much.

In his letter^[8] of explanation dated May 20, 2001, petitioner Peñano said that in December 2000, he was the Service Manager of Jollibee Festival Mall branch and was transferred from Level 1 to Level 4. One of his key responsibility areas was service, which included hiring and scheduling of the crew members. According to him, he was not familiar with the duties pertaining to the management of the kitchen area, as he had no proper training, and that Lee Macayana failed to make an indorsement when he was transferred to Level 4 branch and designated as kitchen manager from April 2 to 19, 2001. He was aware that there were Chickenjoy rejects, but he did not know that they were so many (2,130 pieces). Since he had no training in the kitchen, he merely followed Manese's instructions.

In her letter^[9] of explanation dated May 21, 2001, petitioner Cruz stated that before her transfer to the Jollibee Shell branch on April 2, 2001, the Chickenjoy rejects were only about 1,200 pieces. Some of those were valid rejects scheduled

for pull-out until April 8, 2001, while some could no longer be pulled out because they were already greenish, as they were the Chickenjoy products delivered when the store first opened. The Chickenjoy products turned greenish or quickly deteriorated because those were the ones delivered when the walk-in freezers were still on pre-setting temperature and were operating on temporary power. She tried reporting them as rejects, but the driver would not accept them because of their condition. She decided that it was not practical to report the rejects in one month as it would hurt the newly-opened store. They could not just throw the rejects, as they were also considering proper waste disposal. She denied any involvement in the alleged product tampering, since it happened after she was already assigned to the Jollibee Shell branch on April 2, 2001.

Thereafter, respondents Human Resource Manager Sylvia Mariano, Operations Manager Elizabeth dela Cruz, and Atty. Rey Montoya, lawyer for corporate affairs, conducted an administrative hearing on the incident.

On June 11, 2001, the Investigating Committee sent petitioner Cruz a Memorandum^[10] on its administrative findings and decision, and the said memorandum notified her that she was terminated from employment due to loss of trust and confidence.

On June 13, 2001, petitioners Manese and Peñano each received a similar Memorandum^[11] on the administrative findings and decision of the Investigating Committee, and the said Memoranda also notified them that they were terminated from employment due to loss of trust and confidence.

Thereafter, petitioners Manese and Cruz filed a Complaint^[12] against respondents for illegal dismissal with a claim for separation pay, retirement benefits, illegal deduction, unfair labor practice, damages, non-payment of maternity leave, non-payment of last salary, non-payment of sick leave and release of cooperative contributions and damages and attorney's fees. Petitioner Peñano also filed a complaint^[13] for illegal dismissal, non-payment of 13th month pay, damages and attorney's fees. These complaints were consolidated.

Petitioners contended that they did not waste the Chickenjoy rejects, because there were so many rejects since the opening of the store. Hence, they planned to report the Chickenjoy rejects to the commissary on a staggered basis, but the driver of the commissary refused to accept the rejects. They tried to find some solutions so that they could convince the driver of the commissary to accept their rejects, and they were able to return some 400 pieces of Chickenjoy rejects. They emphasized that their food cost was relatively high and the profit margins were low, so they could not declare the rejects as wastes and charge it to the store. Their purpose was salutary, and they even decided to pay for the rejects themselves if the same would no longer be accepted by the commissary.

Petitioners further argued that there was no product contamination, as the rejects were packed by tens and wrapped in plastic, placed in garbage bags, then placed in a crate before being stored in the freezer. From the opening of the store until their dismissal, they had not experienced any wastage of other wet and frozen items. In addition, they claimed that there was no insubordination, considering that the last word of Area Manager Evangelista on the wastage was "[s]ige kung gusto niyong

remedyuhan at makapagsasauli kayo." She allegedly did not direct petitioner Manese to waste the Chickenjoy. Her parting words to Manese were considered the green light to their attempts to find a solution for the proper disposal of the rejects.

In its Position Paper,^[14] respondent Jollibee replied that as a policy, a store can request for the return of the ordered products to the commissary for re-delivery on another date, especially if there are reasons to return them like postponement of the store opening or defective storage freezers. A store can also request other nearby Jollibee stores to accommodate wet products in their walk-in freezers and even allow the use of these products. Petitioner Cruz failed to resort to these remedies. All 450 packs of Chickenjoy were thawed for the store opening on December 28, 2000, and since not all were consumed, she allowed the same to be served beyond their shelf life until December 31. When the area manager visited the store on May 6, 2001 to make sure that her instruction on May 3, 2001 to dispose of the greenish Chickenjoy products was carried out, she found out that the greenish Chickenjoy products were still in the store. Hence, respondent Jollibee contended that there was no illegal dismissal, as petitioners were dismissed for gross negligence and/or incompetence, and for breach of trust and confidence reposed in them as managerial employees.

On July 31, 2003, the Labor Arbiter rendered a Decision,^[15] the dispositive portion of which reads:

WHEREFORE, premises considered, the complaints for illegal dismissal of complainants Cecilia T. Manese and Eufemio M. Peñano II, are hereby dismissed for want of merit. Cecilia A. Manese's money claims further, are likewise dismissed for similar reason.

The complaint for illegal dismissal filed by complainant Julietes E. Cruz is resolved in her favor, against respondent herein. On ground of strained relationship, respondent Jollibee, Inc. is hereby held liable for the payment of her separation pay computed at one (1) month pay for every year of service, or the amount of P59,530.00 instead of reinstatement. The payment of backwages is ruled out as an equitable solution to the losses sustained by the respondent.

SO ORDERED.^[16]

The Labor Arbiter stated that the charges against petitioners of having caused possible product contamination and endangering public health should not be collective, because at the time the incident was discovered on May 3, 2001, petitioner Cruz was no longer working at Jollibee Festival Mall, Level 4, as she was already transferred to Jollibee Shell South Luzon Tollway, Alabang, Muntinlupa on April 2, 2001. Thus, the Labor Arbiter held that Cruz could not be held liable therefor; hence, her dismissal was illegal. The Labor Arbiter also found no sufficient basis for the other charges foisted on Cruz. However, the Labor Arbiter awarded separation pay to Cruz, considering the strained relationship between the parties. Moreover, on the basis of equitable consideration for the losses sustained by the company on account of some errors of judgment, the Labor Arbiter resolved not to award backwages to Cruz.