

FIRST DIVISION

[G.R. No. 169173, June 05, 2009]

**M+W ZANDER PHILIPPINES, INC. AND ROLF WILTSCHKE,
PETITIONERS, VS. TRINIDAD M. ENRIQUEZ, RESPONDENT.**

D E C I S I O N

PUNO, C.J.:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the decision,^[1] dated May 31, 2005, of the Court of Appeals in CA G.R. SP No. 87597, entitled "Trinidad M. Enriquez v. National Labor Relations Commission, M+W Zander Philippines, Inc. and Rolf Wiltschek." The decision of the Court of Appeals set aside the decision of the National Labor Relations Commission (NLRC) and ruled the dismissal of respondent Trinidad M. Enriquez (Enriquez) as illegal. The Court of Appeals also ordered petitioners M+W Zander Philippines, Inc. and Rolf Wiltschek to reinstate respondent to her former position without loss of seniority rights and privileges and awarded her moral damages and attorney's fees.

The facts are as follows.

On June 4, 2001, respondent Enriquez was hired on probationary basis as the Administration Manager and Executive Assistant to the General Manager of petitioner M+W Zander Philippines, Inc. (M+W Zander), a multi-national corporation engaged in construction and facilities management. She was confirmed as a permanent employee on December 4, 2001. As Administration Manager, respondent's responsibilities include taking charge of the management of administrative personnel assigned to the head office, as well as the security of the company staff and premises and the implementation of company rules. As Executive Assistant to the General Manager, respondent was in charge of scheduling, monitoring and tracking all the General Manager's appointments and personal finances and serving as the liaison among the General Manager, the Division Heads, the Administrative Staff and external contacts.

In January 2002, M+W Zander relieved its General Manager, Mr. Eric Van Stiegeren, and in his place appointed Mr. Rolf Wiltschek (Wiltschek). The appointment of Wiltschek as the Acting General Manager was announced in a meeting held on January 31, 2002. On the same day, a Letter of Appeal^[2] was signed by 29 employees of M+W Zander, opposing the appointment of Wiltschek.

The letter states:

TO: MR. KLAUS GAERTNER
Managing Director
CC: MR. HELMUT
KURZBOECK

CC: MISS KITTY LEE
DATE: January 31, 2002

LETTER OF APPEAL

We are writing you this Letter of Appeal in the hope of expressing our concern and sentiments on the appointment of Rolf Wiltschek as the new General Manager.

We are appealing for your kind attention and consideration on this matter as part of the m+w Zander family worldwide. We know that above anything else, the well-being of the company is the first priority of every employee from whom he derives his livelihood and that of his family. However, we believe that Rolf Wiltschek as the General Manager here in the Philippines will not in any way contribute to our goal of making m+w Zander better equipped to fight all the financial deficiencies that the company is facing today.

For how can we have a person represent the company when we cannot even respect him as a person. His human behavior and relationship, his manners and etiquette appear less than the accepted norms in a civilized society. His sarcasm and arrogance and seeming feeling of superiority as expressed by his verbal abuses on his contemporaries and subordinates is unacceptable even in a poor country like the Philippines. Most of us in m+w Zander have worked with all sorts of people with different nationalities, people with even higher positions in life but we have never seen such an obnoxious and demeaning attitude towards the Filipino workers. It has perhaps escaped Rolf Wiltschek, that we Filipinos take pride in our professions and in our Country humble as it is.

We wish to relay to you our extreme disappointment on the replacement of Mr. Eric Van Stijgeren with the sudden appointment of Rolf Wiltschek as the new General Manager. We wish to convey to you our apprehension on the fate that awaits m+w Zander here in the Philippines with Rolf Wiltschek as the General Manager. Lastly, we assure you of our commitment to give our best performance in any task given us for the welfare of our Company.

Please help us save m+w Zander (Phils.) Inc.

Respectfully yours,

M+W Zander- Manila Head Office STAFF

All of the Undersigned:

1. ABEC TAYAG (sgd.)
2. CARLITO GARCIA (sgd.)
3. MARK JOSEPH AMADOR (sgd.)
4. CHRISTINE SAN AGUSTIN (sgd.)
5. EMMANUEL PIELAGO, JR. (sgd.)

6. STANLEY MOSENDE (sgd.)
7. JOANNE A. MEDIARITO (sgd.)
8. MICHAEL M. ILAGAN (sgd.)
9. DIANE F. COMINTAN (sgd.)
10. ERIC V. NAPOLITAN (sgd.)
11. RAYMOND C. JOSE (sgd.)
12. CHE BONBON (sgd.)
13. POCHOLO G. RATON (sgd.)
14. JON-JON IBARRA (sgd.)
15. MICHELLE DE MESA (sgd.)
16. TRINIDAD M. ENRIQUEZ (sgd.)
17. VIRGILIO G. NATIVIDAD (sgd.)
18. CELSA L. BAG-AO (sgd.)
19. ALLAN RIVERA (sgd.)
20. RANDY TECSON (sgd.)
21. JOY P. ESGUERRA (sgd.)
22. LARRY N. MARASIGAN (sgd.)
23. ELMER M. ARANA (sgd.)
24. ALDRIN EVANGELISTA (sgd.)
25. EDWARD A. BORJA (sgd.)
26. ERNESTO M. ANTIQUIA (sgd.)
27. JESS DELA CRUZ (sgd.)
28. P.R. SIMPLICIANO (sgd.)
29. R.L. CRUZ (sgd.)

The same appeal from the employees at the site to follow.^[3]

A day after the Letter of Appeal was released, a number of employees did not report to work.

Petitioners allege that after the announcement of Wiltschek as the new General Manager, respondent actively solicited signatures for a letter opposing the appointment of Wiltschek (Letter of Appeal). The petitioners claim that Enriquez used her influence and moral ascendancy to coerce several employees into signing the letter of appeal.^[4] They referred to Affidavits of Mark Joseph M. Amador (Amador),^[5] Randy R. Tecson (Tecson)^[6] and Patrocinio R. Simpliciano,^[7] M+W Zander's Accounting Assistant, Network Administrator and Contract Administrator, respectively, which state that respondent sought their signature for the Letter of Appeal. Amador stated in his affidavit^[8] that on February 1, 2002 one Abelardo Tayag asked him not to go to work and Enriquez only called him to confirm that he did not report for work. In Tecson's affidavit,^[9] it was stated that on February 1, 2002, he received a call from Enriquez in his mobile phone telling him not to report to work since other employees will not report to work and that he should just file for a sick leave since they were doing the same. Tecson said he was already on his way to the office and refused to follow Enriquez.

Upon discovering respondent Enriquez's participation in drafting and in circulating the Letter of Appeal, as well as in the alleged work stoppage that occurred a day after the release of the Letter, M+W Zander sent a Notice^[10] to respondent Enriquez, requiring her to explain within 48 hours from receipt of the notice why no

disciplinary action should be taken against her for willful breach of trust and using her authority and/or influence as Administration Manager of M+W Zander over her subordinates to stage a "no work day" on February 1, 2002. It was indicated that willful breach of trust has a corresponding penalty of dismissal. Meanwhile, respondent Enriquez was placed under preventive suspension for 15 working days.

Respondent Enriquez signed a statement,^[11] dated February 5, 2002, denying that she used her authority and/or influence as Administration Manager and Executive Assistant to the General Manager to compel her co-employees to stage the illegal work stoppage. She also denied that she performed any act to disrupt the vital operations of the company. She said that when she arrived at work on February 2, 2002, she was given a notice of suspension for 15 days and was instructed to leave the premises without being given an explanation. Her personal belongings were inspected and she was escorted out of the premises like a criminal. Respondent stated in her affidavit that her colleagues were given an order that if she is seen in the premises of the company, the administration should be informed immediately and that in no case should respondent be allowed to enter the premises of the company except if she is with an authorized escort of the petitioner company.^[12]

On February 14, 2002, an administrative investigation and an administrative hearing were conducted by the petitioner. During the administrative hearing, the respondent submitted several signed statements from her subordinates, such as Cecilia Benito,^[13] the receptionist; Michelle De Mesa,^[14] the Engineering Administrative Assistant; Joy Esguerra,^[15] an Administrative Assistant, and Christine Roma San Agustin,^[16] all saying that they were never advised or prevailed upon by the respondent not to report to work.

Sales Engineer Allan Ordinario Rivera (Rivera) admitted before the investigating panel that he was the one who instigated the no work day on February 1, 2002, but he was not charged by the petitioners. We quote Rivera's statement:

14 FEBRUARY 2002

TO WHOM IT MAY CONCERN:

IN RELATION TO THE ALLEGATIONS MADE AGAINST MS. TRINIDAD ENRIQUEZ, I ALLAN O. RIVERA REQUEST TO BE ACKNOWLEDGED & RECOGNIZED THROUGH MY OWN INITIATIVE & NOT FORCED TO PRESENT THIS WRITTEN STATEMENT TO CLARIFY WHAT REALLY TRANSPIRED ON JANUARY 31, 2002.

IT WAS ME [sic] WHO GAVE INSTRUCTION TO THOSE PRESENT THAT EVENING OF JANUARY 31, 2002 NOT TO REPORT FOR WORK THE FOLLOWING DAY[,] FEBRUARY 01, 2002 (FRIDAY).

IT WAS ALSO I, WHO INVITED MS. TRINIDAD ENRIQUEZ TO JOIN US, WHO WAS THEN LATER ACCUSED OF INSTIGATING THE SAID "NO WORK DAY SHOW," WHEREAS, IT WAS I WHO INSTIGATED THE INCIDENT.

FURTHER MS. TRINIDAD ENRIQUEZ, ASIDE FROM COMING LATE EVENING, SHE ONLY STAYED FOR LESS THAN AN HOUR, THAT THE

ACCUSATION BY SOME OF THE INDIVIDUALS IS NOT TRUE, SINCE SOME HAD ALREADY LEFT & MOST OF THE PARTICIPANTS DID NOT ARRIVED [sic] YET.

THIS IS TO ATTEST TO THE TRUTH OF THE ABOVE.

(Sgd.)

ALLAN ORDINARIO RIVERA

SALES ENGINEER^[17]

Out of the eight subordinates who gave their statements during the administrative investigation, it was only Stanley Mosende (Mosende) who stated that he was influenced by respondent Enriquez not to report for work.^[18] It appears, however, that Mosende was not absent from work based on the signed attendance sheet, which showed that he reported to the office at 5:00 p.m. and signed out at 7:00 p.m.^[19] The accounts of Mosende are incongruous with the statement of Tecson, the Network Administrator. Tecson submitted a written statement declaring that around 8:00 a.m. of February 1, 2002, he received a text message from Mosende and from Wally Borja asking him not to go to the office.^[20] He did not mention the respondent. Later on, he contradicted his earlier statement when he submitted another affidavit that was attached to the Petition for Review of petitioner M+W Zander, this time stating that it was respondent Enriquez who called him up in his mobile phone to tell him not to report to work.

On March 1, 2002, a Notice of Termination^[21] was received by respondent informing her that her services as Administration Manager and Executive Assistant to the General Manager of M+W Zander are terminated effective the same day. The respondent was found liable for "willful breach of trust and confidence in using [her] authority and/or influence as Administrative Manager of M+W Zander Philippines over [her] subordinate to stage a 'no work day' last February 1, 2002, which in turn disrupted vital operations in the Company."^[22]

On the same day of her receipt of the Notice of Termination, respondent filed a Complaint for illegal dismissal with the Arbitration Office of the NLRC. Respondent Enriquez alleges that petitioners based her termination on mere speculation since there were a number of employees who reported to work despite signing the letter of appeal, and despite the absence of some of the employees, the company still continued its operations that day.

Labor Arbiter Edgar B. Bisana held that respondent Enriquez was illegally dismissed.^[23] Both petitioners, M+W Zander and Wiltschek, were ordered to reinstate respondent without loss of seniority rights and privileges, and to pay respondent full backwages and benefits from the time compensation was withheld from her up to her actual reinstatement. The petitioners were further ordered to pay P100,000.00 as moral damages, P100,000.00 as exemplary damages, as well as attorney's fees.

The NLRC reversed the decision of the Labor Arbiter and found that respondent was not illegally dismissed because she committed serious misconduct which destroyed the trust and confidence of the management in her.^[24]