

FIRST DIVISION

[G.R. NO. 162053, March 07, 2007]

**ST. LUKE'S MEDICAL CENTER EMPLOYEE'S ASSOCIATION-AFW
(SLMCEA-AFW) AND MARIBEL S. SANTOS, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND ST.
LUKE'S MEDICAL CENTER, INC., RESPONDENTS.**

DECISION

AZCUNA, J.:

Challenged in this petition for review on *certiorari* is the Decision^[1] of the Court of Appeals (CA) dated January 29, 2004 in CA-G.R. SP No. 75732 affirming the decision^[2] dated August 23, 2002 rendered by the National Labor Relations Commission (NLRC) in NLRC CA No. 026225-00.

The antecedent facts are as follows:

Petitioner Maribel S. Santos was hired as X-Ray Technician in the Radiology department of private respondent St. Luke's Medical Center, Inc. (SLMC) on October 13, 1984. She is a graduate of Associate in Radiologic Technology from The Family Clinic Incorporated School of Radiologic Technology.

On April 22, 1992, Congress passed and enacted Republic Act No. 7431 known as the "Radiologic Technology Act of 1992." Said law requires that no person shall practice or offer to practice as a radiology and/or x-ray technologist in the Philippines without having obtained the proper certificate of registration from the Board of Radiologic Technology.

On September 12, 1995, the Assistant Executive Director-Ancillary Services and HR Director of private respondent SLMC issued a final notice to all practitioners of Radiologic Technology to comply with the requirement of Republic Act No. 7431 by December 31, 1995; otherwise, the unlicensed employee will be transferred to an area which does not require a license to practice if a slot is available.

On March 4, 1997, the Director of the Institute of Radiology issued a final notice to petitioner Maribel S. Santos requiring the latter to comply with Republic Act. No. 7431 by taking and passing the forthcoming examination scheduled in June 1997; otherwise, private respondent SLMC may be compelled to retire her from employment should there be no other position available where she may be absorbed.

On May 14, 1997, the Director of the Institute of Radiology, AED-Division of Ancillary Services issued a memorandum to petitioner Maribel S.

Santos directing the latter to submit her PRC Registration form/Examination Permit per Memorandum dated March 4, 1997.

On March 13, 1998, the Director of the Institute of Radiology issued another memorandum to petitioner Maribel S. Santos advising her that only a license can assure her of her continued employment at the Institute of Radiology of the private respondent SLMC and that the latter is giving her the last chance to take and pass the forthcoming board examination scheduled in June 1998; otherwise, private respondent SLMC shall be constrained to take action which may include her separation from employment.

On November 23, 1998, the Director of the Institute of Radiology issued a notice to petitioner Maribel S. Santos informing the latter that the management of private respondent SLMC has approved her retirement in lieu of separation pay.

On November 26, 1998, the Personnel Manager of private respondent SLMC issued a "Notice of Separation from the Company" to petitioner Maribel S. Santos effective December 30, 1998 in view of the latter's refusal to accept private respondent SLMC's offer for early retirement. The notice also states that while said private respondent exerted its efforts to transfer petitioner Maribel S. Santos to other position/s, her qualifications do not fit with any of the present vacant positions in the hospital.

In a letter dated December 18, 1998, a certain Jack C. Lappay, President of the Philippine Association of Radiologic Technologists, Inc., wrote Ms. Judith Betita, Personnel Manager of private respondent SLMC, requesting the latter to give "due consideration" to the organization's three (3) regular members of his organization (petitioner Maribel S. Santos included) "for not passing yet the Board of Examination for X-ray Technology," "by giving them an assignment in any department of your hospital awaiting their chance to pass the future Board Exam."

On January 6, 1999, the Personnel Manager of private respondent SLMC again issued a "Notice of Separation from the Company" to petitioner Maribel S. Santos effective February 5, 1999 after the latter failed to present/ submit her appeal for rechecking to the Professional Regulation Commission (PRC) of the recent board examination which she took and failed.

On March 2, 1999, petitioner Maribel S. Santos filed a complaint against private respondent SLMC for illegal dismissal and non-payment of salaries, allowances and other monetary benefits. She likewise prayed for the award of moral and exemplary damages plus attorney's fees.

In the meantime, petitioner Alliance of Filipino Workers (AFW), through its President and Legal Counsel, in a letter dated September 22, 1999 addressed to Ms. Rita Marasigan, Human Resources Director of private respondent SLMC, requested the latter to accommodate petitioner Maribel S. Santos and assign her to the vacant position of CSS Aide in

the hospital arising from the death of an employee more than two (2) months earlier.

In a letter dated September 24, 1999, Ms. Rita Marasigan replied thus:

Gentlemen:

Thank you for your letter of September 22, 1999 formally requesting to fill up the vacant regular position of a CSS Aide in Ms. Maribel Santos' behalf.

The position is indeed vacant. Please refer to our Recruitment Policy for particulars especially on minimum requirements of the job and the need to meet said requirements, as well as other pre-employment requirements, in order to be considered for the vacant position. As a matter of fact, Ms. Santos is welcome to apply for any vacant position on the condition that she possesses the necessary qualifications.

As to the consensus referred to in your letter, may I correct you that the agreement is, regardless of the vacant position Ms. Santos decides to apply, she must go through the usual application procedures. The formal letter, I am afraid, will not suffice for purposes of recruitment processing. As you know, the managers requesting to fill any vacancy has a say on the matter and correctly so. The manager's inputs are necessarily factored into the standard recruitment procedures. Hence, the need to undergo the prescribed steps.

Indeed we have gone through the mechanics to accommodate Ms. Santos' transfer while she was employed with SLMC given the prescribed period. She was given 30 days from issuance of the notice of termination to look for appropriate openings which incidentally she wittingly declined to utilize. She did this knowing fully well that the consequences would be that her application beyond the 30-day period or after the effective date of her termination from SLMC would be considered a re-application with loss of seniority and shall be subjected to the pertinent application procedures.

Needless to mention, one of the 3 X-ray Technologists in similar circumstances as Ms. Santos at the time successfully managed to get herself transferred to E.R. because she opted to apply for the appropriate vacant position and qualified for it within the prescribed 30-day period. The other X-ray Technologist, on the other hand, as you may recall, was eventually terminated not just for his failure to comply with the licensure requirement of the law but for cause (refusal to serve a customer).

Why Ms. Santos opted to file a complaint before the Labor Courts and not to avail of the opportunity given her, or

assuming she was not qualified for any vacant position even if she tried to look for one within the prescribed period, I simply cannot understand why she also refused the separation pay offered by Management in an amount beyond the minimum required by law only to re-apply at SLMC, which option would be available to her anyway even (if she) chose to accept the separation pay!

Well, here's hoping that our Union can timely influence our employees to choose their options well as it has in the past.

(Signed)

RITA MARASIGAN

Subsequently, in a letter dated December 27, 1999, Ms. Judith Betita, Personnel Manager of private respondent SLMC wrote Mr. Angelito Calderon, President of petitioner union as follows:

Dear Mr. Calderon:

This is with regard to the case of Ms. Maribel Santos. Please recall that last Oct. 8, 1999, Ms. Rita Marasigan, HR Director, discussed with you and Mr. Greg Del Prado the terms regarding the re-hiring of Ms. Maribel Santos. Ms. Marasigan offered Ms. Santos the position of Secretary at the Dietary Department. In that meeting, Ms. Santos replied that she would think about the offer. To date, we still have no definite reply from her. Again, during the conference held on Dec. 14, 1999, Atty. Martir promised to talk to Ms. Santos, and inform us of her reply by Dec. 21, 1999. Again we failed to hear her reply through him.

Please be informed that said position is in need of immediate staffing. The Dietary Department has already been experiencing serious backlog of work due to the said vacancy. Please note that more than 2 months has passed since Ms. Marasigan offered this compromise. Management cannot afford to wait for her decision while the operation of the said department suffers from vacancy.

Therefore, Management is giving Ms. Santos until the end of this month to give her decision. If we fail to hear from her or from you as her representatives by that time, we will consider it as a waiver and we will be forced to offer the position to other applicants so as not to jeopardize the Dietary Department's operation.

For your immediate action.

(Signed)