546 Phil. 339

THIRD DIVISION

[G.R. NO. 153477, March 06, 2007]

DEL MONTE PHILIPPINES, INC., PETITIONER, VS. LOLITA VELASCO, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for *Certiorari* under Rule 45 seeking to reverse and set aside the Decision[1] dated July 23, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 56571 which affirmed the Decision dated May 27, 1999 of the National Labor Relations Commission (NLRC); and the CA Resolution[2] dated May 7, 2002 which denied the petitioner's Motion for Reconsideration.

The facts of the case, as stated by the CA, are as follows:

> Lolita M. Velasco (respondent) started working with Del Monte Philippines (petitioner) on October 21, 1976 as a seasonal employee and was regularized on May 1, 1977. Her latest assignment was as Field Laborer.
>
> On June 16, 1987, respondent was warned in writing due to her absences. On May 4, 1991, respondent, thru a letter, was again warned in writing by petitioner about her absences without permission and a forfeiture of her vacation leave entitlement for the year 1990-1991 was imposed against her.
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> On September 14, 1992, another warning letter was sent to respondent regarding her absences without permission during the year 1991-1992. Her vacation entitlement for the said employment year affected was consequently forfeited.
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> In view of the said alleged absences without permission, on September 17, 1994, a notice of hearing was sent to respondent notifying her of the charges filed against her for violating the Absence Without Official Leave rule: that is for excessive absence without permission on August 15-18, 29-31 and September 1-10, 1994. The hearing was set on September 23, 1994.
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> Respondent having failed to appear on September 23, 1994 hearing, another notice of hearing was sent to her resetting the investigation on September 30, 1994. It was again reset to October 5, 1994.
>
> On January 10, 1995, after hearing, the petitioner terminated the services of respondent effective January 16, 1994 due to excessive absences without permission.

> Feeling aggrieved, respondent filed a case for illegal dismissal against petitioner asserting that her dismissal was illegal because she was on the family way suffering from urinary tract infection, a pregnancy-borne, at the time she committed the alleged absences. She explained that for her absence from work on August 15, 16, 17 & 18, 1994 she had sent an application for leave to her supervisor, Prima Ybañez. Thereafter, she went to the company hospital for check-up and was advised accordingly to rest in quarters for four (4) days or on August 27 to 30, 1994. Still not feeling well, she failed to work on September 1, 1994 and was again advised two days of rest in quarters on September 2-3, 1994. Unable to recover, she went to see an outside doctor, Dr. Marilyn Casino, and the latter ordered her to rest for another five (5) consecutive days, or from September 5 to 9, 1994. She declared she did not file the adequate leave of absence because a medical certificate was already sufficient per company policy. On September 10, 1994 she failed to report to work but sent an application for leave of absence to her supervisor, Prima Ybañez, which was not anymore accepted.[3]

On April 13, 1998, the Labor Arbiter dismissed the Complaint for lack of merit. The Labor Arbiter held that the respondent was an incorrigible absentee; that she failed to file leaves of absence; that her absences in 1986 and 1987 were without permission; that the petitioner gave the respondent several chances to reform herself; and that the respondent did not justify her failure to appear during the scheduled hearings and failed to explain her absences.

Respondent appealed to the NLRC. On May 29, 1999, the NLRC issued its Resolution, the dispositive portion of which reads:

> WHEREFORE, foregoing considered, the instant decision is hereby VACATED and a new one entered declaring the dismissal of complainant as ILLEGAL. In consonance with Art. 279 of the Labor [Code], her reinstatement with full backwages from the date of her termination from employment to her actual reinstatement is necessarily decreed.[4]

The NLRC held that, under the company rules, the employee may make a subsequent justification of her absenteeism, which she was able to do in the instant case; that while it is not disputed that the respondent incurred absences exceeding six (6) days within one employment year - a ground for dismissal under the company rules - the petitioner actually admitted the fact that the respondent had been pregnant, hence, negating petitioner's assertion that the respondent failed to give any explanation of her absences; that the records bear the admission of petitioner's officer of the receipt of the hospital record showing the cause of her absences ("RIQ advice" or "rest-in-quarters") for August 19-20, 1994 which, in turn, could already serve as reference in resolving the absences on August 15 to 18; that the petitioner further admitted that the respondent was under "RIQ advice" on September 2-3, 1994 and yet insisted in including these dates among respondent's 16 purported unexplained absences; that it is sufficient notice for the petitioner, "a plain laborer" with "unsophisticated judgment," to send word to her employer through a co-worker on August 15 to 16, 1994 that she was frequently vomiting; that the sheer distance between respondent's home and her workplace made it difficult to send formal notice; that respondent even sent her child of tender age to

inform her supervisor about her absence on September 5, 1994 due to stomach ache, but her child failed to approach the officer because her child felt ashamed, if not mortified; that respondent's narration that she had to bear pains during her absences on September 21 to 27, 1994 is credible; that she dared not venture through the roads for fear of forest creatures or predators; that the petitioner is guilty of unlawfully discharging respondent on account of her pregnancy under Article 137(2) of the Labor Code; and, that petitioner's reference to the previous absenteeism of respondent is misplaced because the latter had already been penalized therefor.

Petitioner's Motion for Reconsideration was denied on September 30, 1999.

The petitioner then appealed to the CA. On July 23, 2001, the CA promulgated its Decision the dispositive portion of which states:

> VIEWED IN THE LIGHT OF ALL THE FOREGOING, the instant petition is DISMISSED, the Resolutions, dated May 27, 1999 and September 30, 1999 of the National Labor Relations Commission in NLRC CA No. M-003926-98, are hereby AFFIRMED *in toto.*
>
> SO ORDERED.[5]

In affirming the NLRC, the CA held that absences due to a justified cause cannot be a ground for dismissal; that it is undisputed that the respondent was pregnant at the time she incurred the absences in question; that the certification issued by a private doctor duly established this fact; that it was no less than petitioner's company doctor who advised the respondent to have rest-in-quarters for four days on account of a pregnancy- related sickness; that it had been duly established that respondent filed leaves of absence though the last had been refused by the company supervisor; that the dismissal of an employee due to prolonged absence with leave by reason of illness duly established by the presentation of a medical certificate is not justified; that it is undisputed that respondent's sickness was pregnancy-related; that under Article 137(2) of the Labor Code, the petitioner committed a prohibited act in discharging a woman on account of her pregnancy.

On May 7, 2002, the CA denied petitioner's Motion for Reconsideration.

Hence, the instant Petition raising the following issues:

I.

> THE COURT OF APPEALS SERIOUSLY ERRED IN CONSIDERING RESPONDENT'S EXCESSIVE AWOPS AS JUSTIFIED SIMPLY ON ACCOUNT OF HER PREGNANCY.

II.

> THE COURT OF APPEaLS SERIOUSLY ERRED IN NOT CONSIDERING THAT RESPONDENT'S LATEST STRING OF ABSENCES INCURRED WITHOUT ANY PRIOR PERMISSION, AND AS ABOVE SHOWN, WITHOUT ANY VALID JUSTIFICATION, TAKEN TOGETHER WITH HER DAMAGING awop history,

established her gross and habitual neGlect of duties, a just and valid ground for dismissal.

III.

THE COURT OR APPEALS SERIOUSLY ERRED IN HOLDING THAT RESPONDENT'S DISMISSAL WAS IN VIOLATION OF ARTICLE 137 (PROHIBITING AN EMPLOYER TO DISCHARGE AN EMPLOYEE ON ACCOUNT OF HER PREGNANCY).

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN AWARDING FULL BACKWAGES IN FAVOR OF RESPONDENT NOTWITHSTANDING PETITIONER'S EVIDENT GOOD FAITH.[6]

The essential question is whether the employment of respondent had been validly terminated on the ground of excessive absences without permission. Corollary to this is the question of whether the petitioner discharged the respondent on account of pregnancy, a prohibited act.

The petitioner posits the following arguments: (a) The evidence proffered by the respondent, to wit: (1) the Discharge Summary indicating that she had been admitted to the Phillips Memorial Hospital on August 23, 1994 and discharged on August 26, 1994, and that she had been advised to "rest in quarters" for four days from August 27, 1994 to August 30, 1994, and (2) the Medical Certificate issued by Dr. Marilyn M. Casino stating that respondent had sought consultation on September 4, 2002 because of spasm in the left iliac region, and was advised to rest for five days (from September 4, 1994 up to September 8, 1994), due to urinary tract infection, all in all establish respondent's sickness only from August 23, 1994 up to August 30, 1994 and from September 4, 1994 up to September 8, 1994. In other words, respondent was absent without permission on several other days which were not supported by any other proof of illness, specifically, on August 15, 16, 17, 18, 31, 1994 and September 1, 2, 3, 9, and 10, 1994, and, hence, she is guilty of ten unjustified absences; (b) Per *Filflex Industrial and Manufacturing Co. v. National Labor Relations Commission (Filflex)*,[7] if the medical certificate fails to refer to the specific period of the employee's absence, then such absences, attributable to chronic asthmatic bronchitis, are not supported by competent proof and, hence, they are unjustified. By parity of reasoning, in the absence of evidence indicating any pregnancy-borne illness outside the period stated in respondent's medical certificate, such illness ought not to be considered as an acceptable excuse for respondent's excessive absences without leave; (c) Respondent's latest string of absences, taken together with her long history of absenteeism without permission, established her gross and habitual neglect of duties, as established by jurisprudence; (d) The respondent was dismissed not by reason of her pregnancy but on account of her gross and habitual neglect of duties. In other words, her pregnancy had no bearing on the decision to terminate her employment; and, (e) Her state of pregnancy *per se* could not excuse her from filing prior notice for her absence.

Petitioner's arguments are without merit.