

FIRST DIVISION

[G.R. NO. 164532, July 27, 2007]

PHILIPPINE DAILY INQUIRER, INC., PETITIONER, VS. LEON M. MAGTIBAY, JR. AND PHILIPPINE DAILY INQUIRER EMPLOYEES UNION (PDIEU), RESPONDENTS.

D E C I S I O N

GARCIA, J.:

By this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Philippine Daily Inquirer, Inc. (PDI) seeks the reversal and setting aside of the decision^[1] dated May 25, 2004 of the Court of Appeals (CA) in *CA G.R. SP No. 78963*, affirming the resolution dated September 23, 2002 of the National Labor Relations Commission (NLRC) in NLRC Case No. 00-03-01945-96. The affirmed NLRC resolution reversed an earlier decision dated July 29, 1996 of the Labor Arbiter in NLRC Case No. 011800-96, which dismissed the complaint for illegal dismissal filed by the herein respondent Leon Magtibay, Jr. against the petitioner.

The factual antecedents are undisputed:

On February 7, 1995, PDI hired Magtibay, on contractual basis, to assist, for a period of five months from February 17, 1995, the regular phone operator. Before the expiration of Magtibay's contractual employment, he and PDI agreed to a fifteen-day contract extension, or from July 17, 1995 up to July 31, 1995, under the same conditions as the existing contract.

After the expiration of Magtibay's contractual employment, as extended, PDI announced the creation and availability of a new position for a second telephone operator who would undergo probationary employment. Apparently, it was PDI's policy to accord regular employees preference for new vacancies in the company. Thus, Ms. Regina M. Layague, a PDI employee and member of respondent PDI Employees Union (PDIEU), filed her application for the new position. However, she later withdrew her application, paving the way for outsiders or non-PDI employees, like Magtibay in this case, to apply.

After the usual interview for the second telephone operator slot, PDI chose to hire Magtibay on a probationary basis for a period of six (6) months. The signing of a written contract of employment followed.

On March 13, 1996, or a week before the end the agreed 6-month probationary period, PDI officer Benita del Rosario handed Magtibay his termination paper, grounded on his alleged failure to meet company standards. Aggrieved, Magtibay immediately filed a complaint for illegal dismissal and damages before the Labor Arbiter. PDIEU later joined the fray by filing a supplemental complaint for unfair labor practice.

Magtibay anchored his case principally on the postulate that he had become a regular employee by operation of law, considering that he had been employed by and had worked for PDI for a total period of ten months, *i.e.*, four months more than the maximum six-month period provided for by law on probationary employment. He also claimed that he was not apprised at the beginning of his employment of the performance standards of the company, hence, there was no basis for his dismissal. Finally, he described his dismissal as tainted with bad faith and effected without due process.

PDI, for its part, denied all the factual allegations of Magtibay, adding that his previous contractual employment was validly terminated upon the expiration of the period stated therein. Pressing the point, PDI alleged that the period covered by the contractual employment cannot be counted with or tacked to the period for probation, inasmuch as there is no basis to consider Magtibay a regular employee. PDI additionally claimed that Magtibay was dismissed for violation of company rules and policies, such as allowing his lover to enter and linger inside the telephone operator's booth and for failure to meet prescribed company standards which were allegedly made known to him at the start through an orientation seminar conducted by the company.

After due proceedings, the Labor Arbiter found for PDI and accordingly dismissed Magtibay's complaint for illegal dismissal. The Labor Arbiter premised his holding on the validity of the previous contractual employment of Magtibay as an independent contract. He also declared as binding the stipulation in the contract specifying a fixed period of employment. According to the Labor Arbiter, upon termination of the period stated therein, the contractual employment was also effectively terminated, implying that Magtibay was merely on a probationary status when his services were terminated inasmuch as the reckoning period for probation should be from September 21, 1995 up to March 31, 1996 as expressly provided in their probationary employment contract. In fine, it was the Labor Arbiter's position that Magtibay's previous contractual employment, as later extended by 15 days, cannot be considered as part of his subsequent probationary employment.

Apart from the foregoing consideration, the Labor Arbiter further ruled that Magtibay's dismissal from his probationary employment was for a valid reason. Albeit the basis for termination was couched in the abstract, *i.e.*, "you did not meet the standards of the company," there were three specific reasons for Magtibay's termination, to wit: (1) he repeatedly violated the company rule prohibiting unauthorized persons from entering the telephone operator's room; (2) he intentionally omitted to indicate in his application form his having a dependent child; and (3) he exhibited lack of sense of responsibility by locking the door of the telephone operator's room on March 10, 1996 without switching the proper lines to the company guards so that incoming calls may be answered by them.

The Labor Arbiter likewise dismissed allegations of denial of due process and the commission by PDI of unfair labor practice.

PDIEU and Magtibay appealed the decision of the Labor Arbiter to the NLRC. As stated earlier, the NLRC reversed and set aside said decision, effectively ruling that Magtibay was illegally dismissed. According to the NLRC, Magtibay's probationary employment had ripened into a regular one.

With the NLRC's denial of its motion for reconsideration, PDI went to the CA on a petition for certiorari. Eventually, the CA denied due course to PDI's petition on the strength of the following observations:

We agree with the findings of respondent NLRC.

Petitioner PDI failed to prove that such rules and regulations were included in or form part of the standards that were supposed to be made known to respondent Magtibay at the time of his engagement as telephone operator. Particularly, as regards the first stated infraction xxx petitioner PDI, contrary to its assertion, stated in its position paper, motion for reconsideration and in this petition that respondent Magtibay failed to abide by the rules and regulations of the company issued by Ms. Benita del Rosario regarding the entry of persons in the operator's booth when respondent was already working for petitioner PDI. Further, nowhere can it be found in the list of Basic Responsibility and Specific Duties and Responsibilities (Annex D of the petition) of respondent Magtibay that he has to abide by the duties, rules and regulations that he has allegedly violated. The infractions considered by petitioner PDI as grounds for the dismissal of respondent Magtibay may at most be classified as just causes for the termination of the latter's employment. x x x.

x x x x x x x x

Finally, the three questionable grounds also relied upon by petitioner PDI in dismissing respondent Magtibay may be considered as just causes. However, petitioner PDI did not raise the same as an issue in the present petition because the procedure it adopted in dismissing respondent Magtibay fell short of the minimum requirements provided by law.

PDI filed a motion for reconsideration but to no avail.

Hence, this recourse by PDI on the following submissions:

I.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN FINDING THAT A PROBATIONARY EMPLOYEE'S FAILURE TO FOLLOW AN EMPLOYER'S RULES AND REGULATIONS CANNOT BE DEEMED FAILURE BY SAID EMPLOYEE TO MEET THE STANDARDS OF HIS EMPLOYER THUS EMASCULATING PETITIONER'S RIGHT TO CHOOSE ITS EMPLOYEES.

II.

THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN REFUSING TO FIND THAT PROCEDURAL DUE PROCESS AS LAID DOWN IN SECTION 2, RULE XXIII OF THE IMPLEMENTING RULES OF THE LABOR CODE HAD BEEN OBSERVED BY THE PETITIONER.

We **GRANT** the petition.