

THIRD DIVISION

[G.R. NO. 166039, June 26, 2006]

**DIGITEL^[*] TELECOMMUNICATIONS PHILIPPINES, INC.,
JOHNSON ROBERT L. GO^[**] AND ERIC J. SEVERINO,^[***]
PETITIONERS, VS. MARIQUIT SORIANO, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

In issue in the present Petition for Review^[1] is whether respondent, Mariquit Soriano (Mariquit), was forced to resign, due to professional and sexual harassment, thus amounting to constructive dismissal.

The Labor Arbiter and the National Labor Relations Commission (NLRC) held in the negative. The Court of Appeals held otherwise.

From the records of the case, the following antecedent facts are culled:

In the third quarter of 1998, petitioner Digitel Telecommunications Philippines, Inc. (Digitel) hired Mariquit, then of 48 summers, a Bachelor of Science in Nutrition graduate from the University of the Philippines and a graduate school student of De La Salle University (she had not submitted her thesis), as Director for Market and Communications effective August 15, 1998.

Digitel's co-petitioners Senior Vice President for Business Division Eric J. Severino (Severino) and Senior Executive Vice President Johnson Robert L. Go (Go) were Mariquit's immediate superior and next higher superior, respectively.

Working under Mariquit were Evelyn P. Inductivo (Evelyn), Manager of the Promotion Section, Andrea S. Arnedo (Andrea), Manager of the Corporate and Planning Information Section, and Joselito Macachor (Macachor), Ad and Promo Manager.^[2]

In the Performance Review conducted by Digitel for the period of August 17, 1998 up to February 15, 1999,^[3] Mariquit obtained for her first six months of work a rating of 92% (Above Average).

Mariquit later had a rift with Macachor regarding an advertisement error. She thus sought his termination through petitioner Severino. To her dismay, Severino merely arranged for the transfer of Macachor to another department.

Mariquit's performance soon began to deteriorate. The Performance Review^[4] for the period of April 1, 1999 up to April 1, 2000 showed that she obtained a rating of 60% (Average) with the following notes from petitioner Severino:

REVIEW OF OVERALL PERFORMANCE:

(Special comments on performance in particular work areas, overall performance and development under the covered period.)

Clearly, Ms. Soriano possesses the requisite traits to be successful in her responsibility areas. The overall performance of the department assigned to her in both quantitative and qualitative aspects, will increase significantly with Ms. Soriano's commitment to focus on output expectations.

TRAINING AND DEVELOPMENT:

(Please comment on the staff member's training and development needs in the year to come, taking into consideration his/her strengths and areas for improvement.)

Ms. Soriano should endeavor to overcome whatever residual effects the P. Macachor situation caused. She should return to her overall sunny and cheerful disposition. This will significantly contribute to the positive department work atmosphere with improved performance as a result.^[5]
(Emphasis in the original; underscoring supplied)

Apparently in an attempt to shift the blame on the unfavorable evaluation made on her, Mariquit gave unfavorable evaluation of her two remaining managers, Evelyn and Andrea.

In a Memorandum of June 27, 2000^[6] addressed to Severino, Evelyn questioned the basis of her rating and charged Mariquit of "harassing and framing-up her very own managers." And she also charged Mariquit of violating company rules and regulations.^[7]

For her part Andrea, in a Memorandum of May 15, 2000^[8] also addressed to Severino, challenged the factual basis of her poor performance rating and appealed for a new evaluation, she attributing as possible motive of Mariquit her "hatred, prejudice, revenge and a desire to get rid" of her.^[9]

Mariquit's personal conflicts with her two managers continued, prompting her to also demand the termination of their services.^[10] As in the case of Macachor, the management retained them, however.

Mariquit later filed on June 27, 2000 a letter of resignation bearing the date June 28, 2000, to take effect at the closing of office hours on June 30, 2000.^[11] Severino acknowledged receipt of the letter of resignation which Mariquit left in his office.^[12] Severino thereafter forwarded the letter to the Human Resources Department where it was stamped "received" on June 28, 2000.^[13]

On August 22, 2000, Mariquit executed a Deed of Quitclaim and Release^[14] acknowledging receipt from Digital of the sum of P97,560.02, and declaring therein that her resignation on June 30, 2000 was of her own free will and that in

consideration of the said amount, she was releasing and forever discharging Digitel, its officers, managers or representatives or successors from all claims or cause in connection with her employment therewith.

About five months after her execution of the Deed of Quitclaim and Release or in January 2001, on the intercession of Mariquit's friend Emma Teodoro (Emma), Go and Mariquit, together with Emma, met during which Mariquit is said to have pleaded for financial assistance. Go thus referred her to Digitel Executive Vice President Policarpio B. Pau, Jr. (Pau).^[15] Pau was to later relate what transpired when Mariquit went to see him.

Eleven months after her resignation letter was filed or on May 28, 2001, Mariquit filed criminal complaints against petitioners Go and Severino,^[16] for violation of R.A. 7877 (Anti-Sexual Harassment Law) and/or Article 336 of the Revised Penal Code (Acts of Lasciviousness), before the Quezon City Prosecutors Office which referred the complaints to the National Bureau of Investigation (NBI).

The NBI recommended to the City Prosecutor the filing of a case for sexual harassment against petitioner Go. The City Prosecutor later dismissed Mariquit's complaints but, on her motion for reconsideration, it issued a Resolution finding probable cause to hale Go to court for acts of lasciviousness.^[17] Go appealed the Resolution to the Department of Justice (DOJ).

In Pau's affidavit dated July 6, 2001 which Go submitted in connection with Mariquit's criminal complaint against him, Pau gave the following account of what transpired during his meeting with Mariquit after Go had, as stated above, referred her to him.

x x x x

14. Sometime in January 2001 Ms. Soriano and her son went to my office; She told me that she had dinner with Mr. Johnson [Go] and a common friend and that Mr. Johnson [Go] told her to see me;
15. On my part, I was already expecting that this was what Mr. Johnson [Go] and I had agreed in principle earlier – to extend financial assistance, for humanitarians [sic], to Ms. Soriano;
16. To my surprise, Ms. Soriano told me that she was advised by her lawyer to explore means in settling her case with Mr. Johnson [Go]. She then told me that she needs money to: (a) send her children abroad, (b) to start a business of her own and (c) to pay the fees of her lawyers; Based on her insinuations I had the impression that she wanted millions of pesos;
17. Clearly, she had a wrong impression and it appeared to me that she is extorting money from the company; To end our conversation, I told her that if that is what she wanted I have no authority to grant the same, what the company intended was to give her a separation pay, even though she is not entitled to it; I also told her that maybe she has misunderstood the humanitarian gesture taken by the company; Thereafter, she already left the office.

x x x x^[18] (Underscoring supplied)

About one and a half years after she filed her letter of resignation or on December 20, 2001, Mariquit filed a complaint^[19] for illegal dismissal against petitioners Digitel, Go and Severino before the NLRC, docketed as NLRC NCR Case No. 12-06571-2001. During the initial mandatory conference which took place on January 23, 2002, she clarified that her cause of action was for "constructive dismissal,"^[20] alleging that she was harassed by herein individual petitioners to thus compel her to resign from Digitel.

By Decision of April 24, 2003,^[21] the Labor Arbiter, finding insufficient Mariquit's evidence to support her claim that she was forced to resign, held that she voluntarily resigned:

The factual background of this case clearly shows that complainant voluntarily resigned from her employment. We sympathize with her but we cannot sustain her contention that she was constructively dismissed. **With complainant's educational and professional background, it would be absurd to assume that she did not understand the import of her own words and the consequences of her own acts of voluntary resignation.**

Complainant's submission that she was "forced to resign" because of the way she was sexually and professionally harassed by respondents Eric J. Severino and Johnson Robert L. Go were not sufficiently established by substantial, concrete and credible evidence.

The affidavit of Ms. Sta. Clara [submitted by Mariquit] is purely hearsay evidence. Her statements do not even qualify as part of the res gestae. Ms. Sta. Clara was not personally present during the times that respondent Go allegedly poked, several times, at complainant's private parts. Neither was she physically present when respondent Severino was allegedly staring at complainant's crotch and made suggestive remarks to the latter. She, therefore, could not concretely, credibly nor substantially testify as to those facts or circumstances that she acquired through her own perception or organs of sense. Her affidavit does not establish the truth of the facts stated therein.

The affidavit of Mr. Frank Wenceslao [also submitted by Mariquit] is not only telling, so to speak; it is also highly suspect. It is likewise hearsay, as that of Ms. Sta. Clara's. It must be taken with utmost precaution. It should be carefully scrutinized. Mr. Wenceslao knew that respondent Go and his brother Henry were "reputed to be womanizers." Why then would he (Wenceslao) encourage the mother of his own love child to apply and accept a job offered by respondent company knowing fully well that she, with whom he was again sleeping together at that time, would be working with and for Mr. Go who has a "questionable reputation" with women? Why would he have prevailed upon complainant who already wanted to resign from her job during those periods that she was being allegedly professionally and sexually harassed? His testimony is that of an "interested person" and should thus

be rejected.

Complainant's own allegation, although they are so detailed, appear incredible if not downright puny. An analysis of her statements shows that her own conclusion that she was being sexually and professionally harassed was on the basis of her own suppositions, conjectures, and surmises. Some of her statements are inconsistent. She could not satisfactorily explain her allegation that she was consistently professionally harassed by respondent Severino. The latter's alleged words: "How come you claim you know so much yet nothing ever gets done in your department?" do not jurisprudentially constitute nor clearly establish "professional harassment." Aside from these words, the complainant could only venture to allege instances in general and vague terms.

As to the facts allegedly constituting "sexual harassment" advanced by Go and Severino, after an objective analysis over their assertions as stated in their respective counter-affidavits and further considering the other supporting documents attached to the respondents' pleadings, it is found that these far out weigh the complainant's own evidence.^[22] (Emphasis and underscoring supplied.)

The Labor Arbiter also observed:

One last note: During the initial mandatory conference on January 23, 2003, while the respective parties' counsels and the undersigned were discussing on some matters, complainant who was seated opposite respondent Severino discreetly showed him her middle finger (the "dirty finger" sign) and later, took his cellular phone which he placed on the table and banged it on the table. Mr. Severino then asked the undersigned if it would be possible, at the next hearing, to have someone officially record and take note of the deportment of the parties during the hearings. When the undersigned asked what for, respondent Severino narrated what had just transpired between him and the complainant. When the undersigned asked if this was true, the complainant, looking at respondent Go, rudely replied: "Because you are not my boss anymore!"

The conduct displayed by the complainant in the presence not only of the undersigned, the parties' respective legal counsels but also with complainant's own daughter around shows much of her character.^[23] (Underscoring supplied)

The Labor Arbiter thus disposed:

WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING this complaint for constructive dismissal for lack of merit.

The counterclaim of the respondents is likewise dismissed for lack of merit.

All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.^[24]