

## **THIRD DIVISION**

**[ G.R. NO. 148372, June 27, 2005 ]**

**CLARION PRINTING HOUSE, INC., AND EULOGIO YUTINGCO,  
PETITIONERS, VS. THE HONORABLE NATIONAL LABOR  
RELATIONS COMMISSION (THIRD DIVISION) AND MICHELLE  
MICLAT, RESPONDENTS.**

### **D E C I S I O N**

**CARPIO-MORALES, J.:**

Respondent Michelle Miclat (Miclat) was employed on April 21, 1997 on a probationary basis as marketing assistant with a monthly salary of P6,500.00 by petitioner Clarion Printing House (CLARION) owned by its co-petitioner Eulogio Yutingco. At the time of her employment, she was not informed of the standards that would qualify her as a regular employee.

On September 16, 1997, the EYCO Group of Companies of which CLARION formed part filed with the Securities and Exchange Commission (SEC) a "Petition for the Declaration of Suspension of Payment, Formation and Appointment of Rehabilitation Receiver/ Committee, Approval of Rehabilitation Plan with Alternative Prayer for Liquidation and Dissolution of Corporation"<sup>[1]</sup> the pertinent allegations of which read:

x x x

5. The situation was that since all these companies were sister companies and were operating under a unified and centralized management team, the financial requirements of one company would normally be backed up or supported by one of the available fundings from the other companies.

6. The expansion exhausted the cash availability of Nikon, NKI, and 2000 because those fundings were absorbed by the requirements of NPI and EYCO Properties, Inc. which were placed on real estate investments. However, at the time that those investments and expansions were made, there was no cause for alarm because the market situation was very bright and very promising, hence, the decision of the management to implement the expansion.

7. The situation resulted in the cash position being spread thin. However, despite the thin cash positioning, the management still was very positive and saw a very viable proposition since the expansion and the additional investments would result in a bigger real estate base which would be very credible collateral for further expansions. It was envisioned that in the end, there would be bigger cash procurement which would result in greater volume of production, profitability and other good results based

on the expectations and projections of the team itself.

8. Unfortunately, factors beyond the control and anticipation of the management came into play which caught the petitioners flat-footed, such as:

- a) The **glut in the real estate market** which has resulted in the bubble economy for the real estate demand which right now has resulted in a severe slow down in the sales of properties;
- b) **The economic interplay consisting of the inflation and the erratic changes in the peso-dollar exchange rate** which precipitated a soaring banking interest.
- c) **Labor problems** that has precipitated adverse company effect on the media and in the financial circuit.
- d) **Liberalization of the industry (GATT)** which has resulted in flooding the market with imported goods;
- e) Other related adverse matters.

9. The inability of the EYCO Group of Companies to meet the obligations as they fall due on the schedule agreed with the bank has now become a stark reality. The situation therefore is that since the obligations would not be met within the scheduled due date, complications and problems would definitely arise that would impair and **affect the operations** of the entire conglomerate comprising the EYCO Group of Companies.

x x x

12. By virtue of this development, there is a need for suspension of all accounts o[r] obligations incurred by the petitioners in their separate and combined capacities in the meantime that they are working for the rehabilitation of the companies that would eventually redound to the benefit of these creditors.

13. The foregoing notwithstanding, however, the present combined financial condition of the petitioners clearly indicates that their assets are more than enough to pay off the credits.

x x x (Emphasis and underscoring supplied)<sup>[2]</sup>

On September 19, 1997, the SEC issued an Order<sup>[3]</sup> the pertinent portions of which read:

x x x

It appearing that the petition is sufficient in form and substance, the corporate petitioners' prayer for the creation of management or receivership committee and creditors' approval of the proposed Rehabilitation Plan is hereby set for hearing on October 22, 1997 at 2:00

o'clock in the afternoon at the SICD, SEC Bldg., EDSA, Greenhills, Mandaluyong City.

x x x

Finally, the petitioners are hereby enjoined from disposing any and all of their properties in any manner, whatsoever, except in the ordinary course of business and from making any payment outside of the legitimate business expenses during the pendency of the proceedings and as a consequence of the filing of the Petition, all actions, claims and proceedings against herein petitioners pending before any court, tribunal, office board and/or commission are deemed SUSPENDED until further orders from this Hearing Panel pursuant to the rulings of the Supreme Court in the cases of RCBC v. IAC et al., 213 SCRA 830 and BPI v. CA, 229 SCRA 223. (Underscoring supplied)

And on September 30, 1997, the SEC issued an Order<sup>[4]</sup> approving the creation of an interim receiver for the EYCO Group of Companies.

On October 10, 1997, the EYCO Group of Companies issued to its employees the following Memorandum:<sup>[5]</sup>

This is to formally announce the entry of the Interim Receiver Group represented by SGV from today until October 22, 1997 or until further formal notice from the SEC.

This interim receiver group's function is to make sure that all assets of the company are secured and accounted for both for the protection of us and our creditors.

Their function will involve familiarization with the different processes and controls in our organization & keeping physical track of our assets like inventories and machineries.

Anything that would be required from you would need to be in writing and duly approved by the top management in order for us to maintain a clear line.

We trust that this temporary inconvenience will benefit all of us in the spirit of goodwill. Let's extend our full cooperation to them.

Thank you. (Underscoring supplied)

On October 22, 1997, the Assistant Personnel Manager of CLARION informed Miclat by telephone that her employment contract had been terminated effective October 23, 1997. No reason was given for the termination.

The following day or on October 23, 1997, on reporting for work, Miclat was informed by the General Sales Manager that her termination was part of CLARION's cost-cutting measures.

On November 17, 1997, Miclat filed a complaint<sup>[6]</sup> for illegal dismissal against

CLARION and Yutingco (petitioners) before the National Labor Relations Commission (NLRC).

In the meantime, or on January 7, 1998, the EYCO Group of Companies issued a Memorandum<sup>[7]</sup> addressed to company managers advising them of "a temporary partial shutdown of some operations of the Company" commencing on January 12, 1998 up to February 28, 1998:

In view of the numerous external factors such as slowdown in business and consumer demand and consistent with Art. 286 of the Revised Labor Code of the Philippines, we are constrained to go on a temporary partial shutdown of some operations of the Company.

To implement this measure, please submit to my office through your local HRAD the list of those whom you will require to report for work and their specific schedules. Upon revalidation and approval of this list, all those not in the list will not receive any pay nor will it be credited against their VL.

Please submit the listing no later than the morning of Friday, January 09, 1998.

Shutdown shall commence on January 12, 1998 up to February 28, 1998, unless otherwise recalled at an earlier date.

Implementation of th[ese] directives will be done through your HRAD departments. (Underscoring supplied)

In her Position Paper<sup>[8]</sup> dated March 3, 1998 filed before the labor arbiter, Miclat claimed that she was never informed of the standards which would qualify her as a regular employee. She asserted, however, that she qualified as a regular employee since her immediate supervisor even submitted a written recommendation in her favor before she was terminated without just or authorized cause.

Respecting the alleged financial losses cited by petitioners as basis for her termination, Miclat disputed the same, she contending that as marketing assistant tasked to receive sales calls, produce sales reports and conduct market surveys, a credible assessment on production and sales showed otherwise.

In any event, Miclat claimed that assuming that her termination was necessary, the manner in which it was carried out was illegal, no written notice thereof having been served on her, and she merely learned of it only a day before it became effective.

Additionally, Miclat claimed that she did not receive separation pay, 13th month pay and salaries for October 21, 22 and 23, 1997.

On the other hand, petitioners claimed that they could not be faulted for retrenching some of its employees including Miclat, they drawing attention to the EYCO Group of Companies' being placed under receivership, notice of which was sent to its supervisors and rank and file employees via a Memorandum of July 21, 1997; that in the same memorandum, the EYCO Group of Companies advised them of a scheme for voluntary separation from employment with payment of severance pay;

and that CLARION was only adopting the "LAST IN, FIRST OUT PRINCIPLE" when it terminated Miclat who was relatively new in the company.

Contending that Miclat's termination was made with due process, petitioners referred to the EYCO Group of Companies' abovesaid July 21, 1997 Memorandum which, so they claimed, substantially complied with the notice requirement, it having been issued more than one month before Miclat was terminated on October 23, 1997.

By Decision<sup>[9]</sup> of November 23, 1998, the labor arbiter found that Miclat was illegally dismissed and directed her reinstatement. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered ordering the respondent to reinstate complainant to her former or equivalent position without loss of seniority rights and benefits and to pay her backwages, from the time of dismissal to actual reinstatement, proportionate 13th month pay and two (2) days salary computed as follows:

a.1) Backwages – 10/23/97 to 11/30/98

$P6,500.00 \times 13.25 \text{ months} = P86,125.00$

a.2) Proportionate 13th month pay

$1/12 \text{ of } P86,125 = 7,177.08$

b) 13th month pay - 1997

$= P6,500 \times 9.75 \text{ months}/12 = 5,281.25$

c) Two days salary

$= P6,500/26 \times 2 \text{ days} = 500.00$

TOTAL P 99,083.33

(Emphasis and underscoring supplied).

Before the National Labor Relations Commission (NLRC) to which petitioners appealed, they argued that:<sup>[10]</sup>

1. [CLARION] was placed under receivership thereby evidencing the fact that it sustained business losses to warrant the termination of [Miclat] from her employment.

2. The dismissal of [Miclat] from her employment having been effected in accordance with the law and in good faith, [Miclat] does not deserve to be reinstated and paid backwages, 13th month pay and two (2) days salary.