

## **THIRD DIVISION**

**[ CA-G.R. SP NO. 127579, March 23, 2015 ]**

**SONIA M. BADILLA, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, TRANSCOM WORLDWIDE  
PHILIPPINES, INC., AND ANTONIO C. GOMEZ, JR.,  
RESPONDENTS.**

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

#### **CARANDANG, J.:**

This is a petition for certiorari seeking to nullify and set aside the NLRC Resolutions dated July 16, 2012<sup>[1]</sup> and August 31, 2012<sup>[2]</sup> in NLRC NCR CASE NO: 06-09108-11 NLRC LAC NO. 05-001568-12.

The dispositive portion of the July 16, 2012 Resolution reads:

"WHEREFORE, premises considered, the appeal is GRANTED and the Decision dated 30 March 2012 is ordered VACATED and SET ASIDE.

A new one is issued DISMISSING the above-entitled complaint for lack of merit.

SO ORDERED."<sup>[3]</sup>

The August 31, 2012 Resolution is the order of denial of petitioner's Motion for Reconsideration.<sup>[4]</sup>

#### **Antecedents:**

Transcom Worldwide Philippines Inc. (hereinafter Transcom) is a corporation engaged in Business Process Outsourcing (BPO). On July 27, 2009, Transcom hired the services of Sonia Badilla as customer service representative (CSR) or call center agent with a monthly salary of P16,000.00 for a five-day work from 11:30 pm to 8:30 am. Badilla became a regular employee after six months.<sup>[5]</sup>

The company provides call/phones regulatory auxiliary codes for short breaks, lunch, meeting, coaching sessions, and personal breaks (bathroom break).<sup>[6]</sup> Each CSR is allotted a six-minute break called bathroom-break or Aux 8 in addition to their regular breaks<sup>[7]</sup>. It is also a company policy that each CSR must document every call on actual call-time to determine his/her Average Handling Time (AHT) per call which means that Customer Transaction Notes must be done by the CSR while taking the call.<sup>[8]</sup> Under the Company Confidential Operations Manual (COM) there is a zero-tolerance for work-avoidance which is a pattern of behavior or recurring manipulation of work distribution including but not limited to the use of Aux 8

breaks.<sup>[9]</sup> Work avoidance is considered a serious offense.<sup>[10]</sup>

On April 20, 2011, Badilla was monitored to have used Aux 8 breaks 16 times on thirty minute intervals, to wit:<sup>[11]</sup>

Time		Time average of Aux 8 breaks
Total		6:48 mins.
11:30:00 AM	12:00:00 PM .	:37 secs
12:00:00 PM	12:30:00 PM	:01
12:30:00 PM	01:00:00 PM	:43
01:00:00 PM	01:30:00 PM	:01
01:30:00 PM	02:00:00 PM	:03
02:00:00 PM	02:30:00 PM	:31
02:30:00 PM	03:00:00 PM	:01
03:00:00 PM	03:30:00 PM	:01
03:30:00 PM	04:00:00 PM	:12
04:00:00 PM	04:30:00 PM	:10
04:30:00 PM	05:00:00 PM	01:21'
05:00:00 PM	05:30:00 PM	1:55'
05:30:00 PM	06:00:00 PM	:00
06:00:00 PM	06:30:00 PM	:35
06:30:00 PM	7:00'PM	:00
7:00'PM	7:30'PM	:02
7:30 'PM	8:00'PM	:23
8:00'PM	9:00'PM	:12
9:00'PM	9:30'PM	:00

On May 5, 2011, Badilla was served a Notice to Explain her use of Aux 8 on April 20, 2011 which resulted in queue jumping, putting her last in the queue of available CSRs for that day.<sup>[12]</sup>

On May 18, 2011, Badilla gave her explanation of her use of Aux 8 at short durations claiming that she used the time to throw garbage into the trash bin, getting water from the water station, making documentations for long or transferred calls.<sup>[13]</sup> She also averred that she used Aux 8 when doing notations and sign offs to avoid increasing her Average Handling Time (AHT) because using After Call Work (ACW) in the past increased her AHT.<sup>[14]</sup>

During an administrative hearing conducted on May 24, 2011, Badilla admitted that: she was aware of the company rules and regulations; she was using Aux 8 breaks since the previous year; she was aware that using Aux 8 will put her at the bottom of the queue; she used Aux 8 for mere seconds to place notes.<sup>[15]</sup>

The decision to terminate the services of Badilla effective June 10, 2011 was contained in the Notice of Decision dated June 6, 2011 for work-avoidance considered as serious misconduct where the company's policy is zero-tolerance.<sup>[16]</sup>

Badilla filed a complaint for illegal dismissal on June 13, 2011.<sup>[17]</sup>

On March 30, 2012, the Labor Arbiter rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed from the service. Accordingly, respondents are hereby ordered to immediately reinstate the complainant to her former position and pay her full backwages computed from date of her dismissal up to her actual reinstatement and unpaid salaries during the time of her preventive suspension as follows:

BACKWAGES: P209,164.25

UNPAID SALARIES: P19,384.69

Respondents are likewise ordered to pay complainant attorneys fees equivalent to ten percent of the total awards.

For purposes of complainant's reinstatement, respondents are hereby ordered to report to the Office within ten days from receipt hereof the fact of compliance thereof."<sup>[18]</sup>

The Labor Arbiter ratiocinated that while there is no dispute that complainant resorted to Aux 8 code break for sixteen times on 20 April 2011, said fact does not support respondents' claim that complainant is guilty of work avoidance or serious misconduct, hence the penalty of dismissal is not commensurate to her act of availing Aux 8 breaks on 20 April 2011.<sup>[19]</sup>

On appeal, the NLRC vacated and set aside the Labor Arbiter decision in its Resolution dated March 30, 2012.<sup>[20]</sup>

The NLRC ruled that the respondents complied with the following standard of procedural due process, to wit: i) A written notice served on the employee specifying the ground or grounds for termination and giving said employee reasonable opportunity within which to explain his side; ii) a hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given the opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; iii) a written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, ground has been established to justify his termination.

In this case, the NLRC found that respondents were able to discharge the burden of proving valid ground to justify the termination of complainant.<sup>[21]</sup> The NLRC upheld the administrative finding that the short durations of Aux 8 break by Badilla for 16 times on an 8-hour duty on April 20, 2011 at intervals of 30 minutes effectively placed her at the bottom of the queuing system which is clearly an act of work-avoidance which cannot be tolerated per company policy.<sup>[22]</sup>

Moreover, Badilla used Aux 8 to reflect "*a better Average Handling Time (AHT) which is also highly unprocedural as CSRs, as above averred, are mandated to do all call-related activities including documentation and transaction notes making, real time, while on live calls.* Complainant