

## SECOND DIVISION

[ CA-G.R. SP NO. 134607, March 18, 2015 ]

**RAMIL S.M. RAMOS, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, AXA PHILIP-PINES, INC., AND RIEN  
HERMANS, RESPONDENTS.**

### D E C I S I O N

**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision<sup>[1]</sup> dated September 30, 2013 and Resolution<sup>[2]</sup> dated January 15, 2014 of the National Labor Relations Commission (NLRC), First Division, in NLRC LAC No. 01-000288-13, NLRC Case No. 12-18195-11 entitled "RAMIL S. RAMOS, Complainant-Appellee, versus AXA PHILIPPINES, INC., RIEN HERMANS, Respondents-Appellants.", the dispositive portions of which read:

***Decision dated September 30, 2013***

"**WHEREFORE**, the appeal is **GRANTED**. The Labor Arbiter's Decision dated 28 September 2012 is **VACATED** and **SET ASIDE** and a new one entered dismissing the complaint for lack of merit. Respondent Axa is, however, **DIRECTED** to grant financial assistance to complainant in the amount of P35,000.00.

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

***Resolution dated January 15, 2014***

"**WHEREFORE**, the motion for reconsideration is hereby **DENIED** for lack of merit. No further motion for reconsideration of the same tenor shall be entertained.

**SO ORDERED."**<sup>[4]</sup>

The facts are:

On December 7, 2011, petitioner Ramil S.M. Ramos (Ramos for brevity) filed a Complaint<sup>[5]</sup> for illegal dismissal, non-payment of salary, separation pay, illegal deduction, moral damages, exemplary damages, and attorney's fees against private respondents AXA Philippines, Inc. (AXA for brevity) and Rien Hermans. In his Position Paper<sup>[6]</sup>, petitioner Ramos averred that: he previously worked for private respondent AXA as Financial Executive from February 2006 until he resigned on December 30, 2008; when he joined another company, he was required to submit his clearance from private respondent AXA; however, despite his repeated requests, private respondent AXA did not issue his clearance; he was informed that the denial

of his request for the issuance of his clearance was due to his failure to settle his alleged obligation to the company in the amount of P61,741.15<sup>[7]</sup>; it turned out that private respondent AXA, upon investigation, charged him P87,078.72<sup>[8]</sup> for the withdrawal of policy of one of its clients, Daisy Kam Shung; aggrieved, petitioner Ramos became determined to contest the said matter and insisted in getting a copy of any document or record pertaining to the said investigation; sometime in July 2011, while petitioner Ramos' request to provide him with documents was still pending, private respondent AXA offered him another employment in the company as Corporate Sales Officer; he accepted the offer and commenced to report for work on July 27, 2011; as a probationary employee fully cognizant of the quota that a sales person has to meet, he was keen in the performance of his duties under the Employment Agreement<sup>[9]</sup>; thus, he was able to close a number of accounts such as Emerald Headway, Fit for School, and Mitsubishi Motors Philippines; these closed accounts, however, were not officially tagged to him because he lacked the required insurance code, which was brought about by private respondent AXA's refusal to release his clearance; petitioner Ramos persistently requested for documentation regarding Daisy Kam Shung's withdrawal, but these follow-ups remained unheeded; he chose not to pay the amount for which he was supposedly liable, P61,741.15, as he felt that it was grossly unfair and he should not be held responsible for the same; Daisy Kam Shung was not really his client and he had no direct access to Metrobank Seafront Branch clients; it was the duty of the service team to update the client of any development on the withdrawal process; and, he was not the right person to answer and address Daisy Kam Shung's concerns as he was merely requested to provide assistance.

Petitioner Ramos further alleged that: since his counsel wrote a demand letter<sup>[10]</sup> to private respondent AXA on September 15, 2011 for his clearance and separation pay, he was despised and discriminated by the company; his immediate superior gave him a very cold treatment; on October 10, 2011, he received a letter<sup>[11]</sup> from Corporate Solutions informing him that he supposedly was not able to close any case, inviting him for a sales counseling; on the said meeting, instead of determining the key areas that need to be improved, petitioner Ramos was advised to resign voluntarily; he did not resign because he knew that he was diligently performing his duties, as he had in fact closed several accounts although not officially tagged to him; he was also positive that he could meet the quota since he had numerous potential pending accounts; it was only on October 14, 2011 that he was finally given a copy of Daisy Kam Shung's complaint; on October 18, 2011, private respondent AXA sent him a letter<sup>[12]</sup> denying his appeal questioning the cost-charging; petitioner Ramos filed an appeal through a letter<sup>[13]</sup> dated November 23, 2011, which was the first time he was able to fully explain his side, having received a copy of Daisy Kam Shung's complaint only on October 14; two (2) days later, on November 25, 2011, or two (2) months prior to the expiration of his probationary employment, petitioner Ramos received a letter<sup>[14]</sup> from private respondent AXA terminating his employment effective November 30, 2011; his dismissal was not based on a just, authorized, or valid cause provided by law; he was actually able to close a number of accounts and had several potential pending accounts; he could have met the quota had he been given the chance to finish his probationary employment and to be properly counseled as mandated in his employment contract; his termination was a clear violation of the provisions on Key Performance Indicator (KPI) validation assessment stages<sup>[15]</sup>; his illegal dismissal

was an offshoot of the company's resentment towards him for taking legal action<sup>[16]</sup> to obtain his clearance; and, his termination did not comply with the requirements of procedural due process.

Private respondents, for their part, filed a Position Paper<sup>[17]</sup> maintaining that: the engagement of petitioner Ramos was subject to a six(6)-month probationary period where his continued employment and subsequent regular employment was subject to his compliance with the conditions and standards of employment under Section 3<sup>[18]</sup> of the Employment Agreement; Appendix 3 thereof shows that the performance of petitioner Ramos and other Corporate Solutions Officers is assessed based on their ability to meet the minimum monthly Key Performance Indicators (KPI) validation requirements<sup>[19]</sup>; under Section 13.2(c)20 of the Employment Agreement, private respondent AXA may terminate petitioner Ramos' employment if he fails to pass the probationary period or if he fails to meet the requirements for regular employment; petitioner Ramos, after undergoing the mandatory basic training, caddying, and other activities throughout the month of August 2011, began his validation assessment period and took on his responsibilities as Corporate Sales Officer in September 2011; two (2) months into his validation assessment period, petitioner Ramos was unable to meet the minimum KPI requirements prescribed in Appendix 3, scoring 0.0 New Business Income (NBI) and failing to close any case during the said period; alarmed by his poor performance, Corporate Solutions Management Head Mary Ann Rivera scheduled a one-on-one meeting with petitioner Ramos on November 11, 2011 where it was agreed upon that he had until the end of November to meet the minimum KPI requirement, otherwise, he would be terminated for failure to meet the probationary period standards and requirements for regularization; despite this opportunity given to petitioner Ramos, he again failed to close any case and maintained a 0.0 NBI score; it became clear to private respondent AXA that petitioner Ramos was not suited for the position, and in order to protect the company's interests, private respondent AXA had no choice but to terminate him; on November 25, 2011, private respondent AXA issued to him a written notice of termination<sup>21</sup>; petitioner Ramos' dismissal for failure to meet the minimum performance standards for continued and regular employment was just and in accordance with law; it is a valid exercise of management prerogative; his termination was both substantively and procedurally valid, and petitioner Ramos has no cause of action against private respondent Rien Hermans as he had no hand whatsoever in the former's dismissal.

Both parties thereafter filed their respective Replies<sup>[22]</sup> and Rejoinders.<sup>[23]</sup>

On September 28, 2012, Labor Arbiter Jaime M. Reyno rendered a Decision<sup>[24]</sup> holding that petitioner Ramos was illegally dismissed, ordering his immediate reinstatement without loss of seniority rights and payment of backwages, moral damages, exemplary damages, and attorney's fees. The Labor Arbiter found private respondent AXA's allegation that petitioner Ramos scored 0.0 closed cases as inaccurate, considering that he actually closed accounts as shown in e-mail correspondences but were not officially credited to him because he did not have the required insurance code due to private respondent AXA's refusal to release his clearance. According to the Labor Arbiter, petitioner Ramos' dismissal was a mere excuse for private respondent AXA to get even with him for taking legal action to obtain his clearance. Had private respondents given him the chance to finish the probationary period and undergo sales counseling, he would have made the quota in

view of his several potential pending accounts.

Private respondents filed a Memorandum of Appeal<sup>[25]</sup> dated November 5, 2012, which petitioner Ramos countered with his Answer.<sup>[26]</sup>

On September 30, 2013, public respondent NLRC rendered the assailed Decision<sup>[27]</sup> setting aside the ruling of the Labor Arbiter and dismissed petitioner Ramos' complaint for lack of merit. Public respondent NLRC held that the company records show that petitioner Ramos was not able to close a case, and scored zero in New Business Income (NBI). As such, private respondent AXA had basis to terminate his probationary employment. Public respondent NLRC observed that nowhere in the exchange of e-mails is there any indication that petitioner Ramos actually closed an account. Even granting that the said exchange would suffice to prove that petitioner Ramos closed an account, it would not constitute substantial evidence that he satisfactorily passed his probationary employment. Further, the imputation of bad faith on the part of the private respondents lacked basis. Nonetheless, public respondent NLRC awarded P35,000.00 in favor of petitioner Ramos as financial assistance.

Petitioner Ramos filed a Motion for Reconsideration<sup>[28]</sup> which public respondent NLRC denied in the assailed Resolution<sup>[29]</sup> dated January 15, 2014.

Hence, this Petition for *Certiorari* raising the following grounds<sup>[30]</sup>:

I.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING (TO) LACK OR EXCESS OF JURISDICTION IN FINDING FOR RESPONDENTS AXA AND HERMANS DESPITE ABSENCE OF SUBSTANTIAL EVIDENCE TO SUPPORT THE CONCLUSION THAT PETITIONER RAMOS FAILED TO MEET THE LATTER'S STANDARDS DURING PROBATIONARY PERIOD; and

II.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING (TO) LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER RAMOS's MONEY CLAIMS.

The petition lacks merit.

In a nutshell, petitioner Ramos asserts that: even probationary employees enjoy security of tenure and can only be terminated in accordance with Article 281 of the Labor Code; the termination of a probationary employee is not without limitations and should be exercised with careful discretion; private respondent AXA's standards are not reasonable; it was unreasonable for private respondent AXA to evaluate petitioner Ramos within a six-month probationary period using a validation assessment intended to be applied for a longer evaluation period of four (4) quarters; such standards were not meant to be applied to a six-month probationary period; private respondent AXA failed to adduce substantial evidence that the dismissal was legal; a ruling not supported by substantial evidence constitutes grave abuse of discretion; the conflicting pronouncements of the Labor Arbiter and public respondent NLRC gives this Court authority and discretion to reconcile their findings;

as a consequence of petitioner Ramos' illegal termination, he is entitled to backwages, separation pay, moral damages, exemplary damages, attorney's fees and expenses of litigation; and, private respondent Hermans acted in bad faith for instructing those under him to unjustly deny petitioner Ramos' request for clearance and for allowing his illegal dismissal.

Well-settled is the legal tenet that *certiorari* is a remedy narrow in its scope and inflexible in character. It is not a general utility tool in the legal workshop.<sup>[31]</sup> *Certiorari* will issue only to correct errors of jurisdiction and not to correct errors of judgment or mistakes in the tribunal's findings and conclusions.<sup>[32]</sup> Further, for a petition for *certiorari* to prosper, mere abuse of discretion on the part of public respondent NLRC is not enough.<sup>[33]</sup> The onus is upon petitioner Ramos to sufficiently establish that public respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the findings of the Labor Arbiter.

A probationary employee is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and *to ascertain whether he will become an efficient and productive employee*. While the employer observes the fitness, propriety and efficiency of a probationary employee to ascertain whether he is qualified for permanent employment, the employee, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word "probationary", as used to describe the period of employment, implies the *purpose* of the term or period, not its length.<sup>[34]</sup>

In line with these fundamental principles, and after a careful review of the facts of the case, this Court finds that public respondent NLRC committed no grave abuse of discretion in dismissing petitioner Ramos' complaint as it was convincingly shown that he failed to meet the performance standards required of him by private respondent AXA, particularly its monthly quota for closed cases and New Business Income (NBI).

An employer, in the exercise of its management prerogative, may hire an employee on a probationary basis in order to determine his fitness to perform his work.<sup>[35]</sup> Under Article 281 of the Labor Code, there are two (2) grounds to legally terminate a probationary employee. It may be done either: a) for just cause or b) when the employee fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the start of the employment.<sup>[36]</sup>

As plainly provided in the Employment Agreement, a Corporate Sales Officer such as petitioner Ramos, was required to meet the Minimum Validation Criteria for the Key Performance Indicators (KPIs) specified by private respondent AXA in Appendix 3 thereof, to retain his employment with the company<sup>[37]</sup>, viz:

Monthly KPI	Validation	Target	Weight
NBI	560,000	700,000	100%