

## **SIXTH DIVISION**

**[ CA-G.R. SP NO. 124872, June 30, 2014 ]**

**NELLY P. COO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, EXPRESSCASH INC. AND MIRASOL DEPANO, RESPONDENTS.**

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

**CRUZ, R.A., J.:**

#### **THE CASE**

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the Decision dated February 15, 2012 dismissing petitioner's appeal and the Resolution dated March 16, 2012 denying petitioner's motion for reconsideration, both issued by the National Labor Relations Commission (NLRC) in NLRC LAC NO. 01-000313-12 (NLRC-NCR- 05-07429-1).

#### **THE ANTECEDENTS**

This case stemmed from the Complaint filed by Petitioner Nelly P. Coo against Respondents Expresscash Inc. and Mirasol Depano for illegal dismissal – constructive and damages.

Petitioner alleged in her position paper that she served as a consultant in Respondent Company Expresscash Inc. from December 2006 to January 2007. By February 2007, she was designated as Loan Manager of the company and served as such for four (4) years. She also took on the task of a Desk Relations Officer in October 2010 when two (2) of the employees went on maternity leave.

On February 23, 2011, she took a leave of absence for health reasons as she was advised to undergo an operation. On March 7, 2011, petitioner informed Respondent Mirasol Depano, who was the Manager of respondent company, that she was not cleared for the procedure due to her thyroid problem. On April 16, 2011, she notified Mirasol Depano that she is ready to report for work as she only needed to undergo medication but the latter refused petitioner's return and insisted that she first undergo surgery before she could resume work. Petitioner made several attempts to go back to work but she was always denied access which led her to file a complaint for constructive illegal dismissal.

For their part, private respondents averred that they hired the petitioner as Loan Manager on November 30, 2006. On February 24, 2011, she failed to report for work without prior notice. Three (3) days later, petitioner informed the office, through a phone call, that she will undergo a major operation due to Myoma in her ovary. She asked that she be given a cash advance and be allowed to take a leave from work as the procedure would be taking place in March 2011. The company approved her request and directed her to file a formal leave of absence, but petitioner failed to do so. Despite the company violation, petitioner was still given a

cash advance of P35,000.00 intended for her operation. Private respondents then found out that petitioner never underwent surgery. She was absent from work for almost two (2) months until she filed a leave of absence on April 16, 2011. The office then issued a memorandum requesting her to report for work and submit a written explanation with a duly notarized medical certificate issued by the hospital where she was allegedly confined, along with other documents that would justify her long absence. Petitioner never reported for work. Respondent Mirasol Depano was surprised when she received a Notice of Conference from the National Conciliation and Mediation Board (NCMB)-NCR on April 29, 2011.

Private respondents maintain that petitioner was never dismissed but was merely directed to comply with the office memorandum. If they indeed terminated her, they would not have granted her request for cash advance. If only she would be able to comply with the office memorandum and also prove her fitness to work, they are very much willing to accept her back to work.

In her reply, petitioner controverted Respondent Mirasol Depano's allegation regarding her failure to notify the company of her leave of absence. She properly informed the latter of her ordeal and that as a consequence, she would be on leave from her post. No proof was given regarding Respondent Mirasol Depano's supposed instruction for her to file a sickness notification form. She never disobeyed any directive requiring her to return to work. It was Respondent Mirasol Depano who refused to accept her upon her return on April 16 and 18 of 2011.

Private respondents also argued that the act of requiring proof of petitioner's surgery and fitness to work cannot be interpreted as proof of their intent to terminate the petitioner. It was merely done to assure that the job would not pose danger to the worker's health.

On November 29, 2011, the Labor Arbiter rendered a Decision finding no fault on the part of the private respondent, the dispositive portion of which reads:

X X X

"WHEREFORE PREMISES CONSIDERED, judgment is rendered dismissing the case for lack of merit.

"SO ORDERED."

X X X

The Labor Arbiter declared that petitioner was not illegally dismissed for failure of petitioner to prove the fact of dismissal itself. It found that petitioner was not terminated but simply required to submit a written explanation for her two months of absence and to submit medical documents relative to her alleged hospital confinement due to surgical operation, which petitioner failed to comply. The Labor Arbiter did not accord any probative value to the Affidavits of petitioner's co-employees for being self-serving.

The petitioner filed a Memorandum of Appeal with the NLRC but the NLRC Third Division rendered a Decision, the dispositive portion of which reads:

X X X

"WHEREFORE, the appeal is hereby DISMISSED.