

## **SIXTEENTH DIVISION**

**[ CA-G.R. SP No. 131093, June 27, 2014 ]**

**STREAM INTERNATIONAL GLOBAL SERVICES PHILIPPINES, INC.,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION –  
THIRD DIVISION AND ROCHELLE A. BARRO, RESPONDENTS.**

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

**MACALINO, J:**

This is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court seeking to set aside and reverse the Resolution<sup>[2]</sup> dated March 27, 2013 of the National Labor Relations Commission (NLRC) and its Resolution<sup>[3]</sup> dated May 22, 2013 denying petitioner's Motion for Reconsideration in NLRC LAC No. 10-002822-12(8); NLRC NCR CN. 03-04376-12. The dispositive portion of the Resolution dated March 27, 2013 reads:

“WHEREFORE, in view of the foregoing, the appeal filed by respondent is hereby DISMISSED for lack of merit.

SO ORDERED.”

#### *ANTECEDENT FACTS*

This case stemmed from a complaint<sup>[4]</sup> dated March 16, 2012 filed by private respondent Rochelle A. Barro (Barro) against petitioner Stream Global International Services (Stream), Jarred Morrison (Morrison), Heather Sundia (Sundia), and Jake Musngi (Musngi) for illegal suspension, illegal dismissal, moral and exemplary damages, and attorney's fees.

In her Position Paper,<sup>[5]</sup> Barro stated that on September 28, 2009, Stream employed her as a customer support professional under its MNL Sirius Saves account and was given a monthly salary of PhP17,500.00.

On February 2, 2012, Stream gave Barro a Cite Form (Communication an Infraction allegedly actuated by an Employee) for an alleged “tampering or manipulating of the statistics, scores, records, equipment or software and dishonesty” in violation of Stream's Service Code of Conduct. On even date, Barro received a notice of preventive suspension effective February 3, 2012 up to March 3, 2012. On February 8, 2012, Barro appeared before the administrative hearing conducted by Stream. On March 26, 2012, Stream issued a resolution dismissing Barro for having committed serious misconduct in violation of its Code of Discipline.

Barro argued that she was dismissed by Stream without any just or authorized cause. In particular, she stated that she did not conceal any information on any fraudulent activity purportedly going on in Stream because she raised the issue of possible fraudulent activity in Stream to her immediate supervisor. Also, there is no

company policy that requires her to inform Stream of any possible fraud activity in the company.

For their part, Stream, Morrison, Sundia and Musngi (Stream et al.) stated in their Position Paper<sup>[6]</sup> that Stream is a domestic corporation engaged in Business Processing Outsourcing or Call Center Industry. Morrison, Sundia and Musngi are the Vice President and Country Manager, Human Resource Manager of the Quezon City site and Senior Team Manager respectively of Stream. On the other hand, Barro was employed by Stream as a customer support professional.

Stream et al. averred that upon her employment, Barro was tasked to handle the account of MNL Sirius Save – PH Quezon City, known as “SXM Program,” an inbound customer and technical sales program. This program required Stream's support professionals to receive calls from existing customers who were in need of troubleshooting assistance. Under the SXM program, one major performance indicator of the employees was the customer satisfaction rating. This means that the higher the customer satisfaction rating of a support professional, the better was his performance rating that entitled him to additional benefits from Stream. As a support professional, Barro was assigned a password protected user number, which is ID No. 1524P2, that she used to access Stream's computer system.

On January 6, 2012, Stream conducted a hearing involving a certain Edmon Esplana (Esplana), one of its former employees. Esplana allegedly disclosed that the employees under the SXM program had been manipulating the customer surveys to get higher customer satisfaction rating. These employees were said to be accessing customer accounts and changing the email addresses on record so they can answer the surveys sent to the customers.

Because of Esplana's disclosure, Stream conducted an audit of all its customers' email addresses that received survey forms. The audit revealed that several customer account numbers had the same email addresses on record. These email addresses were repeatedly used to answer surveys under different customer accounts encoded by 18 support professionals, including Barro. Purportedly, Barro created and used 6 email addresses linked to 46 instances involving customers who supposedly answered the survey forms sent to them.

On February 2, 2012, Stream issued a Cite Report on Barro. Stream et al. said that Barro was informed that she was being accused of a level 3 offense or an offense against integrity for tampering or manipulation of statistics, scores, records, equipment or software and dishonesty. Barro was preventively suspended on the same day for a period not exceeding 30 days.

During the investigation on February 8, 2012, Barro denied all the allegations in the Cite Form and claimed that someone may be hacking or using her log-in account. Stream et al. also averred that Barro claimed that her team manager, a certain Michael Villarama, had an access to her account. They stated that Barro, however, admitted that she was aware of the system manipulation since October or November of 2009. They argued that despite such knowledge, Barro never raised this issue with her senior team manager or her senior district manager. Consequently, Stream's Committee on Discipline found Barro guilty of violating its Code of Discipline and was dismissed from her employment.

In her Reply,<sup>[7]</sup> Barro claimed that it was not true that she was found guilty of fraud under the Code of Discipline of Stream. Specifically, she stated that the allegations made by Stream derived from the disclosure of its former employee, Esplana, are hearsay. She explained that Stream's computer system report did not show that she was the one who personally created and used the subject email addresses and encoded them to different customer accounts.

In addition, Barro alleged that she was cleared by Stream of the purported tampering or manipulation of statistics, scores, records, equipment or software. Thus, she argued that the only remaining issue against her by Stream is dishonesty. She, nonetheless, said that the Code of Discipline of Stream does not define "concealment and/or failure to inform the company of a possible fraud activity" as dishonesty. Allegedly, there is no rule in Stream that a customer support professional has a duty to inform the management of a possible fraud activity and failure to do so is dishonesty.

In their Reply,<sup>[8]</sup> Stream et al. stated that Barro was terminated not only for her failure to report the fraudulent acts of the members of her team but also for her participation in the tampering and manipulation of the survey results of Stream's clients. They argued that the fictitious email addresses were used by several employees, including Barro. They alleged that the email addresses in question involving different customer accounts were created and/or processed using Barro's personal log-in. This fact alone shows that Barro was guilty of manipulation. They emphasized that Barro was assigned a personal log-in protected by a password known solely to her.

On July 30, 2012, Labor Arbiter Jose Antonio C. Ferrer (Labor Arbiter) rendered a Decision<sup>[9]</sup> in favor of Barro, the decretal portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding respondent Stream Global International Services liable for illegal dismissal. Accordingly, respondent Stream Global International Services is hereby ordered to pay the complainant her full backwages computed from the time of dismissal on March 26, 2012 until finality of this Decision, which is tentatively computed at P70,700.00 as of date hereof. In addition, respondent Stream Global International Services is adjudged to pay the complainant her separation pay equivalent to one (1) month per year of service counted from time of her employment on September 28, 2009 up to the finality of this Decision, which as of this date is hereby computed at P35,000.00.

Respondent Stream Global International Services is also ordered to pay attorney's fees equivalent to ten (10%) percent of the monetary award.

All other claims are denied.

SO ORDERED."

Stream et al. appealed to the NLRC.<sup>[10]</sup>

On March 27, 2013, the NLRC rendered the assailed Resolution dismissing the appeal for lack of merit. On May 22, 2013, the NLRC denied the motion for reconsideration filed by Stream et al.

## GROUND

Hence, Stream filed this Petition for Certiorari raising the following grounds:

"Public respondent NLRC gravely abused its discretion amounting to lack of jurisdiction when it ruled that private respondent Barro was illegally dismissed contrary to the facts and records of the case.

xxx Public respondent NLRC gravely abused its discretion amounting to lack of jurisdiction when it ruled that private respondent Barro was entitled to backwages, separation pay and attorney's fees."<sup>[11]</sup>

In the instant Petition, Stream avers that the fact that 2 or more individuals had the same e-mail address that was used to rate Barro is more than sufficient proof of manipulation. It contends that since Barro was the beneficiary of the manipulation then, the logical conclusion is that she is the author of the manipulation herself. It also explains that a team manager in Stream has a limited access to his agent's account and this is only for the purpose of resetting the agent's password.

Moreover, Stream declares that it has a clear policy on honesty and integrity and expects that an employee, who is aware of any act of dishonesty in the company, to report it to the duly authorized officers of Stream. The failure of an employee to report such act is an indication that he is the one guilty of dishonesty against the company. It alleges that Barro's failure to raise the dishonest acts of her co-employees to the proper authorities, when she was fully aware of these acts, constitutes a violation of Stream's Code of Discipline and of willful disobedience of the lawful orders of the company.

## RULING OF THIS COURT

We resolve to deny the Petition for Certiorari.

This Court holds that the pertinent portions of Stream's Notice of Preventive Suspension<sup>[12]</sup> and Resolution<sup>[13]</sup> of its Committee on Discipline will shed light to the issue on hand, that is, whether or not Barro was illegally dismissed by Stream.

In the Notice of Preventive Suspension dated February 2, 2012, Stream specified the charges against Barro to wit:

"We refer to the CITE Form issued to you today, February 2, 2012, following a complaint against you for possible:

**Tampering or manipulating of statistics, scores, records, equipment or software**

And

**DISHONESTY and/or FRAUD.** Any act, omission, or concealment, which involves a breach of legal duty, trust, or confidence and/or is injurious to the employer or its representative and/or in connection with the employee's work. More specifically, manipulation of email addresses used for survey generation." (*Emphasis supplied in the original*)

On the other hand, the pertinent portion of the Resolution of the Stream's Committee on Discipline on the case of Barro reads: