Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 18, 2020** *which reads as follows:*

"G.R. No. 226922 – (CONVERGYS PHILIPPINES, INC. *petitioner* v. ANNA PATRICIA IÑIGO DACANAY, *respondent*). – This resolves the petition for review on *certiorari*[1] assailing the Decision[2] dated April 20, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139069; and the Resolution[3] dated September 5, 2016, denying reconsideration of the assailed CA Decision. The assailed CA Decision denied the petition for *certiorari* filed from the Resolution[4] dated September 29, 2014 and the Resolution[5] dated December 5, 2014 in NLRC LAC Case No. 06-001461-14, where the National Labor Relations Commission (NLRC) affirmed the Decision[6] dated February 28, 2014 of the Labor Arbiter in NLRC NCR Case No. 05-06645-13.

Facts

Petitioner Convergys Philippines, Inc. (Convergys) is a company engaged in business process outsourcing.[7] On January 30, 2012, it engaged the services of respondent Anna Patricia I. Dacanay (Dacanay) as a customer service associate with a monthly salary of ₱15,966.00 and a monthly allowance of ₱6,000.00.[8]

- over – nine (9) pages ...

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1 *Rollo*, pp. 3-51.

2 Id. at 56-61; penned by Justice Jose C. Reyes, Jr. (a retired member of this Court), and concurred in by Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a member of this Court).

3 Id. at 63.

4 Id. at 112-122; penned by Presiding Commissioner Alex Arcadio Lopez, with the concurrence of Commissioner Gregorio O. Bilog III and Erlinda T. Agus.

5 Id. at 110-111.

6 Id. at 374-388.

7 Id. at 375.

8 Id.

On April 2, 2013, Dacanay reported to work but was sent home by the company nurse with advice to see a doctor due to redness in her eyes.[9] On even date, Dacanay had her eye checked at Casa Medica, Inc. for which she was issued a Medical Certificate by Dr. Katherine Gunio (Dr. Gunio), stating that she was suffering from "*Internal Hordeolum*".[10] On April 3, 2013, respondent was absent from work. She then reported to work the following day, April 4, 2013, but was again sent home by the company nurse because her left eye was still inflamed.[11] She was then instructed by the company nurse to first secure a certification that she was fit to return to work before reporting back.[12] Respondent was absent from work again on April 5, 2013; while on April 6 and 7, 2013, she was not scheduled for duty.[13] On April 8, 2013, Dacanay reported back to work and submitted a medical certificate[14] dated April 6, 2013, indicating that she was already fit to return to work.

Meanwhile, respondent's team leader, Dexter Tagubasi, noticed that the medical certificate issued by Dr. Gunio on Arpil 2, 2013 contained an alteration. In particular, the recommended number of rest days was changed from 1-"2" day to 1-"5" days. Upon inquiry with Dr. Gunio, the latter confirmed to Tagubasi that she only advised Dacanay to rest for 1-"2" days.[15]

Thus, on April 11, 2013, a notice to explain[16] was issued to respondent. In a handwritten explanation letter,[17] Dacanay denied that she tampered the subject medical certificate and asserted that she was really sick for the duration of her absences.

On April 29, 2013, Dacanay came to the office with her two-year old child and requested her team leader that she be allowed to use her solo parent leave as she has nobody else to take care of her child.[18] However, the company policy on solo parent leave[19] requires employees to file the request for leave at least seven days prior to the intended date of leave, in cases when the duration thereof is less than two days; and one month prior notice, in case the duration thereof is

9 Id. at 345.
10 Id. at 304.
11 Id. at 346.
12 Id.
13 Id. at 10-11.
14 Id. at 348.
15 Id. at 378-379.
16 Id. at 307-308.
17 Id. at 309-311.
18 Id. at 57.
19 Id. at 320-322.

for three or more days. Pending the approval of her request for leave, Dacanay was made to perform her work while her child was unattended.[20] At around 3:30 that afternoon, she was informed that her application for leave was approved effective the following day, April 30, 2013. Feeling oppressed, Dacanay went to the Department of Social Welfare and Development after work and reported the incident.[21]

On May 7, 2013, respondent was terminated from service for violation of the company's policy against "*Fraud, Dishonesty and Similar Acts Prejudicial to Company Interest*", by "*knowingly giving false or misleading information or documents to seek or qualify for any employment preference or benefit from the Company.*"[22]

Dacanay then filed an [amended] complaint against Convergys for illegal dismissal; non-payment of salary and commission; violation of Republic Act (R.A.) No. 8972, otherwise known as the *Solo Parents' Welfare Act*; and for moral and exemplary damages and, attorney's fees. She denied the company's charge of dishonesty against her and claimed that her dismissal was an act of retaliation on the part of the management due to the report she made to the DSWD for the company's violation of the Solo Parents' Welfare Act.[23]

For its part, Convergys asserted that Dacanay's act of submitting the falsified medical certificate dated April 2, 2013 in order to excuse her from work, constitutes a grave offense under the company's Handbook on Employee Discipline, thereby rendering the termination of her employment valid. The company also denied that it violated the *Solo Parents' Welfare Act*, claiming that it in fact disregarded its own rules by allowing Dacanay to take a leave the following day despite the seven-day prior notice requirement.[24]

In the Decision[25] dated February 28, 2014, Labor Arbiter Fedriel Panganiban (Labor Arbiter) declared that Dacanay was illegally dismissed from employment, holding that the penalty of dismissal imposed upon her was too harsh considering that her absences was indeed due to an illness. Thus, the Labor Arbiter ordered Convergys to pay her separation pay in lieu of reinstatement; backwages; and, attorney's fees, *viz.*:

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20 Id. at 57.
21 Id. at 114.
22 Id. at 312-314.
23 Id. at 114-115.
24 Id. at 115.
25 Id. at 374-388.

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed. Respondent Convergys Philippines, Inc. is ordered to pay complainant **ANNA PATRICIA I. DACANAY** her separation pay and backwages reckoned from her employment until finality of this decision, tentatively computed as of the date of this decision in the amount of **TWO HUNDRED SEVENTY-THREE THOUSAND FIVE HUNDRED FORTY-FOUR PESOS & 45/100 (P273,544.45)**, plus ten percent (10%) of the judgment award and for attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[26]

On appeal by Convergys, the NLRC issued the Resolution[27] dated September 29, 2014, affirming the Decision of the Labor Arbiter:

> WHEREFORE, premises considered, judgment is hereby rendered AFFIMRING *in toto* the Decision of the Labor Arbiter.
>
> SO ORDERED.[28]

The NLRC held that there was no direct evidence to prove that Dacanay actually committed the offense of tampering with the medical certificate in question. The NLRC took note that Dacanay did not use the said medical certificate with intent to gain or for her own benefit, as she even reported for work within the prescribed period where she was supposed to be still resting.

Convergys filed a motion for reconsideration, which was denied by the NLRC in its Resolution[29] dated December 5, 2014.

Convergys elevated the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. On April 20, 2016, the CA rendered the herein assailed Decision,[30] which disposed as follows:

> **WHEREFORE**, premises considered, the petition is **DENIED** for lack of merit. The September 29, 2014 and December 5, 2014 NLRC Resolutions are **AFFIRMED**.
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> **SO ORDERED**.[31]

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26 Id. at 386-387.
27 Id. at 112-122.
28 Id. at 121.
29 Id. at 110-111.
30 Id. at 56-61.
31 Id. at 61.

In the Resolution[32] dated September 5, 2016, the CA denied the motion for reconsideration of Convergys.

Hence, this petition was filed.

Convergys argues that the CA has decided the case in a manner that is contrary to law and applicable jurisprudence, considering that the company has shown by substantial evidence that Dacanay falsified a medical certificate that she used to justify her absences. According to Convergys, Dacanay's alleged dishonesty not only constituted a violation of the company's Handbook on Employee Discipline, but likewise, a serious misconduct and a crime against the employer, which are just causes for termination. Petitioner also maintains that it did not violate the *Solo Parents' Welfare Act,* contending that it had in fact approved Dacanay's request for leave upon short notice, and that any delay in the approval thereof was attributable to the latter's belated filing of request.[33]

We deny the petition for lack of merit.

Noteworthy at the outset is the well-established rule that the findings of the Labor Arbiter, the NLRC and the CA, when in absolute agreement, are accorded not only respect but even finality as long as they are supported by substantial evidence.[34] The case at bar best exemplifies this general principle.

In finding no just cause for the dismissal of Dacanay, the Labor Arbiter, the NLRC and the CA unanimously found that she did not use the medical certificate[35] dated April 2, 2013 issued by Dr. Gunio to justify her absences. The conclusion draws support from the following factual circumstances, as established by the evidence on record: after being on medical leave for a period of two days from April 2 to 3, 2013, Dacanay reported back to work on April 4, 2013, notwithstanding the maximum five-day rest period purportedly recommended in the tampered medical certificate. That she went on further medical leave from April 4 to 5, 2013 was due to the fact that the company nurse himself sent her home again on April 4, 2013 for still having an inflamed left eye, as evinced by the Fit to Work Slip[36] issued on even date. In the same fit to work slip, the company nurse advised Dacanay to secure a fit to work form from an ophthalmologist

32 Id. at 63.
33 Id. at 21-22.
34 *Soriano, Jr. v. NLRC*, 550 Phil. 111 (2007).
35 *Rollo*, p. 304.
36 Id. at 346.

prior to returning to work. When she reported back to work on April 8, 2013, Dacanay submitted another medical certificate dated April 6, 2013, with the following diagnosis: "*acute folliculitis, Left Eye, Resolving (swelling of left upper eyelid 4/2-6/13).*"[37]

We agree with the pronouncement of both labor tribunals, as affirmed by the CA, that Dacanay's presence at work on April 4, 2013 belies an intent on her part to use the tampered document for her own gain or benefit, let alone for a dishonest purpose. If at all, the document was submitted for the legitime purpose of justifying her absences from April 2 to 3, 2013, which was well-within the two-day rest period actually prescribed by Dr. Gunio.

In view thereof, the authorship of the falsification cannot instantly be attributed to Dacanay, in the absence of substantial proof that she committed the act. While this Court is not unaware that a person, who had in his or her possession (actual or constructive) a falsified document and made use of it, taking advantage thereof and/or profiting from such use, is presumed to have authored the falsification,[38] the lack of benefit derived from the falsified medical certificate dated April 2, 2013 failed to trigger the application of the presumption in this case. Hence, Convergys' imputation of dishonesty against Dacanay is devoid of factual basis and, thus, has no leg to stand on.

In any case, even assuming that respondent indeed authored the tampering of the questioned medical certificate, We find the same inconsequential in resolving whether she was validly dismissed on the ground of dishonesty.

"Dishonesty" is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[39] To come with the purview of the term "serious misconduct" as a just cause for termination of employment under Article 297 of the Labor Code,[40] the dishonest act must be attended with "willfulness" or "wrongful intent" on the part of the employee.[41]

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37 Id. at 10-11.

38 *PCGG Chairman Elma v. Jacobi*, 689 Phil. 307, 349 (2012).

39 *Bookmedia Press, Inc. v. Sinajon*, G.R. No. 213009, July 17, 2019, citing *National Power Corp. v. Olandesca*, 633 Phil. 278, 288 (2010).

40 Presidential Decree No. 442, as amended. Article 297 of the Labor Code was originally Article 282, before being renumbered by DOLE Department Advisory No. 1, series of 2015.

41 *Bookmedia Press, Inc. v. Sinajon*, supra.

The requirement of willfulness or wrongful intent in the appreciation of dishonesty as a serious misconduct underscores the intent of the law to reserve only to the gravest infractions the ultimate penalty of dismissal.[42] Suffice it to state, penalty of dismissal authorized under the Labor Code should not be imposed on just "any act of dishonesty" committed by an employee, but only upon those whose depravity is commensurate to such penalty.[43]

Tested against the foregoing criteria, the tampering of Dr. Gunio's Medical Certificate—assuming it was performed by Dacanay—lacked the element of willfulness or seriousness so as to warrant her dismissal. At the pain of over-emphasis, respondent did not utilize the falsified document to justify her absences from work beyond the maximum period of two days admittedly prescribed by Dr. Gunio. More importantly, there is overwhelming evidence on record to prove that she had a genuine medical issue for the entire duration of her absences. Therefore, Dacanay's alleged act of dishonesty falls outside the ambit of serious misconduct to qualify as a just cause for her dismissal, thereby rendering the termination of her employment illegal.

Finally, on the issue of whether Convergys violated R.A. No. 8972 or the *Solo Parents' Welfare Act*, the Court once again sustains the affirmative finding of the labor tribunals, as affirmed by the CA.

No less than Dacanay's team leader, Dexter Tagubasi,[44] himself admitted to the fact that respondent brought her minor child—two years of age, per account of respondent—with her to the office on April 29, 2013 and requested that she be allowed to avail of her parental leave benefit under the *Solo Parents' Welfare Act*, since there was no one to attend to her child on that day. Notwithstanding the exigency of the situation, respondent was still made to work while her child was unattended, during the pendency of the approval of her request.

Convergys faults Dacanay for her failure to observe the company's seven-day notice requirement for the availment of parental leave benefit under R.A. No. 8972, and asserts that, despite this lapse, it still managed to accommodate respondent by approving her request effective the following day, April 30, 2013.

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42 Id.
43 Id. citing *The Hongkong & Shanghai Banking Corp. v. NLRC*, 328 Phil. 1156, 1165 (1996).
44 *Rollo*, p. 85, see paragraph 27 of Tagubasis's Affidvit.

We are unimpressed. Under the circumstances, allowing Dacanay to take a leave the following day, April 30, 2013, rendered futile the reason for which she filed an application for leave on April 29, 2013. Clearly, the company lost sight of the very purpose of granting parental leave under the Solo Parents' Welfare Act, that is, to enable the parent to perform parental duties and responsibilities where physical presence is required.[45]

Furthermore, We have previously held that a worker cannot be reasonably expected to anticipate times of sickness nor emergency. Hence, to require prior notice, more so, seven (7)-day prior notice, of such time was absurd.[46]

Given the policy behind the *Solo Parents' Welfare Act*, a company's procedure regarding applications for parental leave should likewise give consideration to unexpected circumstances or contingencies requiring a parent's immediate physical presence, which are not uncommon occurrences in the life of a solo parent, who is tasked to perform alone the responsibilities of parenthood. After all, any possibility of abuse of this privilege is not without limitation, as the law itself imposes that the grant thereof shall be for "*not more than seven (7) working days every year*."[47]

WHEREFORE, premises considered, the petition is **DENIED**. The April 20, 2016 Decision and September 5, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 139069 are hereby **AFFIRMED**.

SO ORDERED." ***Carandang, J.,*** *on official leave.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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45 REPUBLIC ACT NO. 8972, Section 3(d).
46 *Navarro v. Coca-Cola Bottlers, Inc.*, 551 Phil. 658, 663 (2007).
47 REPUBLIC ACT NO. 8972, Section 8.

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