



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 3, 2021**, which reads as follows:*

“**G.R. No. 247559** (*Milagros B. Barleta v. Riviera Golf Club, Inc., et al.*). – This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the Resolutions dated September 27, 2018² and May 30, 2019³ of the Court of Appeals (CA) in CA - G.R. SP No. 157121. The September 27, 2018 Resolution⁴ affirmed the Decision⁵ dated April 12, 2018 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000962-18 that Milagros B. Barleta (petitioner) was validly dismissed from employment. The May 30, 2019 Resolution⁶ of the CA, on the other hand, denied petitioner’s Motion for Reconsideration⁷ of the September 27, 2018 Resolution.⁸

The instant case stemmed from the Complaint for illegal dismissal filed by petitioner against Riviera Golf Club, Inc., *et. al.*, (respondents) before the Labor Arbiter (LA) in NLRC Case No. RAB-IV-02-00227-17-C.⁹

In her Position Paper,¹⁰ petitioner averred that she was hired by respondent Riviera Golf Club on March 24, 1997. Her duties involved planning, budget preparation, documentation and attending board meetings.¹¹

Petitioner’s relationship with respondents turned sour when she

¹ *Rollo*, pp. 8-42.

² *Id.* at 45-55; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Apolinario D. Bruselas, Jr. and Ronaldo Roberto R. Martin, concurring.

³ *Id.* at 56-57; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Apolinario D. Bruselas, Jr. and Ronaldo Roberto R. Martin, concurring.

⁴ *Id.* at 45-55.

⁵ *Id.* at 59-77; penned by Commissioner Cecilio Alejandro C. Villanueva with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.

⁶ *Id.* at 56-57.

⁷ *Id.* at 82-95.

⁸ *Id.* at 45-55.

⁹ *Id.* at 97-110.

¹⁰ *Id.* at 167-216.

¹¹ *Id.* at 170.

wrote a Letter Memorandum¹² dated June 8, 2007, addressed to the then Club President Gen. Celso Castro, regarding certain irregularities that were detrimental to the financial interest of the Riviera Golf Club. Written in the Letter Memorandum¹³ were alleged anomalies involving the Armed Forces of the Philippines – Retirement and Separation Benefits System (AFP-RSBS), the developer of Riviera Golf Club, whose members were exempted from paying membership dues.¹⁴

Consequently, General Nano (then Chairman of Riviera Golf Club and President of AFP-RSBS) summoned petitioner and challenged her to retire. However, petitioner did not retire.¹⁵ The Letter Memorandum¹⁶ caused a confusion among the shareholders of Riviera Golf Club that also affected the relationship of Riviera Golf Club and AFP-RSBS. Later on, the shareholders of AFP-RSBS were already being billed for their liabilities and accountabilities.¹⁷

The issue in the instant case began when the composition of the Board of Directors of Riviera Golf Club (Board) changed in an election on November 25, 2016.¹⁸

According to petitioner, as soon as the new Board assumed office, the Board immediately placed her under preventive suspension; disallowed her from entering her office, transferred her entire staff to a different floor, seized everything inside her office and even searched her vehicle.¹⁹

Petitioner requested that she be allowed to retire considering that her application for early retirement had been approved by the previous Board.²⁰

Petitioner received a Letter²¹ dated February 21, 2017 from Club President Florian O. Concepcion informing her of the preliminary result of the management audit and giving her seventy two (72) hours to file her comment and explanations on the report.²² On March 1, 2017, petitioner sent a Letter²³ to the Board with her comments and explanations. But prior to her Letter,²⁴ on February 29, 2017, petitioner filed an action for constructive dismissal with money claims.²⁵

¹² *Id.* at 112-116.

¹³ *Id.*

¹⁴ *Id.* at 171-174.

¹⁵ *Id.* at 17.

¹⁶ *Id.* at 112-116.

¹⁷ *Id.* at 17-18.

¹⁸ *Id.* at 20.

¹⁹ *Id.* at 21.

²⁰ *Id.* at 179-180.

²¹ *Id.* at 130.

²² *Id.*

²³ *Id.* at 138-158.

²⁴ *Id.*

²⁵ *Id.* at 180-181.

On March 26, 2017, petitioner received a Notice of Termination²⁶ dated March 24, 2017 from respondents. Thus, petitioner amended her complaint to include actual illegal dismissal.²⁷

On the other hand, respondents countered that petitioner's duties include supervision of the operations and management of the company finances.²⁸

Due to serious losses suffered by the company sometime in December 2016, they retained the services of Tagnia, Ortega & Partners, an accounting firm to work as an external auditor and to investigate the cause of the losses.²⁹

The report (Tagnia Report)³⁰ of the external auditor showed at least twenty-one (21) irregularities which involved petitioner. On the basis of the Tagnia Report,³¹ respondents conducted an investigation and required petitioner to submit a written explanation. Petitioner complied therewith. Subsequently, an investigative committee conducted a clarifying hearing on March 13, 2017. After further deliberations, respondents concluded that petitioner failed to convince them that the irregularities were beyond her control. Because petitioner's position is one vested with trust and confidence, the Board resolved to terminate her services.³²

Ruling of the Labor Arbiter

On January 15, 2018, the LA³³ ruled in favor of petitioner. The LA did not consider the Tagnia Report³⁴ because no records were submitted to support the findings stated in the report. The LA held that the actions of respondents towards petitioner were oppressive to labor.³⁵ Thus, the LA held that petitioner was illegally dismissed from the service and ordered respondents to reinstate petitioner to her former position and pay her damages amounting to ₱3,577,000.00.³⁶

On appeal, respondents submitted before the NLRC the documents referred to in the Tagnia Report³⁷ which the NLRC admitted. On the other hand, petitioner failed to file her comment or respond to the partial appeal interposed by respondents.³⁸

²⁶ *Id.* at 159-166.

²⁷ *Id.* at 207.

²⁸ *Id.* at 219.

²⁹ *Id.* at 219-220.

³⁰ *Id.* at 131-137.

³¹ *Id.*

³² *Id.* at 220-221.

³³ *Id.* at 97-110.

³⁴ *Id.* at 131-137.

³⁵ *Id.* at 108.

³⁶ *Id.* at 109.

³⁷ *Id.* at 131-137.

³⁸ *Id.* at 25-26.

Ruling of the NLRC

In the Decision³⁹ dated April 12, 2018, the NLRC reversed the LA ruling. On the basis of Section 10, Rule VII of the New Rules of Procedure of the NLRC, the NLRC considered the evidence submitted by respondents for the first time on appeal in support of their position before the LA.⁴⁰

The NLRC discussed at least eight irregular and unauthorized transactions in which petitioner was involved. It held that petitioner committed acts approximating the just cause of serious misconduct.⁴¹ Based on the circumstances of the case, the NLRC was convinced that there was sufficient basis to hold that petitioner violated the trust and confidence of her employer. Thus, it decreed that petitioner's dismissal is valid and justified.⁴²

Petitioner brought the case before the CA via a Petition for *Certiorari* under Rule 65 of the Rules of Court.

Ruling of the CA

In the Resolution⁴³ dated September 27, 2018, the CA held that "*the NLRC did not act whimsically or arbitrarily in issuing the assailed decision which found that petitioner was validly dismissed.*"⁴⁴ The CA explained that the submission of evidence for the first time on appeal is not prohibited by the New Rules of Procedure of the NLRC.⁴⁵ Thus, it ruled that the NLRC did not commit grave abuse of discretion on the issue. Moreover, the CA stated that petitioner failed to prove that the NLRC's act of rendering the decision within one month from the filing of the appeal constitute grave abuse of discretion.⁴⁶

Lastly, the CA held that petitioner's work involved finances of the Riviera Golf Club and that the irregularities involving petitioner are more than enough basis that she was validly dismissed from the service.⁴⁷

Hence, this petition.

³⁹ *Id.* at 59-77.

⁴⁰ *Id.* at 69.

⁴¹ *Id.* at 70-73.

⁴² *Id.* at 75-76.

⁴³ *Id.* at 45-55.

⁴⁴ *Id.* at 54.

⁴⁵ *Id.* at 50-51.

⁴⁶ *Id.* at 52.

⁴⁷ *Id.* at 53-54.

Issues

I.

THE NLRC ALLOWED THE RESPONDENTS TO SUBMIT EVIDENCE FOR THE FIRST TIME ON APPEAL WITHOUT ANY VALID EXCUSE OR JUSTIFICATION FOR THE SAID BELATED SUBMISSION OF EVIDENCE.

II.

THE NLRC WAS AMAZINGLY AND SURPRISINGLY ABLE TO EXAMINE THE MORE THAN 4,000 PAGES OF DOCUMENTS SUBMITTED BY RESPONDENTS IN A VERY SHORT TIME OF LESS THAN ONE MONTH FROM THE TIME THE MEMORANDUM OF APPEAL AND SUPPLEMENTAL MEMORANDUM OF APPEAL WERE FILED; AND ONLY TWO WEEKS FROM THE TIME PETITIONER RECEIVED THE SUPPLEMENTAL MEMORANDUM OF APPEAL, WITHOUT REGARD TO ANY COMMENT THEREON THAT THE HEREIN PETITIONER MAY FILE.

III.

THE NLRC'S VALIDATION AND THE CA'S AFFIRMATION OF PETITIONER'S DISMISSAL BY RESPONDENTS HAVE NO BASIS IN FACT AND IN LAW.⁴⁸

Ruling of the Court

The Court will discuss the issues raised here in *seriatim*.

On the first issue, petitioner argues that the NLRC should not have considered the belated submission of the evidence because respondents failed to present any justification for the delay.⁴⁹ Petitioner anchors this argument on the case of *Misamis Oriental II Electric Service Cooperative (MORESCO II) v. Cagalawan*⁵⁰ wherein the Court disregarded the evidence belatedly submitted because of failure to provide justification for the delay.

The *MORESCO II* case does not apply because it is not in all fours to the instant petition.

⁴⁸ *Id.* at 27.

⁴⁹ *Id.* at 28-29.

⁵⁰ 694 Phil. 268 (2012).

In *MORESCO II*, petitioner therein failed to file its position paper and present its cause before the LA. It only acted when an adverse decision was already rendered by the LA by filing its appeal before the NLRC. Thus, the Court held that the belated submission of their position and evidence cannot be permitted.

Unlike in the instant case, respondents had presented their cause before the LA. Respondents had already threshed out their position before the LA that they have just cause to terminate petitioner's employment on the basis of the investigation laid out in the Tagnia Report.⁵¹ However, the LA simply brushed aside the Tagnia Report⁵² because the documents being referred to in the report were not attached to their position paper. Respondents may have thought that their presentation of the Tagnia Report⁵³ is sufficient justification for petitioner's separation from service. Nonetheless, respondents had no other choice, but to attach the documents referred in the Tagnia Report⁵⁴ only during their appeal before the NLRC.

Without a doubt, the factual milieu of the *MORESCO II* case is way different here. Thus, the *MORESCO II* case should not apply.

Well-settled is the rule that the NLRC may receive evidence, even if submitted for the first time on appeal. In *UNICOL Management v. Malipot*,⁵⁵ the Court held that:

First, this Court would like to underline the fact that the NLRC may receive evidence submitted for the first time on appeal on the ground that it may ascertain facts objectively and speedily without regard to technicalities of law in the interest of substantial justice.

In *Sasan. Sr. v. National Labor Relations Commission 4th Division*, We held that our jurisprudence is replete with cases allowing the NLRC to admit evidence, not presented before the Labor Arbiter, and submitted to the NLRC for the first time on appeal. The submission of additional evidence before the NLRC is not prohibited by its New Rules of Procedure considering that rules of evidence prevailing in courts of law or equity are not controlling in labor cases. The NLRC and Labor Arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. In keeping with this directive, it has been held that the NLRC may consider evidence, such as documents

⁵¹ *Rollo*, pp. 131-137.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ 751 Phil. 463 (2015).

and affidavits, submitted by the parties for the first time on appeal.⁵⁶

Based on the foregoing, no error can be imputed against the NLRC in admitting and considering evidence submitted for the first time on appeal.

Anent the second issue, petitioner ascribes grave abuse of discretion on the part of the NLRC for deciding the case within one month from the filing of the appeal.

First, there is no rule that prohibit the NLRC to decide a case with dispatch. In fact, courts and other tribunals who resolve cases with dispatch should be commended because they contribute to the unclogging of dockets and speedy administration of justice.

Second, petitioner cannot claim violation of due process because she admitted in her Petition for Review on *Certiorari*⁵⁷ that she was abroad on March 26, 2018 when her counsel received the order to file comment due on or before April 5, 2018. Since her return from abroad was dated April 20, 2018, "*it was decided that petitioner's former counsel will file the Answer and Comment shortly after she arrives from abroad.*"⁵⁸ It is clear that petitioner and her counsel opted not to file comment within the period given by the NLRC. Unfortunately for them, the NLRC resolved the case on April 12, 2018 *sans* petitioner's answer or comment.

The Court cannot be mistaken that it was petitioner and her counsel's fault that they failed to file comment on respondents' appeal. Considering that April 5, 2018 lapsed without any move from petitioner, the NLRC cannot be faulted in issuing the assailed April 12, 2018, Decision.⁵⁹ Petitioner, through counsel, could have filed a motion and manifestation before the NLRC for an extension of time to file comment. In that way, the NLRC could have held in abeyance rendering their decision. Apparently, petitioner did not file any motion or manifestation. Hence, there is no speck of grave abuse which can be found on the part of NLRC in deciding the case within one month after the filing of the appeal.

As regards the issue on illegal dismissal, petitioner merely argued that the NLRC committed grave abuse of discretion for taking into consideration the evidence which was submitted for the first time on appeal. Aside from narrating the circumstances surrounding her dismissal, petitioner did not present any argument against the findings of

⁵⁶ *Id.* at 474.

⁵⁷ *Rollo*, pp. 8-43.

⁵⁸ *Id.* at 32.

⁵⁹ *Id.* at 59-77.

the NLRC why she was validly terminated from work. In seeking the reversal of the CA Resolutions⁶⁰ and the NLRC⁶¹ Decision, petitioner relied heavily on the technical matters she presented in the first and second issues which were already discussed.

Nevertheless, even if petitioner failed to dispute the findings of the NLRC, the Court discusses the issue on the alleged illegal dismissal of petitioner.

Respondents terminated petitioner's services for loss of trust and confidence. A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two conditions, to wit: (1) the employee whose services are to be terminated must occupy a position of trust and confidence; and (2) the presence of some basis for the loss of trust and confidence.⁶²

There is no dispute that petitioner's position as Senior Vice President is entailed with trust and confidence because her work covers operations of the Riviera Golf Club and its financial administration. In short, everything that happens in Riviera Golf Club passes through petitioner. Thus, the first condition is present in this case.

The Tagnia Report⁶³ enumerated at least twenty-one (21) irregularities involving petitioner. The irregularities found are equivalent to multi-million peso worth of losses for Riviera Golf Club.

On the other hand, the NLRC discussed only eight irregular activities of petitioner; one of which is when petitioner authorized the issuance of checks with a total amount of ₱24,000,000.00 for payment of real property taxes between 2011 to 2013. Upon audit and investigation, it was found that the ₱24,000,000.00 remained unliquidated. Worse, the Municipality of Silang, Cavite is collecting from Riviera Golf Club tax deficiencies from 2006 to 2013. In fact, petitioner was a signatory to a Memorandum of Agreement between Riviera Golf Club and Municipality of Silang, Cavite for structured payment of real property taxes from 2006 to 2013. The MOA also stated "*that Riviera had not been paying real property taxes from 2006 to 2013.*"⁶⁴ In other words, the ₱24,000,000.00 issued under petitioner's authority for payment of real property taxes which remained unliquidated simply vanished. This fact alone is more than enough reason and basis for respondents to lose their trust and confidence in petitioner and validly terminate her employment.

⁶⁰ *Id.* at 45-55; and 56-57.

⁶¹ *Id.* at 59-77.

⁶² *Bravo v. Urios Collegas*, 810 Phil. 603, 620-621 (2017).

⁶³ *Rollo*, p. 131-137

⁶⁴ *Id.* at 72.

In view of this, there is no need to further discuss the other infractions or irregularities considered by the NLRC in arriving at a conclusion that petitioner was validly dismissed from the service. Indubitably, petitioner failed to show that the CA committed any reversible error as to warrant the reversal of its assailed Resolution.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Resolutions dated September 27, 2018 and May 30, 2019 of the Court of Appeals in CA-G.R. SP No. 157121 are **AFFIRMED**.

SO ORDERED.” (LEONEN, J., and LOPEZ, J., on leave. HERNANDO, J., Acting Chairperson).

By authority of the Court:

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