

## SECOND DIVISION

[ G.R. No. 232194, June 19, 2019 ]

**ALVIN M. DE LEON, PETITIONER, V. PHILIPPINE TRANSMARINE CARRIERS, INC. AND ANNA MARIA MORALEDA, RESPONDENTS.**

### DECISION

#### CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> (Petition) filed by Alvin M. de Leon (de Leon), assailing the Decision<sup>[2]</sup> dated July 19, 2016 and Resolution<sup>[3]</sup> dated May 23, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138932, which affirmed the Resolution<sup>[4]</sup> dated November 28, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002342-14.

#### The Facts

On January 31, 2005, de Leon began as a Hotel Personnel Planner for the Crewing Department of respondent Philippine Transmarine Carriers, Inc. (PTC), a manning agency acting as agent for foreign principals and engaged in the business of sending Filipino seafarers on board ocean-going ships or vessels.<sup>[5]</sup> At the start of his employment, de Leon was given PTC's old company handbook;<sup>[6]</sup>

De Leon's first few years with PTC went well, and he was, in fact, promoted to Hotel Personnel Officer in 2008.<sup>[7]</sup> In December 2010, he was seconded by PTC to First Maritime Shared Services, Inc. (FMSSI), PTC's offshore processing unit, where he was given the position of "Scheduler."<sup>[8]</sup> During his time with PTC, he was given the following awards:

1. Star Award in 2006;
2. Superstar Award in 2007;
3. Megastar Award in 2008;
4. Megastar I Award in 2009;
5. Megastar II Award in 2010;
6. Hall of Fame Award - the highest distinction an employee of PTC could get-in 2011.<sup>[9]</sup>

Meanwhile, during his secondment with FMSSI, he received four Top Performer of the Month awards, three Top Performer of the Quarter awards, and a Top Performer of the Year Award in 2012.<sup>[10]</sup>

It must be noted, however, that in 2010, he was served with two written memoranda

by the Human Resources Department of PTC regarding a supposed violation of PTC's Code of Discipline, particularly Section 3, Number 2 of which provides:

### **E. Employees Behaviour, Relationship with Co-employees/Superiors**

2. It is the duty and obligation of every employee to comply faithfully and strictly with every rule, [regulation], instruction, notice or directive of the company relative to or in connection with his work or employment. This includes strict compliances with notices to appear on investigation to shed light on matter being investigated by or of interest of the company.<sup>[11]</sup>

One of the two written memoranda served on de Leon was regarding an incident on October 11, 2010, caught on PTC's closed-circuit television (CCTV) where he appeared to have violated the policy of receiving "*pasalubong*" which was prohibited under the written instruction of the company.<sup>[12]</sup> De Leon served replies to the memoranda issued to him, in which he explained that he merely assisted a crewmember in giving a gift to a relative. PTC found his explanations honest and justified, so he was given a mere verbal reprimand to discourage any similar suspicious behavior.<sup>[13]</sup>

In 2012, PTC revised its Code of Discipline, in which it indicated more clearly its prohibition against accepting gifts. Thus:

### **Section O. CONCERTED ACTIONS AGAINST COMPANY & OTHER OFFENSES**

5. No employee shall offer or accept directly or indirectly any gift with a collective value of Php 500.00 and above. Any item worth Php 500.00 and above should be returned or surrendered to HR Department. In addition, an employee who accepts any amount of money or any gift in kind from a crew member, ex-crew member, or representative of a crew member shall be dismissed.

**Offering or accepting any gift with collective value of P500.00 and above should be dealt with DISMISSAL.**

#### **1<sup>st</sup> Offense - DISMISSAL<sup>[14]</sup>**

De Leon was served a copy of PTC's revised Code of Discipline on September 7, 2012.<sup>[15]</sup> Incidentally, FMSSI —the PTC-owned company where de Leon was seconded — also had the exact same policy.<sup>[16]</sup>

On October 9, 2013, de Leon, along with a co-employee Aaron T. Brillante<sup>[17]</sup> (Brillante), was caught on the CCTV accepting a brown bag from another employee Fred Rikko B. Adefuin (Adefuin).<sup>[18]</sup> The brown bag — which contained two bottles of Jack Daniel's Whiskey — came from Mr. Mustafa Acar (Acar), a friend and co-employee of de Leon when he was still working in another vessel, the Oasis of the Seas.<sup>[19]</sup> In his Petition, de Leon admitted:

xxx Thinking in all honesty that Mr. Acar's surprise gift as harmless, de Leon instructed Mr. Adefuin to give the gift instead to Mr. Aaron T. Brillantes in the far end of the office knowing that there is a CCTV camera trained on their work area. He informed the crew to give the gift in the far end of the work area so as not to arouse curious stares and create misunderstandings about the liquor sent by Mr. Acar considering that they are at the Crewing Operations Center and in front of a lot of crewmembers waiting.<sup>[20]</sup>

The next day, he was confronted about the incident and he readily admitted that he and Brillante did accept a gift.<sup>[21]</sup> On October 25, 2013, de Leon and Brillante were served with a memorandum to explain the October 9, 2013 incident. They were also served a 30-day Suspension Notice.<sup>[22]</sup>

In his answer to the memorandum, de Leon admitted to receiving the bottles of liquor, but insisted that it was not a violation of the company policy for it did not come from a crewmember but from an outsider.<sup>[23]</sup> On November 6, 2013, an administrative hearing was held, and de Leon was able to attend the same.<sup>[24]</sup> In the administrative hearing, Brillante testified that de Leon told Adefuin "not here, there are cctv and others might have a wrong idea about it," and de Leon then advised Adefuin to proceed to the rear section of the crewing operations office.<sup>[25]</sup> On November 12, 2013, Acar sent an email to the representatives of PTC, to wit:

This matter and statement is just to bring to your notice that recently I had gifted our previous scheduler Alvin [d]e Leon 2 bottles of whiskey worth \$36 US dollars as a goodwill gesture and token of friendship. This gift was sent through one of my Filipino waiters Adefuin, Fred Rikko Bernardin to be given to Alvin [d]e Leon. However there was a whole lot of misunderstanding and it seems like the bottle was being given to Alvin [d]e Leon by the crew member Adefuin, Fred Rikko Bernardin as a favor[.]

I just wanted to let you know that there is no personal favor behind this gift that was extended except for the friendship that we still share till date.

Kindly understand the above matter and I can assure that there is no personal favor involved from Alvin [d]e Leon nor the crew member (Adefuin, Fred Rikko Bernardin) and the whole situation has been misunderstood.

Mustafa Acar  
Maitre'D

Oasis of the Seas.<sup>[26]</sup>

On November 22, 2013, de Leon received a written resolution from PTC notifying him of the termination of his employment.<sup>[27]</sup> Meanwhile, PTC also terminated the employment of Brillante.

On January 30, 2014, de Leon filed a case for illegal dismissal with the Labor Arbiter.<sup>[28]</sup> However, on July 30, 2014, the Labor Arbiter dismissed the case for lack of merit.

De Leon thus filed an appeal with the NLRC.

### **Rulings of the NLRC**

On October 21, 2014, the Third Division of the NLRC issued a Decision<sup>[29]</sup> partially granting de Leon's appeal. It found the penalty of dismissal too harsh and not commensurate to the act committed, more so because it was done without wrongful intent.<sup>[30]</sup> It also took into consideration the fact that de Leon was an exemplary employee during his stint with PTC, as proved by the numerous awards he received.<sup>[31]</sup> It thus held that de Leon was illegally dismissed by PTC.

Aggrieved, PTC filed a motion for reconsideration with the NLRC.

On November 28, 2014, the NLRC issued a Resolution<sup>[32]</sup> reversing its earlier Decision. In this Resolution, the NLRC noted that de Leon was well-aware of the company policy, yet he willfully violated the same. As the penalty provided under PTC's Code of Discipline was dismissal, de Leon's dismissal was therefore justified. The NLRC likewise took into consideration de Leon's position as Scheduler. It noted that de Leon's duties and responsibilities made him a member of the managerial staff, and thus, this violation made him lose the trust and confidence of PTC. All in all, the NLRC held that de Leon was validly dismissed.

De Leon then filed a Petition for *Certiorari* under Rule 65 with the CA.

### **Ruling of the CA**

In the questioned Decision<sup>[33]</sup> dated July 19, 2016, the CA dismissed de Leon's Petition for *Certiorari* primarily for allegedly being filed out of time. It held:

Records reflect that petitioner received on 3 December 2014 a copy of the assailed *Resolution* of the NLRC. Conformably with Sections 1 and 4, Rule 65 of the 1997 Rules of Civil Procedure, petitioner had 60 days from 3 December 2014 within which to file his *Petition for Certiorari*, or, on 1 February 2015. As it happened, on 1 February 2015, the impugned Resolution became final and executory and was ordered recorded in the NLRC Book of Entries of Judgment. Plain as a pikestaff, when the instant *Petition* was filed on 2 February 2015, the repugned *Resolution* had already attained finality.<sup>[34]</sup>

It then held that it nevertheless sieved through the records, and found no grave abuse of discretion in the NLRC's Resolution.

De Leon filed a motion for reconsideration, but the same was denied by the CA in a Resolution<sup>[35]</sup> dated May 23, 2017.

Hence, the instant appeal.

### **Issue**

Proceeding from the foregoing, for resolution of this Court is the issue of whether the CA erred in dismissing de Leon's Petition for *Certiorari*.

### **The Court's Ruling**

The appeal is unmeritorious. The CA did not err in dismissing the Petition for *Certiorari* filed by de Leon.

#### ***The Petition for Certiorari was not filed out of time***

The CA dismissed de Leon's petition primarily for allegedly being filed out of time. On this score, the CA erred.

De Leon received a copy of the NLRC Resolution on December 3, 2014. Consequently, he had 60 days, or until February 1, 2015, to file the Petition for *Certiorari*. However, February 1, 2015 fell on a Sunday, hence the deadline for filing the Petition for *Certiorari* was until the next business day, or on February 2, 2015. In the similar case of *Dela Rosa v. Michaelmar Philippines, Inc.*,<sup>[36]</sup> the Court held:

A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.

The period or manner of appeal from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. National Labor Relations Commission*, Section 4 of Rule 65, as amended, states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed.

Record shows that Dela Rosa received a copy of the November 24, 2005 Resolution of the NLRC, denying his motion for reconsideration on December 8, 2005. **He had sixty (60) days, or until February 6, 2006, to file his petition for certiorari. February 6, 2006, however, was a Sunday. Thus, Dela Rosa filed his petition the next working day, or on February 7, 2006. Undoubtedly, Dela Rosa's petition was timely filed.**<sup>[37]</sup> (Emphasis and underscoring supplied)

Verily, the CA erred in holding that de Leon's petition was filed out of time. De Leon therefore timely filed the Petition for *Certiorari* when he filed the same on the next business day, or on February 2, 2015.

#### ***De Leon was validly dismissed by PTC***

Despite the finding, however, that the CA erred in ruling that the petition was filed out of time, the Court nevertheless upholds the ruling of the CA as regards the merits of the case.

De Leon's dismissal was anchored on his violation of PTC's Code of Discipline, the pertinent provision again reads:

**Section O. CONCERTED ACTIONS AGAINST COMPANY & OTHER OFFENSES**

5. No employee shall offer or accept directly or indirectly any gift with a collective value of Php 500.00 and above. Any item worth Php 500.00 and above should be returned or surrendered to HR Department. In addition, an employee who accepts any amount of money or any gift in kind from a crew member, ex-crew member, or representative of a crew member shall be dismissed.

**Offering or accepting any gift with collective value of P500.00 and above should be dealt with DISMISSAL.**

**1<sup>st</sup> Offense - DISMISSAL<sup>[38]</sup>**

A plain reading of the above rule would reveal that what is punished are two separate acts: (1) offering or accepting, whether directly or indirectly, any gift with a collective value of P500.00 or more, *regardless of who it came from*, and (2) acceptance by an employee of any gift — *regardless of value* — from a crew member, ex-crew member, or representative of a crew member.

It is likewise clear from the said rule that a violation, even on the first instance, merits the dismissal of the employee from his employment. It is without question that de Leon received a gift during his tenure with PTC — his only contentions are: (1) that it did not constitute a violation of the foregoing rule as he did not receive it from a crew member, ex-crew member, or representative of a crew member, and (2) that the rule was vague, unreasonable, and unfair.

With regard to his first contention, de Leon's contention is untenable for his act clearly falls under the first act punished by the rule. He received a gift with a value of \$36, which was clearly above the P500.00 threshold under the rule. Without doubt, therefore, de Leon's acts violated PTC's Code of Conduct.

As regards his second contention, he argues:

Careful analysis of the said provision however will reveal that the same is utterly vague. From the Notice of Dismissal, it shows that petitioner was dismissed for violating the policy that "*No employee shall offer or accept directly or indirectly any gift with a collective value of Php500.00 and above.*" It was his mere acceptance of the gift that he was meted with the supreme penalty of dismissal. Such **provision was however noticeably couched in general and vague manner**, without any qualification as to

from whom the gift should come from and for what consideration. But based from the Notice of Dismissal itself, it is expressly stated the "the governing principles behind the PTC policy ... does not take into account the intent or the origin of the gift." From this admission by the respondents alone, the subject rule should have been declared to be unreasonable and unfair.<sup>[39]</sup> (Emphasis in the original; underscoring supplied)

De Leon's contention is bereft of merit.

The Court's reading of the relevant rule from PTC's Code of Conduct is that it is not vague, nor is it unreasonable. The fact that it did not specify the origin of the gift or the purpose for which the gift was given did not automatically mean that the rule was vague. It simply means that this "no-gift" policy of PTC was absolute, that is, the origin or the purpose of the gift was irrelevant. In simple terms, the mere act of offering or receiving a gift constitutes a violation.

The rule is likewise not unreasonable.

In its Comment, PTC explained the rationale for the rule. It cites the 2003 POEA Rules and Regulations Governing the Recruitment of Seafarers (POEA Rules), the relevant portions of which state:

PART V  
RECRUITMENT VIOLATION AND RELATED CASES

RULE I

LEGAL ASSISTANCE AND ENFORCEMENT MEASURES

Section 1. Acts Constituting Illegal Recruitment. Illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority. Provided, that any such nonlicensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged.

It shall likewise include the following acts committed by any person whether or not a holder of a license or authority:

**a. Charging or accepting directly or indirectly any amount of money, goods or services, or any fee or bond for any purpose from an applicant seafarer;**

X X X X

**RULE II**  
**RECRUITMENT VIOLATIONS AND RELATED CASES**

XXXX

Section 2. Grounds for imposition of administrative sanctions:

**a. Charging, imposing or accepting directly or indirectly, any amount of money goods or services, or any fee or bond for any purpose from an applicant seafarer;**

XXXX

**RULE V**

**CLASSIFICATION OF OFFENSES  
AND SCHEDULE OF PENALTIES**

Section 1. Classification of Offenses. Administrative offenses are classified into serious, less serious and light, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every recruitment violation.

A. The following are serious offenses with their corresponding penalties:

1. Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents

1st Offense - Cancellation of License

2. Engaging in the recruitment or placement of seafarers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines

1st Offense - Cancellation of License

3. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment

1st Offense — Cancellation of License

**4. Charging or accepting directly or indirectly any amount of money, goods or services, or any fee or bond for any purpose from the seafarers.**

**1st Offense - Cancellation of License**

**The penalty shall carry the accessory penalty of refund of the fee**

**charged or collected from the worker.**(emphases and underscoring supplied)

PTC explains:

In view of the POEA's strict requirements and the severity of the corresponding penalty imposed at the first instance, it is only just and reasonable for PTC to take measures to ensure that any act of its officials, employees and representatives that could possibly be construed as a violation of the rules above be given the same degree of importance and dealt with similarly.

xxx Bearing in mind that PTC is accountable for the actions of its officials, employees and representatives and that the offenses underscored in the POEA Rules carry the corresponding penalty of cancellation of license for a single violation thereof, the strict implementation of company rules and regulations is indispensable.<sup>[40]</sup>

The Court agrees with the above explanation of PTC. Indeed, in light of the strict provisions of the POEA Rules, it was reasonable for PTC to protect itself by crafting its Code of Discipline that imposes the supreme penalty of dismissal for those who commit acts that, if construed to be PTC's, would merit the cancellation of its license. Thus, as it is recognized that company policies and regulations, unless shown to be grossly oppressive or contrary to law, are generally valid and binding on the parties and must be complied with until finally revised or amended,<sup>[41]</sup> the dismissal of de Leon — hinged on a rule that provides for dismissal even on the first instance of violation — should therefore be upheld.

The Court has, in the past, upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.<sup>[42]</sup> In this case, the Court holds that PTC was well within its management prerogative in terminating de Leon's employment upon a finding of violation of its company rules.

It is likewise well to note that, as pointed out by PTC and by the NLRC in its Resolution, de Leon's actions reveal that he was aware that he was violating a company rule. By his own admission in the present petition, he instructed Adefuin to give the gift in question to Brillante in the far end of the office, as he knew that there was a CCTV camera in their work area.<sup>[43]</sup> He thus knew that he was at risk of getting caught doing an act he should not do. Despite this, he still received the gift and did not return the same to Acar or even turned over the same to the Human Resources Department as instructed by the Code of Discipline. This therefore constitutes **willful** misconduct or disobedience of company rules that further justifies PTC's decision to terminate de Leon's employment.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated July 19, 2016 and Resolution dated May 23, 2017 of the Court of Appeals in CA-G.R. SP No. 138932 is hereby **AFFIRMED**.

**SO ORDERED.**

*Carpio, (Chairperson), Perlas-Bernabe, J. Reyes, Jr. and Lazaro-Javier, JJ., concur.*

---

[1] *Rollo*, pp. 3-35.

[2] *Id.* at 39-47. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles concurring.

[3] *Id.* at 49-50.

[4] *Id.* at 91-99. Penned by Presiding Commissioner Alex A. Lopez, with Commissioner Pablo C. Espiritu Jr. concurring.

[5] *Id.* at 5 and 338.

[6] *Id.* at 338.

[7] *Id.* at 5.

[8] *Id.*

[9] *Id.* at 6.

[10] *Id.* at 7.

[11] *Id.* at 339.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 340.

[15] *Id.*

[16] *Id.*

[17] Also surnamed "Brillantes" in some parts of the record.

[18] *Id.* at 7 and 340.

[19] Id. at 7.

[20] Id. at 7-8.

[21] Id. at 8 and 340.

[22] Id. at 340.

[23] Id. at 7, 340-341.

[24] Id. at 341.

[25] Id. at 342.

[26] Id. at 9-10. (Emphasis and underscoring removed)

[27] Id. at 341-344.

[28] Id. at 124.

[29] Id. at 79-89. Penned by Presiding Commissioner Alex A. Lopez, with Commissioner Pablo C. Espiritu Jr. concurring.

[30] Id. at 86.

[31] Id.

[32] Supra note 4.

[33] Supra note 2.

[34] *Rollo*, p. 42.

[35] Supra note 3.

[36] 664 Phil. 154 (2011).

[37] Id. at 162.

[38] *Rollo*, p. 340.

[39] Id. at 18.

[40] Id. at 351.

[41] *Aparente, Sr. v. National Labor Relations Commission*, 387 Phil. 96 106 (2000)

[42] *Id.*

[43] *Rollo*, p. 7.



Source: Supreme Court E-Library

This page was dynamically generated by the E-Library Content Management System (E-LibCMS)