



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 19, 2020 which reads as follows:

“G.R. No. 249889 - Dennis Santos Babar v. IBEX Global Solutions (Philippines), Inc.

Before us is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated August 9, 2019 and the Resolution³ dated October 15, 2019 of the Court of Appeals (CA) in CAG.R. SP No. 159019, which reversed and set aside the Decision dated June 27, 2018 and Resolution dated September 28, 2018 of public respondent National Labor Relations Commission (NLRC) and reinstated the Labor Arbiter’s (LA) Decision dated March 8, 2018. The LA dismissed the complaint for illegal dismissal for lack of merit.

Respondent IBEX Global Solutions (Philippines), Inc. (IBEX) is a corporation engaged in business process outsourcing by providing shared services, customer care, sales and support services and solutions. In April 2017, IBEX hired petitioner Dennis Santos Babar (Babar) as Operations Manager under a six-month probationary employment contract. As part of his orientation, Babar was given access to the online Employment Policies of IBEX wherein the provisions for his probationary employment can be found.⁴

On September 14, 2017, IBEX’s Senior Operations Manager, Armando Cristobal, sent Babar a *Notice of Non-Regularization* due to the latter’s failure to meet “the performance standards and probable

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¹ *Rollo*, pp. 31-66.

² Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Samuel H. Gaerlan (now a Member of the Court) and Germano Francisco D. Legaspi, concurring; *id.* at 10-26.

³ *Id.* at 28-29.

⁴ *Id.* at 11.

violation of the Company Code of Conduct.” Babar sent a letter dated September 19, 2017 to IBEX’s Senior Human Resource Manager Benito Taguibao, Jr. to explain his side, wherein he attributed the same to his subordinate team leaders. The explanation was ignored by IBEX. Babar claimed that he was not informed by IBEX regarding “the reasonable standards for regularization” as required for his position as Operations Manager.⁵

For its part, IBEX claimed that at the beginning of Babar’s probationary employment, IBEX discussed with him the “performance metrics” which his work as Operations Manager must achieve, but Babar failed in this regard. Thus, it validly terminated his service.⁶

Babar filed an illegal dismissal case against IBEX on December 5, 2017,⁷ and on March 8, 2018, the LA rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant case is hereby **DISMISSED** for lack of merit. Respondent is further ordered to release complainant’s unpaid salary and 13th month pay.

SO ORDERED.⁸

The LA ruled that Babar was dismissed for failing to meet the reasonable standards of IBEX. The LA disagreed with Babar’s contention that he is considered as a regular employee for IBEX’s failure to apprise him of the reasonable standards which he must meet. Babar’s contention was belied by the letter appeal he submitted to IBEX. In the said letter, it could be discerned that Babar was fully aware of the standards against which his performance is to be gauged. Babar explained in detail the shortcomings he might have had as well as his claimed improvement in the performance of his functions. He even alleged the measures he undertook in order to correct whatever lapses he may have committed.⁹

On appeal, the NLRC reversed the decision of the LA, to wit:

WHEREFORE, premises considered, the Appeal of complainant Dennis S. Babar is hereby **GRANTED**. The Decision of Labor Arbiter Eduardo DJ. Carpio dated March 8, 2018

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⁵ Id.

⁶ Id. at 12.

⁷ Id. at 139-141.

⁸ Id. at 211-212.

⁹ Id.

dismissing the complaint is **REVERSED AND SET ASIDE**. A new one is entered finding complainant to have been illegally dismissed. Respondent IBEX Global Solutions Philippines, Inc. is hereby ordered to pay complainant his full backwages and separation pay in lieu of reinstatement.

Complainant is also entitled to attorney's fees corresponding to ten percent (10%) of the monetary awards.

The awards of complainant's unpaid salary and 13th month pay are sustained.

SO ORDERED.¹⁰

The NLRC found that IBEX failed to show any proof that it had communicated the regularization standards to Babar at the time of his engagement, thus failing to meet the requirement set by law on probationary employment.¹¹

On Petition for *Certiorari*, the CA reversed the Decision and Resolution of the NLRC and reinstated the Decision of the LA. The dispositive portion reads:

WHEREFORE, the Decision dated June 27, 2018 and Resolution dated September 28, 2018 of public respondent NLRC are reversed and set aside; consequently, the labor arbiter's Decision dated March 8, 2018 is reinstated.

SO ORDERED.¹²

The CA granted the Petition and sustained the LA's finding that there was no illegal dismissal, as the non-regularization of Babar's probationary employment was valid. The CA noted that in the Agreement between the parties, Babar, as Operations Manager, was required to "devote [his] full business time, attention, skill, and efforts to advance the interests of the company," and IBEX would "assess [Babar's] performance, attitude, skills and other employment-related attributes and characteristics." IBEX also reserved its right to terminate the services of Babar due to "non-performance/failure to meet required performance standards," among others. The CA ruled that the foregoing provisions clearly showed that Babar was sufficiently informed about the standards he should meet for his regularization.¹³

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¹⁰ Id. at 103.

¹¹ Id. at 99.

¹² Id. at 25.

¹³ Id. at 19-22.

The CA also held that Babar was notified through a “Notice of Non Regularization” that he failed to meet IBEX’s “performance standards” and committed “probable violation of the Company Code of Conduct.” The CA further ruled that Babar’s own admission in his letter dated September 19, 2017, that his performance “was not hitting the goal on majority of the metrics standards,” belied the claim that he was not informed by IBEX of the reasonable standards required for his position.¹⁴

Hence, the present petition where Babar is arguing that the CA erred in finding that the NLRC have acted with grave abuse of discretion. He maintains that he was illegally dismissed and that IBEX is liable to pay him backwages, nominal damages, and attorney’s fees.¹⁵

We DENY the petition.

We sustain the ruling of the CA insofar as it reinstated the LA’s Decision dated March 8, 2018, finding the non-regularization of Babar’s probationary employment to be valid. The CA correctly found that Babar failed to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.

The provisions in the parties’ Agreement¹⁶ dated April 3, 2017, showed that Babar was sufficiently informed about the standards he should meet for his regularization. Babar was also notified through a “Notice of Non Regularization” that he failed to meet IBEX’s “performance standards” and he committed “probable violation of the Company Code of Conduct”.¹⁷ Babar’s own admission in his letter dated September 19, 2017, that his performance “was not hitting the goal on majority of the metrics standards,” belies the claim that he was not informed by IBEX of the reasonable standards required for his position.¹⁸

However, the Court finds it necessary to modify the Decision and award nominal damages in the amount of ₱30,000.00. The Court finds that there was a breach on the part of IBEX to comply with its contractual obligations in evaluating the performance of a probationary employee. Records show that the on-line Employment Policies of IBEX provide that “Performance evaluation is done on

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¹⁴ Id. at 22-24.

¹⁵ Id. at 31-66.

¹⁶ Id. at 164-172.

¹⁷ Id. at 173-174.

¹⁸ Id. at 191-192.

third and fifth month of employment.”¹⁹ Nowhere in the records is it provided that IBEX assessed the performance of Babar on the third month.

In *Abbott Laboratories, Phils. v. Alcaraz*,²⁰ this Court ruled:

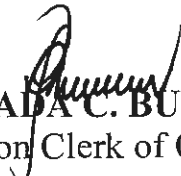
Suffice it to state, the contract is the law between the parties and thus, breaches of the same impel recompense to vindicate a right that has been violated. Consequently, while the Court is wont to uphold the dismissal of Alcaraz because a valid cause exists, the payment of nominal damages on account of Abbott's contractual breach is warranted in accordance with Article 2221 of the Civil Code.

Anent the proper amount of damages to be awarded, the Court observes that Alcaraz's dismissal proceeded from her failure to comply with the standards required for her regularization. As such, it is undeniable that the dismissal process was, in effect, initiated by an act imputable to the employee, akin to dismissals due to just causes under Article 296 of the Labor Code. Therefore, the Court deems it appropriate to fix the amount of nominal damages at the amount of P30,000.00, consistent with its rulings in both *Agabon* and *Jaka*. (Citation omitted)

WHEREFORE, the petition is **DENIED**. The Decision dated August 9, 2019 and the Resolution dated October 15, 2019 of the Court of Appeals in CA-G.R. SP No. 159019, reinstating the Decision of the Labor Arbiter, are **AFFIRMED** with **MODIFICATION**. Respondent IBEX Global Solutions (Philippines), Inc. is **ORDERED** to pay petitioner Dennis Santos Babar nominal damages in the amount of ₱30,000.00 on account of the breach of its own company policy, plus legal interest of 6% per annum from finality of this Resolution until fully satisfied.

SO ORDERED.” *Inting, J., designated as Additional Member in lieu of Peralta, C.J., per Raffle dated June 10, 2020.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court 2019/19

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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¹⁹ Id. at 151.

²⁰ 714 Phil. 510, 541-542 (2013).



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