



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 30 June 2021 which reads as follows:

“G.R. No. 252729 (Kara Jane Lovino Peronilla v. FIS Global Solutions Philippines Inc., Joanna Fedillaga, and Jul Doire Ajo). – The Court NOTES:

1. the comment¹ dated March 22, 2021 of respondents FIS Global Solutions Philippines Inc., *et al.* (respondents) on the petition for review on *certiorari*; and

2. the undated compliance² by counsel for petitioner Kara Jane Lovino Peronilla (petitioner), submitting a proper verification of the petition with additional attestations required under Section 4, Rule 7 of the 2019 Amended Rules of Court.

The petition is denied.

Article 296 of the Labor Code provides, *viz.*:

ART. 296. [281] Probationary Employment. – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. **The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.** An employee who is allowed to work after

¹ *Rollo*, pp. 235-241.

² *Id.* at 245.

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a probationary period shall be considered a regular employee. (Emphasis supplied)

*Moral v. Momentum Properties Management Corp.*³ decrees that a probationary employee is one who is placed on trial by an employer, during which the latter determines whether the former is qualified for permanent employment. By virtue of a probationary employment, an employer is given an opportunity to **observe the fitness and competency of a probationary employee while at work**. During the probationary period, an employer has the **right or is at liberty to decide** who will be hired and **who will be denied employment**.

*Enchanted Kingdom, Inc. v. Verzo*⁴ further ordains that by the nature of a probationary employment, an employee knows from the very start that he or she will be under close observation and his or her performance of assigned duties and functions would be under continuous scrutiny by his/her superiors. It is in apprising him or her of the standards against which his/her performance shall be continuously assessed where due process lies.⁵

Here, upon her employment as probationary employee, petitioner underwent a training program comprising two (2) stages: 1) the theoretical stage; and 2) the on-the-job training (OJT) stage.⁶ As early as the theoretical phase, respondents had already explained to her and the other probationary employees that they needed to achieve adequate real-time feedback (RTF) survey scores and average call handling time (CHT) required by the specific accounts assigned to each of them.⁷ During the training, Willier John Abesamis, the person in charge of petitioner's theoretical training, and Edmar Hular, the speaker during the orientation training likewise emphasized that: 1) meeting the targets is a big factor to being regularized; 2) a probationary employee should avoid being placed under a Performance Improvement Plan (PIP); and 3) failing the PIP means termination of one's probationary contract.⁸

Further, upon signing the AMEX Training Agreement, petitioner was informed of specific performance targets to qualify as a regular employee. Thus, she should have obtained an RTF score of at least 56%, and a CHT of 583.02 seconds. As it was though, by 6th week of her OJT, she only got **an extremely low 25.32% RTF score**. Thus, to improve her score, she got enrolled in the PIP. By the end of the PIP period, however, she still garnered a low **36.36% RTF score** and **358.87 seconds CHT**. Consequently, she was deemed not to have met the reasonable standards for regular employment set and relayed to her by the company.⁹ The Court notes that from the labor arbiter all the way here, she has never denied being unfit to discharge the

³ G.R. No. 226240, March 6, 2019.

⁴ 775 Phil. 388, 405 (2015), citing *Philippine Daily Inquirer, Inc. v. Magtibay*, 555 Phil. 326, 336 (2007).

⁵ *Philippine National Oil Co.-Energy Development Corp. v. Buenviaje*, 788 Phil. 508, 537 (2016).

⁶ *Rollo*, p. 11.

⁷ *Id.*

⁸ *Id.* at 20.

⁹ *Supra* note 3.

duties and functions of her position as Customer Service Center Associate II. All she is asserting is that respondents failed to inform her beforehand of the specific standards to qualify her for regular employment and she was not given the opportunity to improve her poor performance during the period of probation.¹⁰ As heretofore shown, however, these charges are belied by the evidence on record.

But it does not escape the attention of the Court that while petitioner had been validly dismissed, her termination was procedurally infirm because it was made effective immediately.

In *Abbott Laboratories v. Alcaraz*,¹¹ the Court clarified that when terminating a probationary employee, the usual two-notice rule does not govern.¹² Section 2, Rule I, Book VI, as amended by Department Order No. 147-15,¹³ of the Omnibus Rules Implementing the Labor Code nonetheless provides that while a written notice of termination is deemed sufficient, it should be served on the probationary employee within reasonable time from the effective date of his/her termination, *viz.*:

Section 2. Security of Tenure. —

x x x x

If the termination is brought about by the x x x failure of an employee to meet the standards of the employer in case of probationary employment, **it shall be sufficient that a written**

¹⁰ *Rollo*, p. 10.

¹¹ 714 Phil. 510, 537 (2013).

¹² Refers to the procedure stated in Article 291(b) of the Labor Code, as renumbered pursuant to Republic Act No. 10151, *viz.*:

Article 291. Miscellaneous Provisions. —

x x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment.

x x x x

This procedure is also found in Section 2(d), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code which state:

x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 [now, Article 296] of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

¹³ Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as amended.

notice is served to the employee within a reasonable time from the effective date of termination. (Emphasis and underscoring supplied)

In *Esperas v. Sodexo On-Site Services Philippines, Inc.*,¹⁴ the Court ordained that if a probationary employee is terminated for failure to meet the standards of the employer, the notice of termination must be served on such probationary employee **within reasonable time from the effective date of termination**. In that case, Sodexo employed Esperas as a Dining Supervisor on a probationary basis for six (6) months or from June 18, 2016 to December 18, 2016.¹⁵ On September 7, 2016, however, Sodexo sent a letter of termination effective on the same day it was served on him for failure to meet reasonable standards for regularization,¹⁶ *i.e.*, he showed unsatisfactory performance, poor attitude towards staff, and frequent tardiness.¹⁷ The Court sustained the validity of the dismissal but ruled that when Esperas got terminated, **the termination was made effective immediately in violation of Section 2, Rule I, Book VI of the Implementing Rules of the Labor Code**. The Court, thus, awarded Esperas ₱30,000.00 as nominal damages with six (6%) interest *per annum* from finality of judgment until fully paid.¹⁸

Meanwhile, *Agabon v. NLRC*¹⁹ held that the violation of an employee's right to statutory due process warrants the payment of indemnity in the form of nominal damages. The same serves to deter employers from future violations of the statutory due process rights of employees. *Abbott Laboratories, Phils. v. Alcaraz*,²⁰ applying *Agabon*, instructed, thus:

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 ₱30,000.00**, consistent with its rulings in x x x *Agabon* x x x. (Emphases supplied)

Verily, while both the National Labor Relations Commission and the Court of Appeals aptly ruled that the two-notice rule did not govern petitioner as a probationary employee,²¹ the company should have complied with the required reasonable time within which to make her termination effective, counting from the time the notice of termination was served on her.

¹⁴ G.R. No. 249623, February 24, 2020.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013) as cited in *Esperas v. Sodexo-On-Site Services Philippines, Inc.*, *supra*.

¹⁹ 485 Phil. 248 (2004) as cited in *Moral v. Momentum Properties Management Corp.*, *supra*.

²⁰ 714 Phil. 510, 542 (2013) as cited in *Babar v. IBEX Global Solutions (Philippines), Inc.*, G.R. No. 249889 (Notice), August 19, 2020.

²¹ *Rollo*, pp. 24 & 193.

Here, records show that respondent FIS Global Solutions Philippines Inc. served its letter of termination dated February 17, 2017 on petitioner on the same day. It was also made **effective immediately**, meaning effective on the same day it was served on her, thus:

February 17, 2017

Peronilla, Kara Jane
2238 Topacio St., San Andres Bukid, Manila
x x x
Non-Certification – On the Job Training

x x x x

Based on a thorough evaluation of your performance it is evident that you fell short of the requirements/standards established for regular employment. You failed to meet the training qualification requirement for OJT.

x x x x

Under the circumstances, we are left with no other alternative, but to terminate your probationary contract employment with the company. **Your probationary contract is therefore, hereby terminated effective February 17, 2017.**²² (*Emphasis supplied*)

The breach of Section 2, Rule I, Book VI, as amended by Department Order No. 147-15²³ of the Omnibus Rules Implementing the Labor Code and *Esperas* here is palpable. Consequently, FIS Global Solutions Philippines Inc. is liable to pay petitioner nominal damages of ₱30,000.00.

WHEREFORE, the petition is **DENIED**. The Decision dated September 27, 2019 of the Court of Appeals in CA-G.R. SP No. 160315 is **AFFIRMED with MODIFICATION**. Respondent FIS Global Solutions Philippines Inc. is ordered to pay petitioner Kara Jane Lovino Peronilla ₱30,000.00 as nominal damages. This amount shall earn six percent (6%) legal interest *per annum* from the finality of this Resolution until fully paid.

SO ORDERED.” (J. Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021.)

²² *Id.* at 134.

²³ Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as amended

per

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *ab/r*

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*with copy of Decision dated 27 September 2019.
Please notify the Court of any change in your address.
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