



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FRANCHESKA ALEEN BALABA
BUBAN,

Petitioner,

G.R. No. 268399

Present:

LEONEN, SAJ, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

- versus -

NILO DELA PEÑA,*

Respondent.

Promulgated:

JAN 24 2024

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DECISION

LOPEZ, J., J.:

This Court resolves the Petition for Review¹ under Rule 45 of the Rules of Court from the Decision² and Resolution³ of the Court of Appeals (CA), which affirmed with modifications the Decision⁴ and Resolution⁵ of the National Labor Relations Commission (NLRC), that affirmed the Decision⁶ of the Labor Arbiter finding Xerox Business Services Philippines Inc. (Xerox Business) and Nilo Dela Peña (Dela Peña) solidarily liable for payment of

* Also spelled as “de la Pena” in some parts of the *rollo*.

¹ *Rollo*, pp. 13–110.

² *Id.* at 89–101. The May 31, 2019 Decision in CA-G.R. SP NO. 147443 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Ricardo R. Rosario (now a Justice of this Court) and Perpetua T. Atal-Paño of the Eleventh Division, Court of Appeals, Manila.

³ *Id.* at 52–53. The March 7, 2022 Resolution in CA-G.R. SP NO. 147443 was penned by Associate Justice Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Marlene Gonzales-Sison and Perpetua T. Atal-Paño of the Former Eleventh Division, Court of Appeals, Manila.

⁴ *Id.* at 112–120. The May 31, 2016 Decision in NLRC NCR Case No. 09-10939-15 and NLRC LAC No. 04-001149-16 was penned by Presiding Commissioner Grace M. Venus and concurred in by Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio of the Fourth Division, National Labor Relations Commission, Quezon City.

⁵ *Id.* at 122–126. The July 11, 2016 Resolution in NLRC NCR Case No. 09-10939-15 and NLRC LAC No. 04-001149-16 was penned by Presiding Commissioner Grace M. Venus and concurred in by Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio of the Fourth Division, National Labor Relations Commission, Quezon City.

⁶ *Id.* at 128–139. The December 29, 2015 Decision in NLRC NCR Case No. 09-10939-15 was penned by Labor Arbiter Benedict G. Kato of the Arbitration Branch, National Labor Relations Commission, National Capital Region, Quezon City.

damages resulting from sexual harassment as defined and penalized under Republic Act No. 7877,⁷ otherwise known as the Anti-Sexual Harassment Act of 1995.

This case stemmed from an Amended Complaint⁸ filed by Francheska Aleen Balaba Buban (Buban) against Xerox Business, Human Resources Manager Rojan Gonzales (Gonzales), and Dela Peña for sexual harassment, non-payment of salary, payment of moral and exemplary damages, and attorney's fees, before the Labor Arbiter. To support her claim, Buban executed an Affidavit⁹ narrating the incidents of sexual harassment.

On November 11, 2014, Buban was hired as Customer Care Senior Specialist in Xerox Business. On March 22, 2015, between 6:00 p.m. and 8:00 p.m., Buban arrived at the office and went directly to the workstation of Team Leader Kiko¹⁰ to get her headset. However, the latter was on leave and left his pedestal locked. As a result, Buban was constrained to get a temporary headset in the storage room. She tried them on three computers, but was unsuccessful due to a system error. Buban promptly informed Dela Peña, the assigned team leader at the time, and asked for assistance in reporting the system issue to the Information Technology Department. Dela Peña told Buban that the error might be due to the headset and directed her to get a replacement headset from the storage room.¹¹

While inside the storage room, Dela Peña suddenly appeared and told Buban, "*Baby tigas na tigas na ako, kelan mo ba talaga ako pagibigyan [sic]?*" Startled and feeling uneasy, Buban tried to make light of the situation by answering, "*TL ano kaba? Para kang tanga dyan.*" Then, she grabbed the nearest headset and ran out of the room back to her station.¹²

Unfortunately, the headset that Buban took was similarly defective. Buban had to get another headset without an "enabler." Thinking that Dela Peña already left the storage area, Buban went back inside. To her surprise, Dela Peña approached her. Trying to avoid further contact, Buban hurriedly moved away, but Dela Peña grabbed her by the waist and tried to kiss her. She struggled to push him away, but Dela Peña was stronger. Dela Peña was able to hug her and he started groping her breasts. Mustering all her strength, Buban was able to break free from Dela Peña's hold and race out of the room.¹³

⁷ An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes. (1995)

⁸ *Rollo*, pp. 146–148.

⁹ *Id.* at 169–175.

¹⁰ Full name not available in the *rollo*.

¹¹ *Rollo*, pp. 169–170.

¹² *Id.* at 170.

¹³ *Id.* at 170–171.

Buban's ordeal did not end here. While she was at her workstation, Dela Peña approached her and told her to reboot her tools and get a replacement headset, so she can start making calls instead of using system error as an excuse to slack off. Distressed at being put on the spot, Buban complied and went back to the storage room to get another headset. To her horror, Dela Peña followed her inside, closed the door, and blocked the exit. Again, Dela Peña made sexual advances on Buban, telling her, "*Sige na Baby, pagkahawak mo at itatago ko din agad.*" Despite her vehement protestations and warnings that he would be caught by the closed-circuit television camera, Dela Peña still forced himself upon Buban. When she found an opportunity, she ran out of the room. Shocked at what she had just experienced, she was only able to tell her teammates about the incident during their break.¹⁴

From then on, she detested going to work for fear of running into Dela Peña. As a result, her health deteriorated. At work, she became anxious and paranoid, and would find herself uncontrollably crying whenever she saw Dela Peña. However, as a single parent, she could not afford to quit. Thus, she was left with no choice but to continue working.¹⁵

She reported the incident and filed a formal complaint with the Human Resources Department. However, her case was never heard, and no protective measure was afforded to her by the management. Dela Peña continued to work in the same area and same shift with her, magnifying her distress. To her consternation, Dela Peña acted condescendingly and even insinuated that it was Buban who wanted or asked for what happened between them. To make matters worse, Xerox Business withheld three days of Buban's salary earned in May 2015.¹⁶

On September 15, 2015, Buban filed a Complaint before the Labor Arbiter against Xerox Business, Rojan, and Dela Peña for sexual harassment, with prayer for payment of unpaid salary, moral damages, exemplary damages, and attorney's fees.¹⁷

In response, Xerox Business filed its Position Paper¹⁸ admitting that Buban was its employee with the position of Customer Care Senior Specialist. However, Xerox Business denied Buban's allegations that the incident report was never investigated. It claimed that the security incident report was promptly referred to Megaforce Security Services, the security group handling the overall security concerns of the company. In addition, Xerox Business conducted an administrative investigation where a Show Cause Notice¹⁹ was issued against Dela Peña, directing him to explain in writing the charges

¹⁴ *Id.* at 171–172.

¹⁵ *Id.* at 172.

¹⁶ *Id.* at 173–174.

¹⁷ *Id.* at 63–66.

¹⁸ *Id.* at 179–187.

¹⁹ *Id.* at 237.

against him within five days. The administrative investigation, however, did not find convincing evidence to warrant the imposition of the penalty of termination against Dela Peña. Xerox Business further claimed that it was only upon such conclusion that Buban filed her Complaint before the Labor Arbiter.²⁰

In its Decision,²¹ Labor Arbiter ruled in favor of Buban. It held Xerox Business solidarily liable in the payment of damages for its failure to create a Committee on Decorum and Investigation and investigate the alleged sexual harassment incident. In so failing, Xerox Business perpetrated a hostile, offensive, and intimidating work environment that ultimately led to the constructive dismissal of Buban. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, evidence and law considered, judgment is rendered holding respondent *Xerox Business Services, Inc.* liable for the **CONSTRUCTIVE DISMISSAL** of the complainant. By way of relief, however, neither backwages nor reinstatement shall be ordered since complainant's salary was not withheld, nor was she demoted in rank or salary. However, respondent *Xerox Business Services Philippines, Inc.* is hereby **ORDERED** to pay her moral damages of [PHP] 100,000.00, exemplary damages of [PHP]50,000.00, and 3-day salary of [PHP] 2,630.58. Likewise, it is hereby **ORDERED** to immediately remove respondent de la Pena from the immediate workplace of the complainant and to submit its compliance herewith within five (5) calendar days from service of judgment under pain of contempt.

SO ORDERED.²² (Emphasis in the original)

Dissatisfied, Buban²³ and Xerox Business²⁴ filed their separate appeals with the NLRC.

In its Decision,²⁵ the NLRC affirmed the Labor Arbiter's Decision, but modified the award, by increasing the amount of moral damages and exemplary damages to PHP 500,000.00:

WHEREFORE, the 29 December 2015 Decision of the Labor Arbiter finding respondents guilty of constructive dismissal is **AFFIRMED** but partly **MODIFIED** in that moral and exemplary damages in the amount of [PHP]500,000.00 is GRANTED.

All other claims are dismissed for lack of basis.

²⁰ *Id.* at 84.

²¹ *Id.* at 123-139.

²² *Id.* at 139.

²³ *Id.* at 205-223.

²⁴ *Id.* at 193-203.

²⁵ *Id.* at 112-120.

SO ORDERED.²⁶ (Emphasis in the original)

The NLRC affirmed the finding of constructive dismissal by the Labor Arbiter. It held that despite indicating sexual harassment in the Amended Complaint as the only cause of action, the allegations set forth in Buban's Position Paper clearly established constructive dismissal by reason of sexual harassment.²⁷ It likewise rejected Xerox Business's contention that immediate action was taken to investigate the alleged sexual harassment incident. On the contrary, the NLRC found that Xerox Business failed to present any evidence showing compliance with Section 5 of Republic Act No. 7877.²⁸

Unperturbed, Xerox Business sought for Partial Reconsideration.²⁹ Upon a finding that there was no palpable and patent error, the NLRC denied the Motion in its Resolution.³⁰

Aggrieved, Xerox Business and Dela Peña separately sought the annulment of the NLRC's Decision. For his part, Dela Peña filed a Petition for *Certiorari*³¹ under Rule 65 of the Rules of Court. He argued that the NLRC acted with grave abuse of discretion in declaring: (1) that Buban was constructively dismissed by reason of sexual harassment and (2) that he and Xerox Business were solidarily liable for payment of damages in favor of Buban. Dela Peña insisted that Buban's cause of action included only sexual harassment, damages, and attorney's fees, and not constructive dismissal.³²

In its Decision,³³ the CA found that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that Xerox Business had constructively dismissed Buban. The dispositive portion of the CA Decision reads:

We **MODIFY** the Decision dated 31 May 2016 of the National Labor Relations Commission. We order the petitioner Nilo L. Dela Pena and the Xerox Business Services Philippines Inc., jointly and severally, to pay the respondent Francheska Aleen B. Buban the following amount: 1) [PHP] 2,630.588 as payment for the three-day salary of the respondent Franscheka [sic]; 2) [PHP] 100,000.00 as moral damages; and 3) [PHP] 50,000.00 as exemplary damages.

All monetary awards shall be subject to legal interest at the rate of 6% per annum, from the finality of this Decision, until full payment.

²⁶ *Id.* at 119–120.

²⁷ *Id.* at 116.

²⁸ *Id.* at 118.

²⁹ *Id.* at 228–235.

³⁰ *Id.* at 122–126.

³¹ *Id.* at 102–110.

³² *Id.* at 106–108.

³³ *Id.* at 89–101.

IT IS SO ORDERED.³⁴ (Emphasis in the original)

In reducing the award of moral and exemplary damages, the CA held that these amounts are not meant to enrich the employee but merely intended, in the case of moral damages, as reasonable compensation for the suffering caused to the injured party, and in the case of exemplary damages, as correction for the public good. Pursuant to prevailing jurisprudence, the CA also imposed legal interest on the monetary awards, at the rate of 6% per annum.³⁵

Unfazed, Buban filed a Partial Motion for Reconsideration,³⁶ which the CA denied in its Resolution.³⁷

Hence, the present Petition.

Buban argues that the CA committed grave abuse of discretion in dismissing her Motion for Partial Reconsideration when it is apparent on record that Dela Peña already lost his legal standing to seek any affirmative relief from courts of justice for failing to participate in the proceedings before the Labor Arbiter and the NLRC. Further, Buban avers that the CA erred in not upholding the Decision of the NLRC, which declared that she is entitled to payment of moral and exemplary damages amounting to PHP 500,000.00 arising from the acts of sexual harassment. Finally, Buban faulted the CA in failing to render separation pay and full back wages despite the finding that she was illegally terminated.³⁸

The sole issue for this Court's resolution is whether the CA correctly found that the NLRC acted with grave abuse of its discretion in awarding moral and exemplary damages in the amount of PHP 500,000.00.

This Court's Ruling

The Petition is denied for lack of merit.

As a rule, this Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. In labor cases, when the CA decision is brought to the Court through a Petition for Review on *Certiorari*, as in this case, the question of law presented to this Court is whether the CA correctly found that the NLRC acted

³⁴ *Id.* at 100.

³⁵ *Id.* at 99–100.

³⁶ *Id.* at 75–85.

³⁷ *Id.* at 52–53.

³⁸ *Id.* at 18–19.

with grave abuse of discretion in rendering its judgment.³⁹ There is grave abuse of discretion on the part of the NLRC when its findings of fact and conclusions of law are not supported by substantial evidence, that is, such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.⁴⁰

On this note, the pronouncement of this Court in *Traveloka Philippines, Inc. v. Ceballos, Jr.*⁴¹ is instructive:

Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision.

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.⁴² (Citations omitted)

In the case at hand, Buban raises that Dela Peña has already waived his right to participate and intervene in the present labor complaint on account of: *first*, non-submission of position papers and non-participation in the proceedings before the Labor Arbiter and the NLRC; and *second*, filing a petition before a court of law without the assistance of a legal counsel. As a consequence, Dela Peña has lost his legal standing to seek any affirmative relief. Further, Dela Peña signed and filed his own pleading before the CA, without any legal representation. Buban argues that his Petition should have been considered a mere scrap of paper for failing to observe the formalities required by the Rules. Thus, the CA should have dismissed his Petition outright.⁴³

We cannot countenance Buban's arguments. To do so would run contrary to the well-settled principle that the application of technical rules of procedure and evidence are not strictly observed in labor cases to serve the demands of substantial justice. It is the spirit and intention of the Labor Code that in the adjudication of labor disputes, every and all reasonable means shall

³⁹ *Añonuevo v. CBK Power Company, Ltd.*, G.R. No. 235534, January 23, 2023 [Per J. Singh, Third Division].

⁴⁰ RULES OF COURT, rule 133, sec. 6.

⁴¹ G.R. No. 254697, February 14, 2022 [Per *SAJ*, Perlas-Bernabe, Second Division].

⁴² *Id.* at 5-6. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

⁴³ *Rollo*, pp. 18-38.

be employed to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.⁴⁴

Pertinently, the Labor Code provides that:

Article 227 [221]. *Technical rules not binding and prior resort to amicable settlement.*—In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling, and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process[.]⁴⁵

Corollary thereto, the 2011 NLRC Rules of Procedure provides that “[i]n case of non-appearance by the respondent during the . . . scheduled conference . . . despite being duly served with summons, he/she shall be considered to have waived his/her right to file position paper.”⁴⁶ The labor arbiter shall immediately terminate the mandatory conciliation and mediation conference and direct the complainant to file a verified position paper and submit evidence in support thereof. Then the labor arbiter shall render a decision on the basis of the evidence on record.⁴⁷ Meanwhile, “[i]n case of non-appearance of any of the parties during the hearing or clarificatory conference despite due notice, proceedings shall be conducted *ex-parte*” and “the case shall be deemed submitted for decision.”⁴⁸

Verily, the 2011 NLRC Rules of Procedure merely provides that the effect of non-appearance includes waiver of right to file a position paper on the part of the non-appearing party and *ex parte* determination of the case. Further, in labor cases, decisions may be reached based only on position papers and supporting documents without a formal trial and without regard to legal technicalities obtaining in courts of law. To require otherwise would render nugatory “the non-litigious and summary nature of the proceedings.”⁴⁹

Thus, the CA acted accordingly when it took cognizance of the Petition filed by Dela Peña assailing the NLRC Decision, in the greater interest of due process and for expeditious dispensation of justice.

Assuming *arguendo* that Dela Peña is not precluded from seeking reliefs before courts of law, the Motion for Reconsideration filed before the

⁴⁴ LAB. CODE, as renumbered in 2015, art. 227.

⁴⁵ LAB. CODE, as renumbered in 2015, art. 227.

⁴⁶ 2011 NLRC RULES OF PROCEDURE, rule V, sec. 10, par. 2.

⁴⁷ 2011 NLRC RULES OF PROCEDURE, rule V, sec. 10, par. 2.

⁴⁸ 2011 NLRC RULES OF PROCEDURE, rule V, sec. 15(b).

⁴⁹ *Oriental Shipmanagement Co., Inc. v. Bastol*, 636 Phil. 358, 384 (2010) [Per J. Velasco, Jr., First Division].

NLRC was at the instance of Xerox Business, and not Dela Peña. As such, Buban concludes that the CA erred in taking cognizance and ruling on the Petition for *Certiorari* filed by Dela Peña.⁵⁰

While it is indeed settled that the filing of a motion for reconsideration is an indispensable condition before an aggrieved party can resort to a special civil action for *certiorari* under Rule 65 of the Rules of Court, the rule is not absolute and admits of exceptions established by jurisprudence:

The Court, nonetheless, has declined from applying the rule rigidly in the following instances, *viz.*:

- (a) Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) *Where, under the circumstances, a motion for reconsideration would be useless;*
- (e) Where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) Where the proceedings in the lower court are a nullity for lack of due process[;]
- (h) Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and
- (i) Where the issue raised is one purely of law or where public interest is involved.⁵¹ (Emphasis supplied, citation omitted)

Applied to the case at hand, the filing of a motion of reconsideration, under the circumstances, would be useless, if not, redundant. The intention of the rule was fulfilled when the NLRC was afforded an opportunity to rectify any actual or fancied error attributed to it.⁵²

⁵⁰ *Rollo*, p. 19.

⁵¹ *Steelweld Construction v. Echano*, G.R. No. 200986, September 29, 2021 [Per J. Lazaro-Javier, First Division].

⁵² *Republic v. Dimarucot*, 827 Phil. 350, 370–371 (2018) [Per J. Caguioa, Second Division].

To recall, Xerox Business, as co-respondent in the original labor complaint, seasonably interposed an appeal before the NLRC and, subsequently, upon an adverse ruling, filed a Motion for Partial Reconsideration.⁵³

A careful reading of Dela Peña's Petition for *Certiorari* before the CA would reveal that the issues he raised are mere reiterations of the issues raised by Xerox Business in its Motion for Partial Reconsideration before the NLRC, namely: (1) Buban failed to raise constructive dismissal as her cause of action in her *pro forma* Complaint and in her Position Paper; (2) an administrative investigation was conducted by Xerox Business in compliance with Republic Act No. 7877; and (3) the award of damages was granted in the absence of a finding of sexual harassment.⁵⁴

Given the foregoing factual milieu, Dela Peña's omission or failure to file his separate motion for reconsideration before the NLRC is not fatal to his cause of action. Consequently, his recourse to the CA to assail the NLRC's Decision was proper.

We cannot overemphasize that "rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided."⁵⁵

Technicalities notwithstanding, the instant Petition would still necessarily fail for lack of merit.

Prefatorily, We stress that the "factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their original and exclusive jurisdiction especially when these are supported by substantial evidence."⁵⁶

In the case at hand, the Labor Arbiter, the NLRC, and the CA are one in ruling that while Buban did not cease to be employed, she was nevertheless constructively dismissed on account of the hostile, offensive, and intimidating work environment perpetrated by Xerox Business. In so ruling, the Labor Arbiter cited *The Orchard Golf and Country Club v. Francisco*:⁵⁷

⁵³ *Rollo*, pp. 92, 93, 205-234.

⁵⁴ *Id.* at 229-234.

⁵⁵ *De Jesus v. Inter-Orient Maritime Enterprises, Inc.*, G.R. No. 203478, June 23, 2021 [Per J. Hernando, Third Division]. (Citation omitted)

⁵⁶ *Loadstar International Shipping, Inc. v. Cawaling*, G.R. No. 242725, June 16, 2021 [Per J. Delos Santos, Third Division].

⁵⁷ *See* 706 Phil. 479 (2013) [Per J. Del Castillo, Second Division].

The fact that Francisco continued to report for work does not necessarily suggest that constructive dismissal has not occurred, nor does it operate as a waiver. Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.⁵⁸

In *Cornworld Breeding Systems Corporation v. Court of Appeals*,⁵⁹ this Court explained constructive dismissal in this wise:

[C]onstructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable[,] or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him[/her] except to forego his[/her] continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer.

The test for constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.⁶⁰ (Citations omitted)

In cases involving sexual harassment, this Court declared in *LBC Express-Vis, Inc. v. Palco*⁶¹ that “[a]n employee is considered constructively dismissed if he or she was sexually harassed by her superior and her employer failed to act on his or her complaint with prompt and sensitivity.”⁶²

As a consequence of the uniform finding of constructive dismissal, Buban insists that she is entitled to separation pay and full backwages.⁶³

On this note, Buban is mistaken.

In *LBC Express*, we awarded separation pay, backwages, moral damages, exemplary damages, and attorney's fees upon a categorical finding of constructive dismissal. However, a reading of the case reveals that the

⁵⁸ *Id.* at 499.

⁵⁹ G.R. No. 204075, August 17, 2022 [Per J. Hernando, First Division].

⁶⁰ *Id.*

⁶¹ 870 Phil. 617 (2020) [Per J. Leonen, Third Division].

⁶² *Id.* at 621.

⁶³ *Rollo*, pp. 32-34.

award of the twin benefits of separation pay and full backwages was premised upon Palco's actual, albeit involuntary, resignation from work.⁶⁴

Correlatively, in *The Orchard Golf*, while Francisco did not cease to be an employee, her permanent transfer to the Cost Accounting Section, nonetheless, constituted a demotion in her level or rank. Thus, the order for payment of backwages was granted only insofar as "all her accrued salary differential, merit increases and productivity bonuses due her."⁶⁵

In stark contrast to the foregoing, Buban did not resign from her employment. Despite the hostile, offensive, and intimidating environment, she persisted working. Other than the three-day unpaid salary in May amounting to PHP 2,630.58,⁶⁶ the records are bereft of any allegation of demotion in rank or diminution of pay and other benefits. To stress, there is no economic loss to speak of to warrant the imposition of payment of separation benefits and backwages.⁶⁷ Buban woefully failed to establish by substantial evidence her entitlement thereto.

Furthermore, we find no cogent reason to depart from the uniform factual findings of the Labor Arbiter, the NLRC and the CA that Xerox Business was remiss in its duty under Section 4 of Republic Act No. 7877 to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Specifically, it failed to create a committee on decorum and investigation to promptly act upon the allegation of sexual harassment filed by Buban. Accordingly, pursuant to Section 5 of the law, Xerox Business was adjudged solidarily liable with Dela Peña for payment of damages arising from the acts of sexual harassment committed in the employment.⁶⁸

Having ascertained the solidary liability of Xerox Business and Dela Peña, we now proceed to determine the proper amount thereof.

Buban contends that the CA erred in reducing the award of moral damages to PHP 100,000.00 and exemplary damages to PHP 50,000.00. Further, she claims that aside from the damages awarded to her by the NLRC,

⁶⁴ *LBC Express-Vis, Inc. v. Palco*, 870 Phil. 617, 623, 635–636 (2020) [Per J. Leonen, Third Division].

⁶⁵ *The Orchard Golf and Country Club v. Francisco*, 706 Phil. 479, 495–502 (2013) [Per J. Del Castillo, Second Division].

⁶⁶ *Rollo*, pp. 116, 133–174.

⁶⁷ *Advan Motor, Inc. v. Veneracion*, 822 Phil. 596, 609 (2017) [Per J. Leonardo-De Castro, First Division]: The payment of backwages is generally granted on the ground of equity. It is a form of relief that restores the income that was lost by reason of the unlawful dismissal; the grant thereof is intended to restore the earnings that would have accrued to the dismissed employee during the period of dismissal until it is determined that the termination of employment is for a just cause.

⁶⁸ Section 5. *Liability of the Employer, Head of Office, Educational or Training Institution.*—The employer or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

she is likewise entitled to the damages provided under Section 5 of Republic Act No. 7877 arising from the acts of sexual harassment committed in the work environment.⁶⁹

At this juncture, it is worth noting that while the Labor Arbiter, the NLRC, and the CA are in agreement that Xerox Business and Dela Peña are solidarily liable for the payment of damages resulting from the act of sexual harassment, they are at odds with the amount thereof. The Labor Arbiter, as upheld by the CA, ruled that Buban is entitled to PHP 100,000.00 as moral damages and PHP 50,000.00 as exemplary damages. Meanwhile, the NLRC ruled that Buban is entitled to moral and exemplary damages in the amount of PHP 500,000.00.

To put things in proper perspective, Section 3(a) of Republic Act No. 7877 provides that workplace sexual harassment occurs when the employer, agent of the employer, or any other person who has authority over another in a work environment, imposes sexual favors on another, which creates an intimidating, hostile, or offensive environment for the latter. The essence of sexual harassment is the abuse of power by the offender, not the violation of the offended party's sexuality. Such abuse of power emanates from the fact that the superior can remove the subordinate from the workplace should the latter refuse the superior's amorous advances.⁷⁰ What the law intends to correct "is the undue exercise of power and authority manifested through sexually charged conduct or one filled with sexual undertones."⁷¹

In *Philippine Airlines, Inc. v. Yañez*,⁷² this Court re-emphasized that the "demand, request, or requirement of a sexual favor"⁷³ requirement in Section 3 is not essential before an act can be qualified as sexual harassment in an administrative charge. It suffices that the offender's actions created an intimidating, hostile, or offensive environment for the employee.⁷⁴

In *Escandor v. People*,⁷⁵ we explained the liabilities that arise from an act of sexual harassment in this manner:

[A]n act of sexual harassment may result in three distinct liabilities: criminal, civil, and administrative. An action for each can proceed independently of the others. In a criminal action, the accused is prosecuted for a wrong committed against society itself or the State whose law he or she violated. In a civil action, a defendant is sued by the plaintiff in an effort to correct a private wrong. The purpose of an administrative action, on the

⁶⁹ *Rollo*, pp. 20-31.

⁷⁰ *Floralde v. Court of Appeals*, 392 Phil. 146, 150 (2000) [Per J. Pardo, *En Banc*].

⁷¹ *Re: Anonymous Complaint against Atty. Untian, Jr.*, 851 Phil. 352, 360 (2019) [Per J. J. Reyes, Jr., *En Banc*].

⁷² G.R. No. 214662, March 2, 2022 [Per J. M. Lopez, Third Division].

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 876 Phil. 119 (2020) [Per J. Leonen, Third Division].

other hand, is to protect the public service by imposing administrative sanctions to an erring public officer.⁷⁶ (Citations omitted)

This three-fold liability is consistent with the fundamental principle in criminal law that “[e]very man criminally liable is also civilly liable.”⁷⁷ Civil liability arises from the damage or injury caused by the felonious act.⁷⁸

Corollary thereto, the liability of the erring managerial officer and the employer are distinct. In fact, such liabilities are covered by separate provisions under Republic Act No. 7877. For the erring manager, unlawful acts are defined under Section 3(a), whereas the liability of the employer is subsumed under Section 4, in relation to Section 5, of the law.

Upon a careful scrutiny of the records of the case, we sustain the CA’s modification on the awards of moral and exemplary damages.

The award of damages is consistent with Buban’s prayer for relief in her Position Paper. To recall, Buban asked that Xerox Business and Dela Peña be declared “jointly and solidarily liable to pay [Buban] all of her monetary claims, moral and exemplary damages amounting to PHP 100,000.00 and PHP 50,000.00, respectively, and ten percent attorney’s fees from the total monetary award.”⁷⁹

Moral damages are compensatory damages awarded for the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury resulting from a wrongful act or omission.⁸⁰ Time and again, this Court has ruled that the award of damages is not punitive in character:

While, it is true, an employee may rightfully recover moral damages when his dismissal is pernicious in nature, as well as exemplary damages when that dismissal is effected in an oppressive or malevolent manner, these damages, however, are not meant to enrich him but are merely intended, in the case of moral damages, to have some compensation for the suffering that may have been caused to the injured party and, in the case of exemplary damages, by way of example or correction for the public good[.]⁸¹

“A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public

⁷⁶ *Id.* at 140.

⁷⁷ REV. PEN. CODE, art. 100.

⁷⁸ *Escandor v. People*, 876 Phil. 119, 143 (2020) [Per J. Leonen, Third Division].

⁷⁹ *Rollo*, p. 166.

⁸⁰ CIVIL CODE, art. 2219.

⁸¹ *Philippine Advertising Counselors, Inc. v. National Labor Relations Commission*, 331 Phil. 694, 702 (1996) [Per J. Vitug, First Division].

policy.”⁸² Bad faith connotes a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.⁸³

Meanwhile, exemplary or corrective damages are imposed by way of example or correction for the public good.⁸⁴ It is imposed as a punishment for highly reprehensible conduct and serves as a notice to prevent the public from the repetition of socially deleterious actions.⁸⁵ In labor cases, exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.⁸⁶

Applied to the present sexual harassment case, Buban is entitled to recover damages. The failure of Xerox Business to investigate the allegations of sexual harassment demonstrated its insensibility, indifference, and utter disregard not only to the employee’s security and welfare, but also to its duty under Republic Act No. 7877.

On this matter, the CA acted accordingly in reducing the award of moral damages to PHP 100,000.00 and exemplary damages to PHP 50,000.00. The same is not only supported by the records of the case, but also consistent with prevailing jurisprudence. In *Toliongco v. Court of Appeals*,⁸⁷ this Court awarded moral damages amounting to PHP 100,000.00 and exemplary damages amounting to PHP 50,000.00 upon a finding of sexual harassment.⁸⁸

At this juncture, it is worth noting that Xerox Business filed a separate petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 147426, questioning the NLRC’s ruling of constructive dismissal and order for payment of moral and exemplary damages.⁸⁹ In its Decision,⁹⁰ the CA partly granted the petition by deleting the increase of moral and exemplary damages and reinstating the labor arbiter’s Decision in NLRC NCR Case No. 09-10939-15. Notably, this case was elevated to this Court and docketed as G.R. No. 245041, which was denied on March 4, 2019 for having been filed beyond the reglementary period.⁹¹

In any case, this Court will not hesitate in granting the affirmative relief that is due Buban under the law. Under the Anti-Sexual Harassment Act,

⁸² *Agapito v. Aeroplus Multi-Services, Inc.*, G.R. No. 248304, April 20, 2022 [Per J. Lazaro-Javier, Third Division] at 13. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁸³ *Id.*

⁸⁴ CIVIL CODE, art. 2229.

⁸⁵ *Guy v. Tulfo*, 851 Phil. 748, 751 (2019) [Per J. Leonen, Third Division].

⁸⁶ *Agapito v. Aeroplus Multi-Services, Inc.*, G.R. No. 248304, April 20, 2022 [Per J. Lazaro-Javier, Third Division] at 13. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁸⁷ 876 Phil. 803 (2020) [Per J. Leonen, Third Division].

⁸⁸ *Id.* at 837–838.

⁸⁹ *Rollo*, pp. 264–265.

⁹⁰ *Id.* at 259–275. Dated January 26, 2018.

⁹¹ *Id.* at 280–281.

Buban is not precluded from filing a separate civil action for any affirmative relief arising from the alleged acts of sexual harassment.⁷⁷


ACCORDINGLY, the Petition for Review is **DENIED**. The Decision dated May 31, 2019 and the Resolution dated November 23, 2020 of the Court of Appeals in CA-G.R. SP No. 147443 are **AFFIRMED**. Petitioner Francheska Aleen B. Buban is found to have been constructively dismissed. She is entitled to the payment of her unpaid salary amounting to PHP 2,630.58. Respondent Nilo Dela Peña is solidarily liable with Xerox Business Services Philippines, Inc. to pay the unpaid salary of Francheska Aleen B. Buban, and to pay: (1) PHP 100,000.00 as moral damages; and (2) PHP 50,000.00 as exemplary damages. All monetary awards shall be subject to legal interest at the rate of 6% per annum, from the finality of this Decision until full payment.

The case is **REMANDED** to the Labor Arbiter for the determination of whether the total monetary award has already been fully or partially satisfied. Any unpaid amount should be further satisfied in accordance with this Decision.

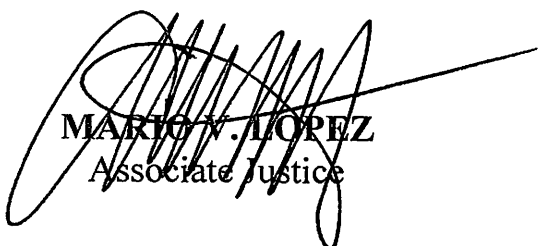
SO ORDERED.


JHOSEP V. LOPEZ
 Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
 Senior Associate Justice
 Chairperson, Second Division


AMY C. LAZARO-JAVIER
 Associate Justice



MARIO V. LOPEZ
 Associate Justice

⁹² Section 6. *Independent Action for Damages*.—Nothing in this Act shall preclude the victim of work, education or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief.


ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice