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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LBC EXPRESS-VIS, INC.,
Petitioner,

G.R. No. 217101

Present:

LEONEN, *J.*, Chairperson,
GISMUNDO,
CARANDANG,
ZALAMEDA, and
DELOS SANTOS, * *JJ.*

-versus-

MONICA C. PALCO,
Respondent.

Promulgated:
February 12, 2020

X-----X

DECISION

LEONEN, J.:

An 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.

This Court resolves the Petition for Review on Certiorari¹ assailing the Decision² and Resolution³ of the Court of Appeals, which affirmed the

* Additional Member per S.O. No. 2753.

¹ *Rollo*, pp. 13–62.

² *Id.* at 66–88. The May 13, 2014 Decision was penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino of the Special Nineteenth Division, Court of Appeals, Cebu City.

³ *Id.* at 91–92. The February 10, 2015 Resolution was penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino of the Former Special Nineteenth Division, Court of Appeals, Cebu City.

National Labor Relations Commission's finding that the employer company, LBC Express-Vis Inc., is liable for constructive dismissal.

On January 16, 2009, Monica C. Palco (Palco) started working for LBC Express-Vis Inc. (LBC) as a customer associate in its Gaisano Danao Branch (LBC Danao). The Branch's Team Leader and Officer-in-Charge, Arturo A. Batucan (Batucan), endorsed her application for the post and acted as her immediate superior.⁴

While employed at LBC, Palco had initially noticed that Batucan would often flirt with her, which made her uncomfortable. Later, Batucan started sexually harassing her. Batucan's undisputed acts are detailed as follows:

1. As weeks passed, she noticed something in the way respondent- Arturo A. Batucan stared and smiled at her. She also sensed some meaning in the way he talked to her, though she initially ignored these and just tried to focus on her job.
2. At one time he offered to lend her money, which she refused, not wanting to be indebted to him.
3. There was likewise an instance when he secretly gave her chocolate, which she felt uncomfortable about, there being no special occasion then.
4. Respondent-Arturo A. Batucan's actions grew bolder everyday[sic]. Whenever he approached her while working, he found ways to hold her hand or put his hand on her lap, if not, on her shoulder.
5. Then, the time came when he started to kiss her on the cheek in a joking manner.
6. On certain occasions, he pulled the strap of her bra, which made her feel really uncomfortable. When she tried to rebuke him on such, he would just tell her that it was a joke.
7. There was also a time when he joked about making a baby with her. He told her that if she will get married someday, he wants to join with her husband in making the baby. She just laughed it off, but she knew there was something wrong with the joke.⁵

The final straw happened at around 8:00 a.m. on May 1, 2010. That morning, Batucan sneaked in on Palco while she was in a corner counting money. Palco was caught by surprise and exclaimed, "*Kuyawa nako nimo sir, oy!*" (You scared me, sir!). Batucan then held her on her hips and attempted to kiss her lips. However, Palco was able to shield herself.

⁴ Id. at 67.

⁵ Id. at 67-68.

Batucan then tried a second time and was able to kiss Palco's lips before she could react. Batucan told Palco that he was just happy that day and then proceeded to wipe her lips. Palco, however, could not stop him. Thereafter, Batucan asked her if it was okay for him to go to the LBC Camotes Branch on Monday, as though asking for her permission and treating her like a girlfriend. She told him not to repeat what he had done and threatened to tell his wife about it. Palco felt angry and afraid.⁶

On the evening of the following day, a Sunday, Batucan texted Palco asking her to report early for work the next day to prepare for the arrival of a certain Ms. Ponce. Afraid of what Batucan might do next, Palco excused herself and suggested that her co-employee take her place, explaining that she might not come in for work.⁷

The next day, despite being repulsed by Batucan, Palco still forced herself to go to work. She was relieved when Batucan left with Ms. Ponce at 11:00 a.m. to visit the LBC Camotes Branch. However, on May 4, 2010, she did not come in for work because she was sick, and was still bothered by the incident.⁸

On May 5, 2010, she reported the incident to the LBC Head Office in Lapu Lapu City. She had a resignation letter prepared in case management would not act on her complaint. Acting on her complaint, management advised her to request for a transfer to another team while they investigated the matter.⁹

On May 8, 2010, Palco returned to the LBC Head Office with her mother and submitted her formal complaint against Batucan. Later, they proceeded to the police station to report the incident.¹⁰

On May 14, 2010, sensing that management did not immediately act on her complaint, Palco resigned. She asserted that she was forced to quit since she no longer felt safe at work.¹¹

On June 15, 2010, Batucan was served a copy of a Notice to Explain.¹²

On July 20, 2010, LBC held the administrative hearing for the incident.¹³ On the same day, Palco filed a Complaint for Illegal Dismissal against the company.

⁶ Id. at 68.

⁷ Id. at 69.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at 84.

¹³ Id.

On September 27, 2010, the area head of LBC Cebu sent a letter addressed to Batucan containing a suspension with last warning:

This administrative action is taken on the account of the complaint on immoral act with you [sic] teammate, Ms. Monica Palco of which you were required to submit a valid explanation why sanction should not be imposed against you. This aggravated the company by facing a case charged with illegal dismissal at NLRC Cebu.

After thorough consideration and evaluation of the case, the company finds it adequate cause to render you answerable for the aforementioned conduct. This Office hereby sites you for the following infraction categorized under our Code of Conduct as Major Offense to wit:

Against Persons:

- a. Immoral act or any form of indecency within company premises or work assignment.
- b. Any form of sexual harassment.

Accordingly, your attention is hereby called to this instance; you are directed to serve a SUSPENSION for a period of sixty (60) days without pay with LAST WARNING effective immediately.

You are further admonished against a repetition of this omission.

For your information and strict compliance.

LEONARDO V. LIBRADILLA (signed)¹⁴

On October 18, 2010, Palco filed a Complaint for sexual harassment before the Danao City Prosecutor's Office.¹⁵

The Labor Arbiter, in its Decision dated June 29, 2011, ruled in favor of Palco:

WHEREFORE, co-respondents LBC Express-VIS, Inc. and Arturo Batucan are hereby ORDERED solidarily to immediately pay complainant Monica C. Palco the following:

Backwages.....	Php 91,000.00
Separation pay.....	14,000.00
Moral Damages.....	200,000.00
Exemplary Damages.....	<u>50,000.00</u>
Total.....	Php 355,000.00
Attorney's fees (10%)	<u>35,000.00</u>
Grand Total.....	390,500.00

¹⁴ Id. at 242.

¹⁵ Id. at 69.

SO ORDERED.¹⁶

The National Labor Relations Commission, in its May 31, 2012 Decision¹⁷ affirmed with modification the Labor Arbiter's decision but reduced the amount of moral damages to ₱50,000.00.¹⁸

The Court of Appeals, in its March 13, 2014 Decision¹⁹ affirmed the National Labor Relations Commission. It denied LBC's Motion for Reconsideration.²⁰

LBC thus filed this Petition²¹ maintaining that: (1) "the findings are grounded entirely on speculation [;]" (2) "the inference made is manifestly mistaken [;]" (3) "the judgment is based on misapprehension of facts [;]" and (4) "the Court of Appeals manifestly overlooked certain relevant facts not disputed but the parties, which... would justify a different conclusion."²² Furthermore, it raised that "a period of four (4) months does not even constitute an unreasonable period to resolve a case of such nature and gravity as one for sexual harassment."²³

Subsequently, Palco filed a Comment,²⁴ and LBC filed its Reply.²⁵

Petitioner mainly argues that it should not be held liable for constructive dismissal. It insists that it did not commit any act of discrimination, insensibility, or disdain towards respondent. Neither did it establish a harsh, hostile or unfavorable work environment for her.²⁶

Citing *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*,²⁷ petitioner argues that it cannot be held liable for the hostile work environment that respondent experienced because it was Batucan, who committed the acts subject of her complaint. It points out that Batucan was a mere team leader, a co-employee, who had no power to dismiss, suspend, or discipline respondent.²⁸ Petitioner did not know of, participate, or consent to Batucan's acts and only learned of his acts after respondent reported it.²⁹

¹⁶ Id. at 322–323.

¹⁷ Id. at 166–177.

¹⁸ Id. at 176–177.

¹⁹ Id. at 66–88.

²⁰ Id. at 91–92.

²¹ Id. at 13–53.

²² Id. at 13.

²³ Id. at 43.

²⁴ Id. at 673–691.

²⁵ Id. at 756–778.

²⁶ Id. at 33.

²⁷ 693 Phil. 646 (2012) [Per J. Mendoza, Third Division].

²⁸ *Rollo*, p. 33.

²⁹ Id. at 36.

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Petitioner also insists that it acted with sensitivity and consideration for respondent's welfare and made efforts to address her concerns while it was investigating the incident. It points out that when respondent expressed her intention to resign, it suggested respondent's transfer to another team and did not require her to report back to the LBC Danao where Batucan was stationed. When respondent accepted the offer, LBC granted her vacation leave requests while awaiting her reassignment.³⁰

Petitioner maintains that it immediately acted on the incident but still had to accord Batucan due process given the seriousness of the charge. It argues that the delay in the investigation was caused by respondent's sudden resignation. In any case, they proceeded with the investigation and suspended Batucan for 60 days with a final warning.³¹ It asserts that four (4) months is not an unreasonable period to resolve a sexual harassment complaint.³²

Petitioner contends that respondent's resignation was deliberate and voluntary, and was by way of reprisal for petitioner's failure to heed her ultimatum that Batucan be immediately removed from his post.³³

As such, petitioner contests the awards granted to respondent, arguing those who voluntarily resigned are not entitled to backwages, and reinstatement or separation pay. It also argues that respondent is not entitled to damages since petitioner acted in good faith in all its dealings and that respondent should bear the litigation expenses for filing an unfounded and baseless case. It further asserts that there is no basis for the award of attorney's fees because there was no unlawful withholding of wages.³⁴

In her Comment,³⁵ respondent, maintains that she was constructively dismissed.³⁶ She argues that Batucan's acts towards her "created a hostile, intimidating and offensive environment, rendering her continued employment in the company impossible, unreasonable or unlikely."³⁷ She points out that Batucan's acts constitute sexual harassment under Section 3(a)(3) of Republic Act No. 7877. The hostile work environment could be clearly seen from her intense fear and anger and her subsequent acts after the incident: (1) she did not want to report to work; (2) she travelled four (4) hours away from her home to personally file a letter-complaint to the LBC Head Office; and (3) she reported the incident to the Danao City Police and filed a criminal case before the City Prosecutor's Office.³⁸

³⁰ Id. at 38-39.

³¹ Id. at 39-41.

³² Id. at 43.

³³ Id.

³⁴ Id. at 45-46 and 52.

³⁵ Id. at 673-690.

³⁶ Id. at 678.

³⁷ Id. at 679.

³⁸ Id. at 680.

Respondent further points out that in the administrative hearing, Batucan did not deny the kissing incident. She claims that his version did not vary much from her allegations³⁹ as he simply argued that his acts did not constitute sexual harassment.⁴⁰

Respondent maintains that petitioner failed to protect its employees from sexual harassment as required under Republic Act No. 7877.⁴¹ It did not have the required rules and regulations to investigate sexual harassment reports, any administrative sanctions for sexual harassment acts, or any committee on decorum and investigation for these cases.⁴²

She contends that petitioner was insensible and acted in bad faith in failing to immediately act on her complaint.⁴³ She points out the following: (1) the investigation only started 78 days after she reported the incident; (2) it took 43 days for petitioner to serve Batucan a Notice to Explain; and (3) it took petitioner 78 days to call him for an administrative hearing, and only after she had already been dismissed.⁴⁴ It took management four (4) months and three (3) weeks to resolve the matter, when a constructive dismissal case had already been filed.⁴⁵

She likewise alleges that management pointed that there were no witnesses or any showing of bruises. It even suggested that perhaps Batucan's kiss was merely a "*beso*."⁴⁶

Respondent also posits that her resignation was not voluntary⁴⁷ but was borne out of the hostile work environment brought about by Batucan's sexual harassment, and the failure of management to accord her redress, protection, and sensitivity.⁴⁸ She thus insists she is entitled to backwages, separation pay, reinstatement, moral and exemplary damages, and attorney's fees, with petitioner solidarily liable for damages with Batucan.⁴⁹

The issue for this Court's resolution is whether or not LBC should be held liable for constructive dismissal.

This Court rules that LBC is liable for constructive dismissal.

³⁹ Id. at 680-681.

⁴⁰ Id. at 682.

⁴¹ Id. at 682-683.

⁴² Id. at 683.

⁴³ Id. at 684.

⁴⁴ Id. at 685.

⁴⁵ Id. at 684.

⁴⁶ Id. at 685.

⁴⁷ Id. at 686.

⁴⁸ Id. at 687.

⁴⁹ Id. at 688-689.

Constructive dismissal occurs when an employer makes an employee's continued employment impossible, unreasonable or unlikely, or has made an employee's working conditions or environment harsh, hostile and unfavorable, such that the employee feels obliged to resign from his or her employment. Common examples are when the employee is demoted, or when his or her pay or benefits are reduced. However, constructive dismissal is not limited to these instances. The gauge to determine whether there is constructive dismissal, is whether a reasonable person would feel constrained to resign from his or her employment because of the circumstances, conditions, and environment created by the employer for the employee.⁵⁰

[C]onstructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges. There may be constructive dismissal 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 except to forego his continued employment.⁵¹

In *Saudi Arabian Airlines (Saudia) v. Rebesencio*,⁵² this Court differentiated between voluntary resignation and constructive dismissal:

In *Bilbao v. Saudi Arabian Airlines*, this court defined voluntary resignation as "the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment." Thus, essential to the act of resignation is voluntariness. It must be the result of an employee's exercise of his or her own will.

In the same case of *Bilbao*, this court advanced a means for determining whether an employee resigned voluntarily:

As the intent to relinquish must concur with the overt act of relinquishment, *the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.* (Emphasis supplied)

On the other hand, constructive dismissal has been defined as "cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."

In *Penaflor v. Outdoor Clothing Manufacturing Corporation*, constructive dismissal has been described as tantamount to "involuntarily [*sic*] resignation due to the harsh, hostile, and unfavorable conditions set by the employer." In the same case, it was noted that "[t]he gauge for

⁵⁰ *Saudi Arabian Airlines (Saudia) v. Rebesencio*, 750 Phil.791, 839 (2015) [Per J. Leonen, Second Division].

⁵¹ *Hyatt Taxi Services Inc. v. Catino*y, 412 Phil. 295, 306 (2001) [Per J. Gonzaga-Reyes, Third Division].

⁵² 750 Phil.791 (2015) [Per J. Leonen, Second Division].

constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances."⁵³

One of the ways by which a hostile or offensive work environment is created is through the sexual harassment of an employee.

Workplace sexual harassment occurs when a supervisor, or agent of an employer, or any other person who has authority over another in a work environment, imposes sexual favors on another, which creates in an intimidating, hostile, or offensive environment for the latter. Section 3 of Republic Act No. 7877, otherwise known as the Anti-Sexual Harassment Act, states:

SECTION 3. *Work, Education or Training-related Sexual Harassment Defined.* — *Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.*

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) *The above acts would result in an intimidating, hostile, or offensive environment for the employee.* (Emphasis supplied)

This Court has held that “[t]he gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer.”⁵⁴

⁵³ Id. at 838–839.

⁵⁴ *Phil. Aeolus Auto-Motive United Corp. v. National Labor Relations Commission*, 387 Phil. 250, 264 (2000) [Per J. Belosillo, Second Division].

In this case, Batucan's acts are undisputed. He filed no pleading in the labor tribunals to deny respondent's allegations.⁵⁵ During the administrative hearing, he simply explained that his acts were misinterpreted and did not constitute sexual harassment.⁵⁶

However, it is clear that Batucan's acts were sexually suggestive. He held respondent's hand, put his hand on her lap and shoulder, pulled her bra strap, joked about making a baby with her, attempted to kiss her, and eventually scored one.⁵⁷ These acts are not only inappropriate, but are offensive and invasive enough to result in an unsafe work environment for respondent.

Petitioner emphasizes that it was not the company, but Batucan, that created the hostile work environment. It argues that Batucan is a mere co-employee, not part of its management who may dismiss other employees.⁵⁸

This argument, however, fails to persuade. Batucan cannot be deemed a mere co-employee of respondent. The determination of whether an employee is part of the managerial staff depends on the employee's duties and responsibilities:⁵⁹

Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or *effectively recommend such managerial actions*. They refer to those whose primary duty consists of the *management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff*. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.⁶⁰

At the very least, Batucan held a supervisory position, which made him part of the managerial staff. Batucan was petitioner's team leader and officer-in-charge in LBC Danao.⁶¹ He was tasked to: (1) "manage and oversee the day to day operation[s] of the branch[;]" (2) keep in custody LBC Danao's daily cash sales; and (3) to deposit it in the company account.⁶² Furthermore, respondent was hired under Batucan's endorsement of.⁶³ He acted as her

⁵⁵ *Rollo*, pp. 70, 692, 696.

⁵⁶ *Id.* at 239-240.

⁵⁷ *Id.* at 67-68.

⁵⁸ *Id.* at 33, 35, 759, 764.

⁵⁹ *Peñaranda v. Baganga Plywood Corp.*, 522 Phil. 640, 650-652 (2006) [Per C.J. Panganiban, First Division].

⁶⁰ *M+W Zander Philippines, Inc. v. Enriquez*, 606 Phil. 591, 607 (2009) [Per C.J. Puno, First Division].

⁶¹ *Rollo*, p. 237, 239.

⁶² *Id.* at 184.

⁶³ *Id.* at 67.

immediate superior.⁶⁴ Respondent had also referred to him as "Sir."⁶⁵ There is also no showing that Batucan answered to anyone in LBC Danao. Respondent had to travel to the LBC Head Office to submit her complaint as she had no other superior within LBC Danao to whom she could report Batucan's acts. Thus, Batucan cannot be deemed to be respondent's mere co-employee.

Nonetheless, although Batucan holds a supervisory position, he cannot be deemed to have acted on petitioner's behalf in committing the acts of sexual harassment. It cannot be assumed that all the illegal acts of managerial staff are authorized or sanctioned by the company, especially when it is committed in the manager's personal capacity.

In *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*,⁶⁶ this Court ruled that constructive dismissal cannot be assumed if an officer of the company wronged an employee, but the employer did not authorize the act:

It is to be emphasized that the abovementioned acts should have been committed by the employer against the employee. Unlawful acts committed by a co-employee will not bring the matter within the ambit of constructive dismissal.

Assuming *arguendo* that, Gimenez did commit the alleged unlawful acts, still, this fact will not suffice to conclude that constructive dismissal was proper. Contrary to the arguments of Verdadero, Gimenez is not the employer. He may be the "disciplinary officer," but his functions as such, as can be gleaned from the BALGCO Rules and Regulations, do not involve the power or authority to dismiss or even suspend an employee. Such power is exclusively lodged in the BALGCO management. Gimenez remains to be a mere employee of BALGCO and, thus, cannot cause the dismissal or even the constructive dismissal of Verdadero. The employers are BALGCO and its owners, Barney and Rosela. As correctly put by the CA:

Petitioner BALGCO, however, cannot be blamed for the existing hostile conditions that beset private respondent. *The repulsive behavior of the disciplinary officer against another employee cannot be imputed upon petitioner BALGCO in the absence of any evidence that it promotes such ill-treatment of its lowly employees or has itself committed an overt act of illegality.* . . . If private respondent had felt that his continued employment with petitioner BALGCO had been rendered "*impossible, unreasonable or unlikely*" this could only have resulted from the hostile treatment by the disciplinary officer and not by any action attributable to petitioner BALGCO nor to its owners Barney

⁶⁴ Id.

⁶⁵ Id. at 67-68.

⁶⁶ 693 Phil. 646 (2012) [Per J. Mendoza, Third Division].

Chito and Rosela Chito.⁶⁷ (Citations omitted, emphasis supplied)

This is consistent with the established rule in labor law that the complainant must first establish the employer-employee relationship to be able to claim that he or she was illegally dismissed.⁶⁸

The distinction between the employer and an erring managerial officer is likewise present in sexual harassment cases. Under Section 5 of the Anti-Sexual Harassment Act, the employer is only solidarily liable for damages with the perpetrator in case an act of sexual harassment was reported and *it did not take immediate action on the matter*:

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.* (Emphasis supplied)

This provision thus illustrates that the employer must first be informed of the acts of the erring managerial officer before it can be held liable for the latter's acts. Conversely, if the employer has been informed of the acts of its managerial staff, and does not contest or question it, it is deemed to have authorized or be complicit to the acts of its erring employee.

In this case, Batucan cannot be considered to have been acting on petitioner's behalf when he sexually harassed respondent. Thus, respondent cannot base her illegal dismissal complaint against petitioner *solely* on Batucan's acts. However, even if petitioner had no participation in the sexual harassment, it had been informed of the incident. Despite this, it failed to take immediate action on respondent's complaint. Its lack of prompt action reinforced the hostile work environment created by Batucan.

The delay on petitioner's part is clear. The following are the undisputed sequence of events:

(1) On May 1, 2010, the kissing incident occurred.⁶⁹

(2) On May 5, 2010, respondent reported the incident to management

⁶⁷ Id. at 657.

⁶⁸ *Marsman & Co., Inc. v. Sta. Rita*, G.R. No. 194765, April 23, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64161>> [Per J. Leonardo- De Castro, First Division].

⁶⁹ *Rollo*, p. 69.

in the LBC Head Office.⁷⁰ Management suggested that instead of resigning, perhaps she could transfer to another branch. Respondent conceded.

- (3) On May 8, 2010, she went back to the LBC Head Office with her mother, Araceli Palco, to submit her formal complaint. She also reported the incident to the police.⁷¹
- (4) While respondent was waiting to be transferred to another branch, Araceli Palco noted that Batucan resumed his duties as usual.⁷²
- (5) On May 14, 2010, Palco tendered her resignation after sensing that management did not act on her complaint.⁷³ In her resignation letter, she stated that she wanted to look for a more secure workplace.⁷⁴ In her exit interview, she ranked the following factors as having caused a strong influence for her to leave: (1) relations with co-workers; (2) job security; (3) how her supervisor relates to her; and (4) her overall perception of the company's ability to deal fairly with its associates.⁷⁵
- (6) On June 18, 2010,⁷⁶ Batucan received a Notice to Explain—41 days after respondent reported the incident, and one (1) month after she felt constrained to leave her employment.
- (7) On June 19, 2010, Batucan submitted his written explanation.⁷⁷ It took another month before the administrative hearing for the complaint was conducted.⁷⁸ They heard Batucan only on July 20, 2010, the same date respondent filed her illegal dismissal complaint.⁷⁹
- (8) On September 27, 2010, Batucan was suspended for 60 days with last warning—two (2) months after his administrative hearing, and over four (4) months from the time the complaint was filed.⁸⁰ During the span of the investigation, there was no showing that Batucan was preventively suspended.

⁷⁰ Id.

⁷¹ Id. See also Rollo, pp. 231, 500-501.

⁷² Id. See also Rollo, pp. 495-496, 498.

⁷³ Id.

⁷⁴ Id. at 232.

⁷⁵ Id. at 233.

⁷⁶ Id. at 236.

⁷⁷ Id. at 239.

⁷⁸ Id. at 237.

⁷⁹ Id.

⁸⁰ Id. at 242.

Clearly, there was unreasonable delay on petitioner's part in acting on respondent's complaint. Despite its allegations, there is no showing that petitioner acted on respondent's report before they issued Batucan a Notice to Explain. Thus, the formal investigation is deemed to have commenced only 41 days after the incident was reported. Petitioner likewise offered no explanation as to why it took another month before it held an administrative hearing for the case.

Worse, it took petitioner another two (2) months to resolve the matter, even if Batucan's answers in his administrative hearing did not substantially differ from respondent's allegations. In his administrative hearing, Batucan had reasoned that he was simply trying to give respondent a "*beso*[" yet he likewise admitted that he does not usually do that with his team or in the office:

Q: Sabi mo sa inyong written explanation noong June 19, 2010, na kayo po ay masaya lamang kaya mo siya *hinawakan ang kanyang pisngi* [sic] *at sabay halik*, tama po ba ito?

A: Tama po, kasi sa unang pagkakataon nakapunta ako ng opisina ng maaga.

Q: Bakit mo naman *hinawakan ang kanyang pisngi at halikan mo sana* [sic] iyon noong May 01, 2010?

A: Gusto ko lang sana batiin si Ms. Monica sa pamamagitan ng biso biso.

Q: *Kagawian na ba sa team ninyo or sa office na mag biso biso?*

A: *Hindi, pero sa bahay namin, kaming mag asawa at mga anak ko kahit malaki na sila, mag biso biso pa rin sa pag-alis at pag dating.*

Q: *Ibig sabihin nito hindi rin kagawian ninyo ni Ms. Monica Palco na magbisobiso?*

A: *Hindi talaga, pero malambing ako sa kanila, sa lahat ng mga associates.*

Q: Ganun ka ba talaga pag masaya ka, hahalikan mo ang inyong mga kasamahan sa trabaho kahit walang pahintulot sa kanila, lalo na ang mga babae?

A: Hindi naman, isa lang akong masayahing tao at malambing.

Q: Hindi mo ba naisip na ang inyong ginawa ay isang uri ng sexual harassment?

A: Hindi kasi wala akong intention na halikan ang kanyang labi, at alam ko naman na hindi kami magkasintahan at may tao din. (Emphasis supplied)⁸¹

Given these circumstances, the delay in acting on respondent's case showed petitioner's insensibility, indifference, and disregard for its employees' security and welfare. In failing to act on respondent's complaint with prompt and in choosing to let the resolution of the complaint hang in the

⁸¹ Id. at 239-240.

air for a long period of time, it had shown that it did not accord her claims the necessary degree of importance, and at best considered it a minor infraction that could wait. Petitioner, it appears, belittled her allegations.

Furthermore, during the investigation, Batucan resumed his duties as usual. In the meantime, respondent consumed her vacation leaves just trying to avoid him while waiting for her transfer to another branch. Petitioner's acts showed that it was respondent who had to change and adjust, and even transfer from her place of work, instead of Batucan. Petitioner thus cannot claim that it did not create a hostile, unfavorable, unreasonable work atmosphere for respondent.

This Court also notes respondent's assertion that petitioner had stated how difficult her allegations were to prove because there *were no witnesses or evidence of bruises*. Respondent's mother, Araceli, stated in her August 5, 2010 Affidavit:⁸²

12. So again, I accompanied her to the main office to submit her resignation letter. At first I told the HR and the legal staff that we arrived to this decision because we have not found any development in our complaint against Mr. Batucan. I told them why I said so, because after the scheduled day of investigation of Mr. Batucan, still he reported for work. "Isn't it that if somebody is under investigation, he or she will no longer report for work?" That if there is a complaint on that employee, there should be preventive suspension? I said to the legal staff and he nod his head, which means yes. And I added, "Did you know how much money we spend for our transportation every time we come here? We will spend P400.00 for two persons and if only one will come, P300.00." At least the HR and the legal staff know the reasons why Monica file a resignation;

13. Then I proceeded to the office of the Area Head and listen to his opinion about the resignation of Monica. At first, I told him the things I said to the HR and Legal staff. *He said to me that it's not easy to decide about the case of Monica and Mr. Batucan because there is no evidence such as bruises*. So I answered, "Ngano man diay, kon gakson ka ug hagkan, manlagom diay ka? Ngano man gikulata diay ka? (*Translation*: "Why would that matter, if you are kissed, would you have bruises?") No answer from him and he proceeded to another statement, "*We have no witness so it['s] hard to prove the case.*" Again I answered him, "kon magbuhat ka ug binastos sa usa ka babaye, nagkinahanglan diay nga naay magtan-aw? Kanang mga buhata himoon na nimo sa tumang ka pribado nga kanarang kamong duha. Unya mangita ka ug witness? [" (*Translation*: "If you are doing lascivious acts to a woman, would you need somebody to see you do it? If you are going to do those acts, you will do it where it is secluded as possible, where there are only two of you. And now, you are looking for a witness?")] He will not answer me. He said that even though Monica resigned, he will pursue the case but it will take time. He will investigate the co-workers of Monica if it is true that they have beso-beso. I told him "Unsay beso-beso? (*Translation*: 'What [sic] beso-beso') between man and woman while they are alone? Beso-beso is only

⁸² Id. at 275.

acceptable when there is an occasion, for example birthdays, Christmas and New Year, not when no one is around and not in the lips.”⁸³

While petitioner did not admit to making these statements, in its Reply filed with the Labor Arbiter, it stated:

Complainant alleged that according to Mrs. Palco, individual respondent Libradilla told Mrs. Palco that he cannot immediately act on the case because there was no evidence such as bruises and no witnesses. Based on Mrs. Palco’s affidavit however, individual respondent Libradilla never said he cannot immediately act on the case. Without admitting the truth hereof, what individual respondent Libradilla was quoted as saying was that it was not easy to decide the case because there is no evidence such as bruises and furthermore, even with the resignation of complainant, he will pursue the case, but it will take time. . .

....

Moreover, complainant accused individual respondent Libradilla as dismissing respondent’s act of kissing complainant on the lips as a mere beso-beso. Based on the abovequoted statement of Mrs. Palco, and without admitting the truth thereof, individual respondent Libradilla assured Mrs. Palco of an investigation. He was never quoted as concluding that respondent Batucan’s acts were mere beso-beso.⁸⁴

Petitioner was explicit enough in denying the statement that it would not immediately act on the case. Yet it did not expressly deny stating that the case was difficult to decide because there are no bruises or witnesses.

This Court emphasizes that statements suggesting that a case is weak because there are no witnesses or bruises are highly insensitive to victims of sexual harassment. In stating that a sexual harassment case is hard to prove without witnesses or physical manifestations of force, employers discourage their employees from coming forward with sexual harassment incidents. They foster an environment in which employees feel that their word cannot be taken against the word of the perpetrator. In making these statements, the employer lends more credence to the perpetrator, even without the latter having been questioned or having submitted a written explanation. It allows the employee to feel that the sexual harassment complaint’s resolution had already been pre-determined against him or her.

Indifference to complaints of sexual harassment victims may no longer be tolerated. Recent social movements have raised awareness on the continued prevalence of sexual harassment, especially in the workplace, and has revealed that one of the causes of its pervasiveness is the lack of concern, empathy, and responsiveness to the situation. Many times, victims are

⁸³ Id. at 275-276.

⁸⁴ Id. at 301-302.

blamed, hushed, and compelled to accept that it is just the way things are, and that they should either just leave or move on.

In recognizing the need to address these concerns, the State's policy against sexual harassment has been strengthened through Republic Act No. 11313, otherwise known as the Safe Spaces Act. This law has expanded the definition of gender-based sexual harassment in the workplace⁸⁵ and has added to the duties of an employer as to its prevention, deterrence, and punishment. It explicitly requires that complaints be investigated and resolved *within 10 days or less* upon its reporting.⁸⁶ It likewise expressly provides for the liability of employers⁸⁷ and duties of co-workers as to sexual

⁸⁵ Republic Act No. 11313, sec. 16 provides:

SECTION 16. *Gender-Based Sexual Harassment in the Workplace.* — The crime of gender-based sexual harassment in the workplace includes the following:

(a) An act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;

(b) A conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems;

(c) A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient: *Provided*, That the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee; and

(d) Information and communication system refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar devices by or in which data are recorded or stored and any procedure related to the recording or storage of electronic data messages or electronic documents.

⁸⁶ Republic Act No. 11313, sec. 17 provides:

SECTION 17. *Duties of Employers.* — Employers or other persons of authority, influence or moral ascendancy in a workplace shall have the duty to prevent, deter, or punish the performance of acts of gender-based sexual harassment in the workplace. Towards this end, the employer or person of authority, influence or moral ascendancy shall:

(a) Disseminate or post in a conspicuous place a copy of this Act to all persons in the workplace;

(b) Provide measures to prevent gender-based sexual harassment in the workplace, such as the conduct of anti-sexual harassment seminars;

(c) Create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment which shall:

(1) Adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;

(2) Designate a woman as its head and not less than half of its members should be women;

(3) Be composed of members who should be impartial and not connected or related to the alleged perpetrator;

(4) Investigate and decide on the complaints within ten (10) days or less upon receipt thereof;

(5) Observe due process;

(6) Protect the complainant from retaliation; and

(7) Guarantee confidentiality to the greatest extent possible.

(d) Provide and disseminate, in consultation with all persons in the workplace, a code of conduct or workplace policy which shall:

(1) Expressly reiterate the prohibition on gender-based sexual harassment;

(2) Describe the procedures of the internal mechanism created under Section 17 (c) of this Act; and

(3) Set administrative penalties.

⁸⁷ Republic Act No. 11313, sec. 19 provides:

SECTION 19. *Liability of Employers.* — In addition to liabilities for committing acts of gender-based sexual harassment, employers may also be held responsible for:

(a) Non-implementation of their duties under Section 17 of this Act, as provided in the penal provisions; or

(b) Not taking action on reported acts of gender-based sexual harassment committed in the workplace.

harassment.⁸⁸ The law likewise specifies the confidentiality of proceedings,⁸⁹ and the issuance of a restraining order for the offended person.⁹⁰ Moreover, it allows local government units to impose heavier penalties on perpetrators.⁹¹

While this law does not apply to this case as it was enacted after the commission of Batucan's acts, its principles emphasize the need to accord more importance to complaints of sexual harassment and recognize the severity of the offense.⁹²

In any case, this Court will not hesitate in granting the affirmative relief that is due respondent under the law. Under the Anti-Sexual Harassment Act, she may file a separate action for any affirmative relief for sexual harassment:

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.

Petitioner's insensibility to respondent's sexual harassment case is a ground for constructive dismissal. In this instance, it cannot be denied that respondent was compelled to leave her employment because of the hostile and offensive work environment created and reinforced by Batucan and petitioner. She was thus clearly constructively dismissed.

Any person who violates subsection (a) of this section, shall upon conviction, be penalized with a fine of not less than Five thousand pesos (P5,000.00) nor more than Ten thousand pesos (P10,000.00).

Any person who violates subsection (b) of this section, shall upon conviction, be penalized with a fine of not less than Ten thousand pesos (P10,000.00) nor more than Fifteen thousand pesos (P15,000.00).

⁸⁸ Republic Act No. 11313, sec. 18 provides:

SECTION 18. *Duties of Employees and Co-Workers.* — Employees and co-workers shall have the duty to:

- (a) Refrain from committing acts of gender-based sexual harassment;
- (b) Discourage the conduct of gender-based sexual harassment in the workplace;
- (c) Provide emotional or social support to fellow employees, co-workers, colleagues or peers who are victims of gender-based sexual harassment; and
- (d) Report acts of gender-based sexual harassment witnessed in the workplace.

⁸⁹ Republic Act No. 11313, sec. 26 provides:

SECTION 26. *Confidentiality.* — At any stage of the investigation, prosecution and trial of an offense under this Act, the rights of the victim and the accused who is a minor shall be recognized.

⁹⁰ Republic Act No. 11313, sec. 27 provides:

SECTION 27. *Restraining Order.* — Where appropriate, the court, even before rendering a final decision, may issue an order directing the perpetrator to stay away from the offended person at a distance specified by the court, or to stay away from the residence, school, place of employment, or any specified place frequented by the offended person.

⁹¹ Republic Act No. 11313, sec. 30 provides:

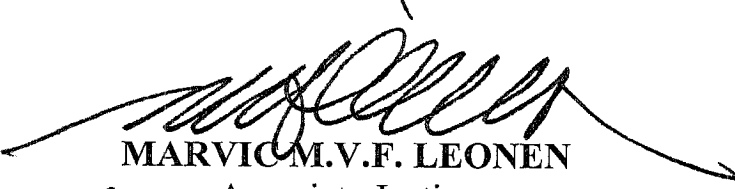
SECTION 30. *Imposition of Heavier Penalties.* — Nothing in this Act shall prevent LGUs from coming up with ordinances that impose heavier penalties for the acts specified herein.

⁹² Republic Act No. 11313, sec. 2 provides:

SECTION 2. *Declaration of Policies.* — It is the policy of the State to value the dignity of every human person and guarantee full respect for human rights. It is likewise the policy of the State to recognize the role of women in nation-building and ensure the fundamental equality before the law of women and men. The State also recognizes that both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions.

WHEREFORE, in view of the foregoing, the Petition is **DENIED**. This the Court of Appeals May 13, 2014 Decision and February 10, 2015 Resolution are **AFFIRMED**. Respondent Monica C. Palco is found to have been constructively dismissed. LBC Express-Vis, Inc., is hereby adjudged liable to Monica C. Palco for separation pay, backwages, moral damages, exemplary damages, and attorney's fees, as awarded by the National Labor Relations Commission in its Decision dated May 31, 2012. It is likewise held solidarily liable with Arturo A. Batucan for any other damages the latter is held liable for on account of his acts of sexual harassment against respondent.

SO ORDERED.

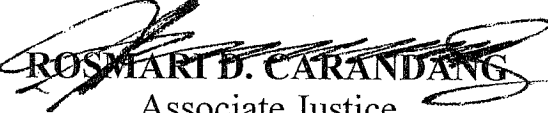


MARVIC M.V.F. LEONEN
Associate Justice

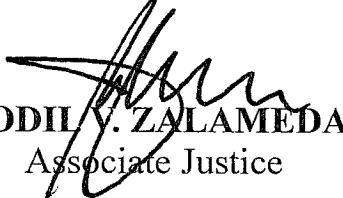
WE CONCUR:



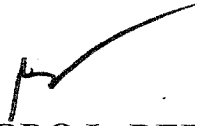
ALEXANDER G. GESMUNDO
Associate Justice



ROSMARIE D. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice

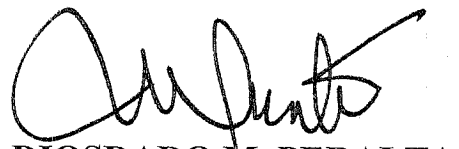
ATTESTATION

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
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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.


DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY


RUMAR D. PASION
Deputy Division Clerk of Court
Third Division

SEP 08 2020