

FILIPINO SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, INC., ARTURO LUI PIO, NOEL G. CABANGON, ALVIN F. DE VERA, LEOCADIO ERNESTO A. SANCHEZ III, ADORACION SATURNO, MA. CARMENCI...

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GALAPATE-LAGUILLES, J:

The Labor Code recognizes the dichotomy in the business enterprises to provide protection to labor and the management as well. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be a rule that every dispute be decided in favor of labor. Indeed, We should be mindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[1]

The facts follow.

Petitioner Filipino Society of Composers, Authors and Publishers, Inc. (FILSCAP) is a non-stock, non-profit corporation composed of composers, lyric-writers and music publishers. It was established primarily for the protection of the members' intellectual property rights over their literary and/or musical works.[2]

On May 5, 2008, FILSCAP employed Genor L. Kasiguran (Kasiguran) as Officer-in-Charge of the Distribution and Documentation Department[3] and was promoted to the position of Manager of the said Department on January 1, 2010.[4] As such, he was expected, among other things, “to perform the duties and responsibilities as assigned to [him] by FILSCAP with a high standard of honesty, efficiency, courtesy, safety, skill, obedience and trustworthiness”, and “to strictly comply with all the rules and regulations, and policies issued by FILSCAP, as well as with all orders and instructions of [his] duly designated superiors and other authorized officers.”[5] In particular, Kasiguran was responsible for the allocation and distribution of the corporation's revenues based on the Distribution Rules[6] approved by the Board of Trustees. His appointment letter also apprised him that appropriate disciplinary action shall be imposed upon him in case of violation of the policies, and rules and regulations governing the management of FILSCAP.

Sometime in June 2012, FILSCAP conducted an investigation in response to a report[7] pertaining to the alleged misappropriation of the Special Accounts which, under the company's Distribution Rules[8] were intended for specific purposes. It was found out that Kasiguran, together with Debra Ann Gaite and Rosanna Roque, the General Manager and the Accounting Manager respectively, took out the amount of P17,720,455.77 from the said funds to cover a shortfall in the Operating Expenses of the company. Thus, FILSCAP sent a show-cause letter[9] to Kasiguran to explain in writing his involvement in the alleged misappropriation of funds. Meantime, he was preventively suspended, with pay, while the administrative matter against him was pending.[10]

On July 16, 2012, Kasiguran submitted his compliance[11] to the show-cause letter stating that there was no ground for the administrative charges against him as the said funds were not misappropriated, reallocated or disbursed for another purpose. He likewise dispelled the notion that he exercised discretion in appropriating or allocating funds as the same were performed by the Accounting Department of the company. In the process of

revenue distribution, he asserted that he was guided by the data and figures supplied by the said department. Thus, Kasiguran opined that the Accounting Department must be the one to answer any issue related to accounting practices and procedures as these matters were within its responsibility. He further clarified that the funds from the Special Accounts were intact, which discredited the accusation of misappropriation or unauthorized reallocation.

To fully thresh-out the issue of alleged misappropriation of funds, FILSCAP scheduled an administrative hearing on July 24, 2012 and directed Kasiguran to appear therein and present evidence in his defense.[12] However, Kasiguran opted not to attend the hearing and, instead, he submitted a letter[13] reiterating the explanations contained in his letter dated July 16, 2012. He also pointed out the impossibility of securing access to any documentary evidence as he was preventively suspended from work.

On July 27, 2012, FILSCAP terminated Kasiguran based on its findings that “funds from the Special Accounts xxx were indeed reallocated or misappropriated by you and the General Manager in 2010 and 2011 to cover Operating Expenses (“OPEX”) without the knowledge, consent or authorization of the Board and in violation of our Distribution Rules.”[14] The records show that the funds reallocated to cover the Operating Expenses deficits, in the aggregate amount of P17,720,455.77, were obtained from the undistributed royalties of the Special Accounts. FILSCAP also noted that Kasiguran and Ms. Gaite failed to refute the following allegations raised during the June 26, 2012 investigation:

(a) That as a matter of procedure, when collected funds (for a particular pool) are processed for distribution, deductions for OPEX and the Socio-Cultural Funds are made first and whatever is left is divided into two categories:

1. those that can be distributed already (the “Distributed Funds”); and
2. those that cannot be distributed yet (the “Undistributed Funds”) because they are allocated for works that are either incomplete, unidentified, in dispute or made by non-members.

(b) That “Undistributed Funds” or funds from the Special Accounts were being reallocated to cover OPEX;

(c) That you, Debbie and Rox (referring to the General Manager and the Accounting Manager, respectively) were the ones who decided to use funds from the Special Accounts to cover OPEX;

(d) That the reallocations were made without the knowledge, consent or authorization of the Board; and

(e) That you knew about the OPEX issue as early as 2008 but you never advised the Board.[15]

Further, according to FILSCAP, these undisputed allegations constituted serious misconduct and loss of trust and confidence which are just causes for dismissal under the Labor Code.[16]

Aggrieved, Kasiguran filed a Complaint for illegal dismissal and money claims before the Arbitral Office of the

National Labor Relations Commission in Quezon City, against FILSCAP and the members of the Board of Trustees, namely: Arturo Lui Pio, Noel G. Cabangon, Alvin F. De Vera, Leocadio Ernesto A. Sanchez III, Adoracion Saturno, Ma. Carmencita A. Gil, Katrina Marie R. Belamide, Rodolfo C. Cayamanda, Roberto N. Rigor, Marivic Benedicto, Ramon S. Chuaying, Ceasar Apostol, Raquel M. Dacillo, Gary G. Granada And Johnny K. Sy. The case was docketed as NLRC-NCR Case No. 08-11756-12. In his position paper, Kasiguran insisted that there was no substantial evidence showing that he misappropriated or reallocated the funds from the Special Accounts. He further argues that his dismissal was a collateral consequence of FILSCAP's plan to terminate Ms. Gaite as General Manager.[17]

On the other hand, FILSCAP and its Board of Trustees, petitioners herein, maintained that Kasiguran's act of converting the funds from the Special Accounts for other purposes amounted to misappropriation, and reiterated that this act constituted serious misconduct and breach of trust.[18]

On January 31, 2013, Labor Arbiter Veneranda C. Guerrero rendered a Decision[19] holding that FILSCAP validly dismissed Kasiguran on the grounds of serious misconduct and loss of trust, viz:

The result of FILSCAP's administrative investigation revealed that complainant transferred the amount of Php17,720,455.77 from the Special Accounts to augment deficits in the organization's supposed Operating Expenses, without the authorization or consent of the Board. Misconduct as just cause for dismissal, must be serious; related to the performance of the employee's duties; and shows that the employee has become unfit to continue working for the employer xxx. All of these requisites are present in the case.

xxx

Complainant's duly established offense resulted in the employer's loss of trust and confidence, another just cause for termination of employment.

xxx

Complainant is not a mere rank and file employee. He serves as Distribution and Documentation Manager, a key position imbued with trust and confidence. As Distribution Manager, complainant was expected to be the first to abide by the Distribution Rules which require that funds of Special Accounts are to be safeguarded and distributed for specific purposes only. Complainant's failure to observe the required distribution procedures necessarily resulted in inaccurate financial reports.[20]

The Labor Arbiter, nonetheless, awarded Kasiguran the amount of Nineteen Thousand Nine Hundred Eighteen Thousand and 33/100 (P19,918.33) representing his pro-rata 13th month pay.

Not satisfied with the Decision, Kasiguran appealed to the National Labor Relations Commission (NLRC), arguing that FILSCAP's proof of serious misconduct and breach of trust fell short of the required quantum of evidence, which rendered his dismissal as illegal. The appeal was docketed as NLRC LAC No. 04-001347-13.

Finding the appeal to be meritorious, the NLRC rendered a Decision dated June 13, 2013 reversing the Labor Arbiter's Decision. It held that FILSCAP had "not shown any concrete evidence to show that indeed [Kasiguran]

had misappropriated any amount xxx”[21] or that he had “defrauded” the company.[22] Notwithstanding its finding that there was “reallocation” or “transfer” of funds from the Special Accounts to the Operating Expenses without authority from the Board of Trustees of FILSCAP, the NLRC ruled that this was not sufficient to warrant the outright dismissal of Kasiguran on the following ratiocination:

xxx Dismissal is too harsh, to say the least, considering that the funds reallocated did not inure to the benefit of the complainant. Conversely, the re-allocated funds were placed in FILSCAP's Operational Expenses Account. What actually happened was there was a transfer of funds from one FILSCAP account to another FILSCAP account. This could be the only logical explanation why FILSCAP's auditors and accountants reported that FILSCAP's accounts were intact.

In the overall consideration of the facts and circumstances obtaining herein, We find that the grounds relied upon by the appellees in terminating appellant has not been fully substantiated to give rise to a valid cause for his termination.[23]

The assailed Decision of the NLRC disposed as follows:

WHEREFORE, the appeal being impressed with merit, the decision appealed from is SET ASIDE and a new one ENTERED finding the dismissal of complainant illegal. The respondents are hereby ordered to pay the complainant the following:

- a. Backwages;
- b. Separation Pay;
- c. Pro-rated 13th month pay of P19,918.33 from January 1, 2012 to August 1, 2012; and
- d. 10% of the total monetary awards as attorney's fees.

SO ORDERED.[24]

The petitioners filed a Motion for Reconsideration but the same was denied by the NLRC per Resolution[25] dated September 27, 2013 for lack of merit. Hence, the present recourse where petitioners ascribe the following errors to the NLRC:

I.

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING ITS 13 JUNE 2013 DECISION AND 27 SEPTEMBER 2013 RESOLUTION, SPECIFICALLY IN REVERSING THE HONORABLE LABOR ARBITER'S DECISION, WHICH EARLIER HELD THAT RESPONDENT WAS NOT ILLEGALLY DISMISSED, AS THE NLRC DISREGARDED THE EVIDENCE ON RECORD AND MISAPPRECIATED THE APPLICABLE LAWS AND JURISPRUDENCE.

II.

THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING TO RESPONDENT BACKWAGES, SEPARATION PAY, 13th MONTH PAY AND ATTORNEY'S FEES.

III.

THE HONORABLE NLRC COMMITTED PALPABLE AND PATENT ERRORS AMOUNTING TO GRAVE ABUSE OF DISCRETION IN RULING THAT INDIVIDUAL RESPONDENTS ARE PERSONALLY LIABLE FOR THEIR OFFICIAL ACTS AS MEMBERS OF THE BOARD OF TRUSTEES OF FILSCAP.[26]

In the main, petitioners insist that they have overcome the burden of proving that Kasiguran transferred or reallocated funds from the Special Accounts to the Operating Expense of FILSCAP without consent or approval of the Board of Trustees. According to them, the said unauthorized act was committed in violation of the Distribution Rules and in derogation to the authority lodged before the Board of Trustees.[27] They further argue that this is tantamount to misappropriation despite the absence of fraud or personal appropriation.[28]

The Petition is meritorious.

At the outset, We emphasize that in certiorari proceedings under Rule 65, this Court does not, as a rule, evaluate the sufficiency of evidence upon which the labor arbiter and the NLRC based their determinations. The inquiry is limited essentially to whether or not the lower tribunals acted without or in excess of its jurisdiction or with grave abuse of discretion.[29] However, in the exercise of equity jurisdiction, We may delve into factual issues in order to resolve allegations of grave abuse of discretion as a ground for the special civil action of certiorari,[30] especially when factual findings of the NLRC are contrary to those of the labor arbiter.[31] Such is the situation obtaining in the present case; thus, the doors to review are open.

Here, the Labor Arbiter ruled that Kasiguran allowed the transfer of the amount of Php17,720,455.77 from the Special Accounts to augment deficits in the organization's supposed Operating Expenses, without the authorization or consent of the Board of Trustees, in blatant disregard of the Distribution Rules laid down by FILSCAP. According to the Labor Arbiter, this constituted serious misconduct and breach of trust which are just causes for a valid dismissal under the Labor Code. The NLRC, however, disagreed with the Labor Arbiter and held that the transfer of the funds from the Special Accounts to the Operating Expenses of the company, standing alone, did not merit the penalty of dismissal. It pointed out that the said transfer did not "inure to the benefit" of Kasiguran, hence, there was no misappropriation but a mere transfer of funds from one account to another.

Despite their diverging findings and legal conclusions, however, the Labor Arbiter and the NLRC agree on a single fact – that the funds from the Special Accounts in the amount of Php17,720,455.77 were transferred, without the knowledge and consent of the Board of Trustees, to the Operating Expenses to cover deficits in administrative costs.[32] Now, the query that must be addressed is whether this constitutes serious misconduct and breach of trust within the purview of Article 282[33] of the Labor Code, which authorizes the employer to dismiss erring employees.

We answer in the affirmative.

Willful breach or loss of trust

In *Lopez v. Alturas Group of Companies, et al.*,^[34] citing *Cruz v. Court of Appeals*,^[35] the Supreme Court clarifies the guidelines that must be complied with in order to effect a valid dismissal based on loss of trust and confidence, thus:

xxx [T]he language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized. (Emphasis Ours)

Indeed, law and jurisprudence had long recognized the right of the employer to dismiss employees by reason of loss of trust and confidence.^[36] It shall be emphasized, however, that the employer must observe the following indispensable requisites for the dismissal to be deemed valid: 1) the employee concerned holds a position of responsibility, and 2) there must be an act that would justify the loss of trust and confidence, which must be based on a willful breach of trust, must be work-related, and supported with substantial evidence.^[37] All these requisites are present in this case.

There is no question that Kasiguran, as Manager of the Distribution and Documentation Department, held a fiduciary position in the company. He was primarily responsible for the distribution of the royalties and revenues to the members of FILSCAP.^[38] In fine, his function was directly related to the management of the company and to the very core purpose of its existence. That his function was imbued with trust and confidence was never refuted.

The next query is whether there is substantial evidence proving the act complained of as constituting breach of trust and confidence. In recent jurisprudence, the Supreme Court distinguished the treatment of managerial employees from that of rank-and-file personnel with respect to the required quantum of evidence. In case of a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal as proof beyond reasonable doubt is not required.^[39] It is sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.^[40] The employer bears this burden of proof.^[41]

We pored over the records and found substantial evidence to sustain FILSCAP's claim of loss of trust and confidence. It has been established that Kasiguran participated in or allowed the transfer of funds from the Special Accounts, upon which he was accountable, to the company's Operating Expenses in order to cover the incurred shortages therein without the knowledge and consent of the Board of Trustees. Melinda See, FILSCAP's Accounting Officer, discovered the discrepancies between the amounts of Administrative Expenses reported by Kasiguran and the actual Operating Expenses as indicated in the audited financial statements. She attested^[42] that when she informed Kasiguran of the matter, the latter instructed her to charge the deficits to the suspended

royalties from the Special Accounts. When Ms. See told him if the said transfer was proper, Kasiguran told her “bahala na si Ma'am Debbie sa Board.”[43]

The transfer of the funds from the Special Accounts to the Operating Expenses was confirmed by Debbie Ann Gaite, FILSCAP's former General Manager, in her electronic mail [44] addressed to Gary Granada and Noel Cabangon, who are members of the Board of Trustees. She explained therein that the Operating Expenses deducted yearly from the gross revenue were not sufficient to cover all the actual administrative costs and that they cannot find another source from which the said deficits can be recovered. According to Ms. Gaite, she informed Kasiguran and the Accounting Manager to reconcile the records pertaining to accounting and distribution to avoid conflicting reports. She further stated that they discussed the problem regarding the unrecovered administrative costs and on how to correct the same; and that they “made a decision which [they] thought was in the best interest of the Society.”[45]

We must stress that under FILSCAP's Distribution Rules, funds from the Special Accounts are held in suspense to be later paid to a particular work or to certain interested parties of a work. There is no provision therein allowing the transfer of the said funds, for whatever reason, to another account. These are reserved for specific purposes.[46] Neither can these funds be utilized for the company's operating expenses since “all expenses arising from and incidental to the conduct of management and operation” and those “applied by the Board for development and promotion of Filipino music and culture” are already deducted from the gross revenue.[47] Only the Board of Trustees can modify the method or manner of distribution or allocation of the revenues pursuant to its general power under Article 2 of FILSCAP's Articles of Incorporation.[48] Clearly, the transfer of funds from the Special Accounts to the Operating Expenses, without authority from the Board of Trustees, was a flagrant violation of FILSCAP's Distribution Rules.

As a departmental manager, Kasiguran cannot feign ignorance of the rules and policies that govern the management of FILSCAP. In fact, his appointment to his position was set on an irrevocable condition that he must “strictly comply with all the rules and regulations, and policies issued by FILSCAP, as well as with all orders and instructions of [his] duly designated superiors and other authorized officers.”[49] We cannot, thus, tolerate Kasiguran's act of blatant disregard of the rules which he was mandated to observe and enforce.

We cannot likewise give credence to Kasiguran's defense that he did not derive any monetary benefit therefrom. This argument is futile and will not aid him to escape from administrative liability. It is inconsequential that he did not derive economic benefit from the said transfer as, in fact, FILSCAP has never accused him of appropriating the funds for himself. The bottom line is that he was remiss in his duty to protect the business interest of his employer, a failure that underscored his willful and intentional breach of the company policies.

Moreover, Kasiguran's failure to report the shortfalls in the Operating Expenses betrayed his lack of foresight and capacity to safeguard the business interest of his employer. Certainly, it was incumbent upon Kasiguran to inform the Board of this issue so that it could augment the budget in order to prevent further deficits in the company's Operating Expenses. Unfortunately, he did not lift a finger for reasons only known to him.

Indeed, the totality of these circumstances presents a compelling reason for FILSCAP to lose trust and confidence upon Kasiguran. We remind him, lest he forgets, of the fiduciary nature of his position; that mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.[50] Kasiguran's failure to abide by the proper procedure of the company and his relentless pursuit of a course of action for which he was not clothed with authority to perform are sufficient bases for the loss of trust and confidence resposed on him by FILSCAP. In *Coca-Cola Export Corporation v. Gacayan*,[51] the Supreme Court exhorts that an employee occupying a position of responsibility and confidence can be validly dismissed for loss

of trust and confidence reposed on him if he committed a willful breach of duty or by reason of some blameworthy act or omission. The employer's act of dismissing an employee who was found lacking in merit is considered an act of self-defense. As held in *Piedad v. Lanao del Norte Electric Cooperative, Inc.*,^[52] thus:

xxx As a measure of self-protection against acts inimical to its interest, a company has the right to dismiss its erring employees. An employer cannot be compelled to continue in employment an employee guilty of acts inimical to its interest, justifying loss of confidence in him. The law does not impose unjust situations on either labor or management.

Serious Misconduct

Also, the complained act committed by Kasiguran amounts to serious misconduct, which is defined as improper or wrong conduct; the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.^[53] For serious misconduct to justify dismissal, the following requisites must be present: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.^[54]

Needless to say, the diversion of funds from the Special Accounts to the Operating Expenses did not only violate FILSCAP's strict rules and policies but it also seriously undermined its business interest. If left unchecked and undiscovered, the continued transfer to and utilization of these funds for purposes other than that agreed upon would result in its depletion thereby depriving the specified beneficiaries of their royalties. As pointed out by petitioners, they were constrained to take out a loan to replenish the Special Accounts funds which were then due for distribution in 2012.^[55] Furthermore, the unauthorized manipulation of the Special Accounts rendered the financial reports inaccurate which might lead the Board in making unsound business judgments. At this juncture, We reiterate that it is Kasiguran's responsibility to ensure that the Distribution Rules shall be strictly followed. He was tasked to allocate FILSCAP's distributable revenues strictly in accordance with the said rules. There is no gainsaying that Kasiguran's dereliction of duty amounts to grave and serious misconduct that negates his fitness to continue working for FILSCAP. The following disquisition of the Labor Arbiter is a propos, thus:

Indeed, it has been held that to sanction the disregard or disobedience by employees of a reasonable rule or order laid down by management would be disastrous to the discipline and order within the enterprise. It is in the interest of both the employer and the employee to serve and maintain order and discipline in the work environment. Deliberate disregard of company rules or defiance of management prerogative cannot be countenanced.^[56] (Citation omitted)

WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated June 13, 2013 and Resolution dated September 27, 2013 of the National Labor Relations Commission (2nd Division) in NLRC LAC No. 04-001347-13; NLRC NCR-08-11756-12 are NULLIFIED, and the Decision dated January 31, 2013 rendered by Labor Arbiter Veneranda C. Guerrero finding private respondent Genor L. Kasiguran validly dismissed is hereby REINSTATED.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Homeowners Savings and Loan Association, Inc. v. NLRC, G.R. No. 97067, September 26, 1996.

[2] Amended Articles of Incorporation. Rollo, pp. 110-115.

[3] Id., p. 9.

[4] Id., p. 153.

[5] Ibid.

[6] Id., pp. 157-170.

[7] Id., p. 156.

[8] Id., p. 168. Paragraph 11 thereof reads:

At each Distribution, royalties payable to a work or to certain interested party (parties) of a work may be held in suspense in the following special Accounts:

11.1 Public Domain Special Account (SP)

Works that are arrangement of works in the public domain may have a share of the royalties withheld for the non-copyright element in the work. The share will be placed in this account. During the calculation process of distribution, the amount allocated to this account will be plowed back into the distribution pool and be allocated pro-rata to all other parties receiving royalties in this distribution.

11.2 Temporary Holding Special Account (SN)

Performance royalties allocated for Temporary Holding Shares of local works will be placed in this account. The royalties will be held until the concerned local writer, successor, copyright owner or publisher becomes a member of FILSCAP. If said person or entity does not become a member within three (3) years from the date the allocation was made, the royalty allocation will be placed in the Undistributable Royalties Special Account for distribution during the next distribution schedule.

11.3 Dispute Special Account (SD)

Royalties or a share of royalties for a work in dispute (e.g. arising from alleged infringement or conflicting ownership claim) will be held in this account. Royalties will remain in suspense until FILSCAP is notified of a settlement.

11.4 Undistributable Royalties Special Account (SU)

Royalties allocated to a work later found to be in the public domain or for any other reasons undistributable, will be placed in this account. The amount held in this account may be used to pay, after validation, for performances which were identified in previous distributions.

[9] Show-Cause Notice. Id., pp. 171-172

[10] Ibid.

[11] Id., pp. 173-175.

[12] Letter dated July 20, 2012. Id., p. 176.

[13] Id., pp. 177-180 and 182.

[14] Notice of Termination. Id., p. 181.

[15] Id., p. 184.

[16] Id., p. 185.

[17] Id., p. p. 217.

[18] Id., p. 128.

[19] Id., pp. 398-420.

[20] Id., pp. 416-417.

[21] Id., p. 98.

[22] Id., p. 99.

[23] Id., pp. 99-100.

[24] Id., p. 102.

[25] Id., pp. 104-106.

[26] Id., pp. 14-15.

[27] Id., p. 30

[28] Id., p. 36.

[29] Magcalas et al. v. NLRC et al. G.R. No. 100333, March 13, 1997.

[30] Balba v. Peak Development, Inc. et al. G.R. No. 148288, August 12, 2005.

[31] R & E Transport, Inc. v. Latag, G.R. No. 155214, February 13, 2004 citing Pabu-aya v. Court of Appeals, 356 SCRA 651, 657, April 18, 2001; Philtranco Service Enterprises, Inc. v. NLRC, 351 Phil. 827, 835, April 1, 1998; Philippine Airlines, Inc. v. NLRC 344 Phil. 860, 873, September 25, 1997; Columbus Philippines Bus, Corp. v. NLRC, 417 Phil. 81, 99, September 7, 2001; Zarate Jr. v. Hon. Olegario, 331 Phil. 278, 288-289, October 7, 1996; Gonzales v. NLRC, 355 SCRA 195, 204, March 26, 2001; Aklan Electric Cooperative Incorporated v. NLRC, 380 Phil. 225, 237, January 25, 2000; San Jose v. NLRC, 255 Phil. 759, August 1, 1998; Manila Electric Company v. NLRC, 331 Phil. 838, 846, October 24, 1996; Asuncion v. NLRC, 414 Phil. 329, 336, July 31, 2001.

[32] See NLRC Decision (Id., p. 99) and Labor Arbiter Decision (Id., pp. 412-415).

[33] ART. 282. TERMINATION BY EMPLOYER. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[34] G.R. No. 191008, April 11, 2011.

[35] G.R. No. 148544, July 12, 2006.

[36] Etcuban v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005; Bristol Myers Squibb (Phils.), Inc. v. Baban, G.R. No. 167449, December 17, 2008.

[37] See Yabut v. Manila Electric Co., G.R. No. 190436, January 16, 2012; Jerusalem v. Keppel Monte Bank, G.R. No. 169564, April 6, 2011; M+W Zander Philippines, Inc., et al v. Enriquez, G.R. No. 169173, June 5, 2009; P.J. Lhuillier, Inc. v. NLRC, G.R. No. 158758, April 29, 2004;

[38] Rollo, p. 210.

[39] Mendoza v. HMS Credit Corporation, et al., G.R. No. 187232, April 17, 2013.

[40] Ibid.

[41] Jerusalem v. Keppel Monte Bank, supra.

[42] Lee's Notarized Affidavit dated November 12, 2012, rollo, pp. 308-309. Also see Lee's letter dated July 18, 2012, id., p. 154-155.

[43] Id., p. 308.

[44] Id., pp. 356-357.

[45] Id., p. 357.

[46] See paragraph 11 of the Distribution Rules. Supra at note 8.

[47] Paragraph 3.1 of the Distribution Rules. Id., p. 158.

[48] Distribution Rules, paragraph 1.1. Id., p. 157.

[49] Id., p. 153.

[50] Etcuban v. Sulpicio Lines, Inc., supra.

[51] G.R. No. 149433, June 22, 2011.

[52] G.R. No. L-73735, August 31, 1987, 153 SCRA 500, 509.

[53] Villamor Golf Club, et al. v. Pehid, G.R. No. 166152, October 4, 2005.

[54] Yabut v. Manila Electric Company, supra.

[55] Rollo, p. 489.

[56] Id., p. 416.

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