

LENY SAN GABRIEL PEÑAREDONDO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PENIAREDONDO CREWING AGENCY, MR. RUDY AGURA PENAREDONDO AND MR. ERIC VILLALUZ AGURA, RESPONDENTS.

SP No. 112930, August 11, 2010

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Court of Appeals

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated December 8, 2009 of public respondent National Labor Relations Commission (NLRC), Sixth Division, which affirmed the Decision[3] dated February 13, 2009 of the Labor Arbiter finding just cause in the dismissal of petitioner Leny San Gabriel Penaredondo with modification in that the award of moral and exemplary damages was deleted while the award of indemnity pay and attorney's fees was reduced, the dispositive portion of which reads:

WHEREFORE, the Decision is AFFIRMED with modification deleting the award of moral and exemplary damages and reducing the indemnity award from P30,000.00 to P10,000.00, plus P1,000.00 attorney's fees.[4]

THE FACTS

Private respondents Peñaredondo Crewing Agency is a registered recruitment agency owned by private respondent Rudy Agura Penaredondo (Rudy). Since Rudy was always outside of the country to negotiate with vessel owners, he designated his brother Tito Agura Penaredondo (Tito) as General Manager of the agency.[5] A Special Power of Attorney[6] (SPA) was executed in the latter's favor which also authorized him to open bank accounts with Rizal Commercial Banking Corporation (RCBC) under the name of the agency.

On January 6, 2003, petitioner Leny San Gabriel Penaredondo, who is a niece of Rudy, was appointed as secretary of the agency with a monthly salary of P6,000.00. Petitioner's tasks included the following: (1) withdrawal of allotments from principals abroad and to deposit the same in different banks for seamen hired by the agency; (2) custody and update of the agency's passbooks[7]; (3) purchase of plane tickets; (4) bookkeeping; and (5) payment of SSS, PHIC, Pag-Ibig, BIR withholding taxes and business permits.[8]

When Rudy returned to the country, he discovered that the dollar account with RCBC was not in the name of the agency but rather in the name of his brother Tito and the latter's wife. Worse, the deposit thereof amounted to only US\$199. While no audit was ever conducted on the finances of the company, Rudy was quite surprised why their agency's dollar account contained only such very minimal amount. Further, the former office in Sta. Ana, Manila which the agency was renting and subject of a contract-to-sell was bought by Tito's wife. Likewise, Rudy found out that petitioner was working not just with their agency but also with See the World Travel Agency, which is owned by Tito's wife. In view of the mismanagement and disloyalty to him, Rudy decided to terminate petitioner from employment and revoke the SPA he granted in favor of his brother Tito.[9]

On June 26, 2008, Rudy went to RCBC Bank's Head Office in Makati City to open a new dollar account in his

name[10] Petitioner also went to RCBC, per instruction of Tito, to withdraw the dollar allotments sent by the principals abroad and buy plane tickets through see the World Travel Agency.[11] Petitioner proceeded to the Telemoney Division for the approval of withdrawals slips. At the said division, petitioner saw Rudy and private respondent Eric Villaluz Agura, the agency's Operations Manager, but she did not approach them. After the withdrawal slips were approved, petitioner decided to deposit the allotments. While waiting for the processing of the deposits, petitioner went to the New Accounts Section to update the passbook of the agency. Rudy then approached petitioner and told her, "Kunin mo na ang separation pay mo kay Tito kasi paano naman ang pamilya mo". Later on, petitioner informed Tito about Rudy's utterances.[12]

The following day, petitioner went again to RCBC for withdrawal of additional allotments. She looked for the account officer Mr. Francis Nipal, Jr. of the Telemoney Division for the approval of withdrawal slips. However, Mr. Nipal told petitioner that the bank account of the agency has already been closed. Petitioner was also informed that Rudy already transferred the money from the old bank account to the new bank account of the agency.[13]

On July 12, 2008, the agency's office was transferred to Paco, Manila. Since petitioner already failed to report for work, private respondents caused the publication in Taliba newspaper on July 23, 2008 a notice to the public that petitioner, together with Tito and other employees, were no longer employed with the agency.[14] The POEA was also notified thereof.[15]

Aggrieved, petitioner instituted a complaint for illegal dismissal, underpayment of wages, damages and attorney's fees before the Department of Labor and Employment's Regional Arbitration Branch in Quezon City. In her Position Paper[16], petitioner alleged that there was no just cause to warrant her dismissal. During the period of her employment, she served without any derogatory record. She was not afforded the right to procedural due process because she was not apprised of the particular acts or omissions for which she was eventually dismissed. She was merely told by Rudy to get her separation pay.

In their traverse, private respondents argued that petitioner was validly dismissed due to loss of trust and confidence. Petitioner's position in office entails a high degree of trust and confidence from her employer. However, petitioner committed acts of disloyalty when she rendered work not just for private respondents' agency but also for a travel agency owned by Tito's wife. Further, the incident at the RCBC when petitioner merely ignored Rudy who was then at the bank and proceeded to withdraw the allotments without Rudy's knowledge showed an utter lack of good conduct and disloyalty on the part of petitioner. Petitioner likewise failed to hand over the agency's funds to private respondents and even used the same to purchase plane tickets at a higher price through the travel agency where she also works. When Tito stopped reporting at private respondent's office, petitioner did the same and continued working at the travel agency owned by Tito's wife. As such, there was just cause in the termination of petitioner from employment.[17]

In a Decision[18] dated February 13, 2009, the Labor Arbiter ruled that private respondents were justified in dismissing petitioner from the service. Petitioner clearly committed acts deemed as breach of the trust and confidence reposed upon her by private respondents. However, petitioner was denied due process since respondents failed to duly notify her of the ground for her dismissal. Hence, petitioner was entitled to P30,000.00 indemnity pay, P20,000.00 moral damages, P20,000.00 exemplary damages and P7,000.00 attorney's fees. The decretal portion of the Decision reads:

WHEREFORE, foregoing premises considered, this charge of Illegal Dismissal is hereby ordered DISMISSED for lack of merit.

Respondents Pefiaredondo Crewing Agency and Rudy Pefiaredondo are hereby ordered to pay jointly and

severally complainant the following:

1. Indemnity Pay

P 30,000.00

2. Moral Damages

P 20,000.00

3. Exemplary Damages

P 20,000.00

4. Attorney's Fees

P 7,000.00

TOTAL

P 77,000.00

SO ORDERED.[19]

Petitioner appealed the decision to the NLRC. In the assailed Decision[20] dated December 8; 2009, the NLRC held that petitioner was validly dismissed from employment. It ratiocinated that petitioner's acts of having another job while working for private respondent agency, withdrawing the latter's allotments and failing to remit the same to private respondents and buying plane tickets at a higher price through the travel agency where she also works, were all considered sufficient grounds for private respondents to have lost their trust and confidence upon petitioner. In like manner, the incident at the RCBC on June 26, 2008 where petitioner ignored Rudy who was also at the bank and then proceeded to withdraw the allotments without the knowledge of Rudy was a clear attempt to thwart the effects of revoking the SPA granted in favor of Tito. However, private respondents failed to comply with the requirements of due process. Hence, they should pay petitioner indemnity damages but in the reduced amount of P10,000.00 and attorney's fees of P1,000.00. The award of moral exemplary damages was also deleted for lack of basis. The pertinent portions of the Decision read:

After a judicious examination of the records of this case, We find the Appeal bereft of merit.

[W]e examined the arguments raised by the parties in their respective pleadings to determine if there is just cause sufficient to separate the Complainant from her employment and find such exists.

Complainant never denied the Respondents' allegations that she was employed both at Respondents' Manning Agency and at the same time at the business of the Respondent General Manager's wife World Travel Agency. In Respondents' Reply, Complainant was accused of suddenly appearing at the premises of RCBC bank to withdraw the allotment for Respondents' seamen, ostensibly for the purchase of plane ticket.

Despite being in the presence of individual Respondent-Rudy, Complainant did not acknowledge such presence and proceeded to withdraw the allotment nevertheless; which in Our perception is too much coincidental in an attempt to thwart the effects of revoking the Special Power of Authority granted to her immediate superior-Tito. Likewise, the purchase of airplane tickets from World Travel Agency at higher price for use of the Respondent's Agency's seam[e]n that can be considered as a conflict of interest was never denied even in this appeal.***

To Our mind, Respondents have presented substantial evidence *** that the Complainant has engaged in acts sufficient for the Respondents to lose the trust and confidence that was reposed upon her by the Respondents and consequently affirm the Labor Ariter's Decision dismissing the complaint.

Considering however that the dismissal is justified and was done in good faith, there is no basis for the award of moral and exemplary damages. Even the amount of the award of indemnity is not befitting since circumstances obtaining warrant urgent and immediate prevention of Complainant's access to Respondent's disposable assets.

WHEREFORE, the Decision is affirmed with modification deleting the award of moral end exemplary damages and reducing the indemnity award from P30,000.00 to P10,000.00, plus P1,000.00 attorney's fees.

SO ORDERED.[21]

Petitioner filed a Motion for Reconsideration[22] but the same was denied in a Resolution[23] dated February 9, 2010.

Hence, the instant petition in which petitioner raised the sole ground for its allowance, to wit:

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER BASED ON FINDINGS NOT SUPPORTED BY EVIDENCE.[24]

THE ISSUE

The pivotal issue to be resolved is whether or not public respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the Labor Arbiter's finding that petitioner's dismissal was valid on the ground of loss of trust and confidence.

THE RULING

The petition is bereft of merit.

Petitioner contends that the NLRC gravely abused its discretion in affirming the Labor Arbiter's finding that her dismissal was valid. Private respondents failed to substantiate their allegation of loss of trust and confidence as basis for petitioner's dismissal. As such, petitioner's termination should have been declared illegal. We are not persuaded.

Under Article 282 (c) of the Labor Code, an employer can terminate the employment of the employee concerned for "fraud or willful breach by an employee of the trust reposed in him by his employer or duly authorized representative". In *Aromin vs. NLRC, et. al.*[25], the Supreme Court held that the basic premise for dismissal based on loss of trust and confidence is that the employee concerned holds a position of trust and confidence. As such, the employee must be invested with confidence on delicate matters, such as the custody, handling or care and protection of the employer's money and other assets.[26] It is the breach of this trust that results in the employer's loss or confidence in the employee.[27]

A perusal of the records shows that petitioner was no ordinary rank-and-file employee. As secretary, her duties

involved the withdrawal of allotments and deposit thereof to the agency's bank accounts, purchase of plane tickets of seamen hired by the agency and update of the agency's passbook. Clearly, petitioner regularly handles significant amounts of money belonging to the agency. Petitioner was, therefore, aware that the handling and monitoring of company funds under her charge requires utmost fidelity on her part. This she failed to do.

In *Baron, et al. vs. NLRC, et al.*[28], the Supreme Court held that for there to be a valid dismissal based on loss of trust and confidence, the breach of trust must be willful, meaning it must be done intentionally, knowingly and purposely, without justifiable excuse. An employee's willful breach of trust reflects a regrettable lack of loyalty to his employer.[29]

Similarly, in *Bibiana Farms and Mills, Inc. vs. Lado*[30], citing *Fungo vs. Lourdes School of Mandaluyong*[31], the Supreme Court enunciated the following guidelines for the application of loss of trust and confidence as a just cause for dismissal of an employee, to wit: a) loss of confidence should not be simulated; b) it should not be used as subterfuge for causes which are improper, illegal or unjustified; c) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and d) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

With the foregoing parameters in mind, We find that the NLRC correctly ruled that indeed petitioner's dismissal was valid due to loss of trust and confidence. Nowhere in the record of the case does it appear that petitioner ever refuted private respondents' claim that she rendered work with the travel agency owned by Tito's wife while she was employed in private respondents' agency. This indubitably shows a conflict of interest on the part of petitioner. It was even bolstered by the June 26, 2008 incident at the RCBC where petitioner withdrew the allotments and used the same in buying plane tickets through the said travel agency.

Unlike other just causes for dismissal, the trust in an employee once lost is difficult, if not impossible, to regain. It cannot be overemphasized that there is no substitute for honesty for sensitive positions which call for utmost trust.[32] Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, the labor tribunal cannot deny the employer's authority to dismiss him.[33]

While petitioner's dismissal was valid, private respondents failed to comply with the twin procedural requirements of notice and hearing for a lawful dismissal. Well-settled is the rule that the employer must furnish the employee with two written notices before the termination can be effected, namely: (a) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the second informs the employee of the employer's decision to dismiss him.[34] Here, petitioner was not given any notice about her dismissal. In *Formantes vs. Duncan Pharmaceuticals, Phils., Inc.*[35], the Supreme Court held that the violation of the employee's right to statutory due process by the employer warrants the payment of indemnity in the form of nominal damages. Prevailing jurisprudence sets the amount of nominal damages at P30,000.00, which the Court finds proper and sufficient in the present case.³⁶ Hence, the NLRC's award of P10,000.00 as nominal damages should be increased to P30,000.00.

The award of P1,000.00 attorney's fees should also be increased to P3,000.00. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.[37] The claim for attorney's fees is granted pursuant to Article 2208 of the New Civil Code which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. The same fees are also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest as in the present case following the refusal by respondent to settle his claims.[38]

WHEREFORE, premises considered, the instant petition for certiorari is hereby dismissed. The assailed Decision dated December 8, 2009 and Resolution dated February 9, 2010 of public respondent National Labor Relations Commission are AFFIRMED with modification in that the award of nominal damages and attorney's fees is increased to Thirty Thousand Pesos (P30,000.00) and Three Thousand Pesos (P3,000.00), respectively.

SO ORDERED.

Carandang and Barrios, JJ. concur.

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- [1] Rollo, pp. 3-24.
[2] Rollo, pp. 25-33.
[3] Rollo, pp. 94-98.
[4] Rollo, p. 32.
[5] Rollo, Private Respondents' Position Paper, p. 69.
[6] Rollo, Annex "B" to Private Respondent's Memorandum Appeal, p. 143.
[7] Rollo, Petitioner's Position Paper, p. 55.
[8] Rollo, Petitioner's Position Paper, p. 54.
[9] Rollo, Private Respondent's Position Paper, pp. 69-70.
[10] Ibid.
[11] Rollo, Private Respondents' Rejoinder, p. 85.
[12] Rollo, Petitioner's Position Paper, p. 55
[13] Rollo, Petitioner's Position Paper, pp. 55-56.
[14] Rollo, Private Respondents' Position Paper, pp. 70-71.
[15] Rollo, Annex T" to Petitioner's Position Paper, p. 67.
[16] Rollo, pp. 53-61.
[17] Rollo, Private Respondents' Position Paper pp. 71-72.
[18] Supra, see note 3.
[19] Rollo, pp. 123-124.
[20] Supra, see note 2.
[21] Rollo, pp. 30-32.
[22] Rollo, pp. 36-52.
[23] Rollo, pp. 34-35.
[24] Rollo, p. 10.
[25] G.R. No. 164824, April 30, 2008.

- [26] Aromin is NLRC. et al., G.R. No. 164824, April 30, 2008; Etcuba, Jr. vs. Sulpicio Lines, due; G.R. No. 148410, January 17, 2005; Gonzales vs. NLRC, et al. G.R. No. 1131 653, March 26, 2001.
- [27] Lima Land, Inc., et. al., vs. Cuevas G.R No 169523, June 16, 2010.
- [28] G.R. No. 182299, February 22, 2010
- [29] Aromin vs. NLRC, et al., G.R. No. 164824 April 30, 2008.
- [30] G.R. No. 157861, February 2, 2010.
- [31] G.R. No. 152531, July 27, 2007.
- [32] Salvador vs. Philippine Mining Service Corp., G.R. No. 148766, January 22, 2003.
- [33] Bristol Mayers Squibb (Phils.), Inc., vs. G.R. No. 167449, December 17, 2008.
- [34] RTG Construction, Inc., et. al, vs. Facto, G.R. No. 163872, December 21, 2009; Formantes vs. Duncan Pharmaceuticals, Phil., Inc., G.R. No. 170661, December 4, 2009.
- [35] G.R. No. 170661, December 4, 2009.
- [36] RTG Construction, Inc., et. al, vs. Facto G.R. No. 163872, December 21, 2009.
- [37] Leopoldo Abante vs. Kjgs Fleet Management Manila, G.R. No. 182430, December 4, 2009.
- [38] Leopoldo Abante vs. Kjgs Fleet Management Manila, G.R. No. 182430, December 4, 2009.

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