

SUPERIOR MAINTENANCE SERVICE, INC., ET AL., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) AND DEVORAH SUCALDITO, RESPONDENTS.

Ponente: INTING, S.B., J.

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INTING, S.B., J.:

This resolves the Petition for Certiorari[1] under Rule 65 of the Rules of Court praying for the reversal of the Decision[2] of the National Labor Relations Commission's (NLRC) dated February 28, 2013. The challenged Decision partially granted private respondent Devorah Sucaldito's Appeal[3] and declared her termination illegal and consequently granted her money claims.

THE FACTS

Sucaldito worked at petitioner Superior Maintenance Services, Inc. (SMSI) as Document Control Center Controller (DCC Controller) beginning May 2007 until her dismissal on April 3, 2012. Sucaldito responded to her dismissal by filing a complaint for illegal dismissal with prayer for reinstatement and money claims.

According to SMSI, Sucaldito worked as a DCC Controller, a Level IV Category having a rank of Department Head. Being a DCC Controller, she exercises supervisory functions and occupies a sensitive position.

On March 15, 2012, Ms. Vilma Roda, Vice President for Finance of SMSI and Sucaldito's immediate superior, filed an administrative complaint against Sucaldito for conflict of interest. According to Roda, she was alarmed by the loss of SMSI's several clients to its competitor ISS Facility Services (ISS) where Sucaldito's husband is employed as the Human Resources Manager (HR Manager). This fact prompted Roda to file an administrative investigation against Sucaldito for conflict of interest. She claimed that Sucaldito's husband was hired by ISS on January 25, 2012 and right after his hiring, several key personnel of SMSI were pirated by ISS.

On March 19, 2012, SMSI required Sucaldito to explain in writing within five (5) days from receipt of its letter why no sanctions should be taken against her for loss of trust and confidence. She was likewise informed that she will be placed under preventive suspension for fifteen (15) days pending the investigation of the complaint filed against her.[4] On March 23, 2012, Sucaldito appeared at the administrative hearing without a counsel. Therein, she submitted her written explanation[5] on the charges against her.

In the investigation that SMSI conducted in response to the administrative complaint filed by Roda, Sucaldito admitted that her husband is working with ISS as HR Manager since January 25, 2012. However, she denied being responsible or accountable for the loss and transfer of several SMSI clients and employees to ISS.

On April 2, 2012, SMSI sent Sucaldito a Termination Notice.[6] SMSI terminated Sucaldito's services on the ground of loss of trust and confidence. The termination was effective April 3, 2012.

In her defense, Sucaldito alleged that there is no sufficient and valid reason to terminate her for loss of trust and confidence. She pointed out that she already informed her area managers and co-employees regarding her husband's employment with ISS even from the time of his application until he was eventually hired, and even if

she did not formally inform SMSI of her husband's employment, no injury was caused to SMSI that would lead her to the charges taken against her and cause her subsequent termination. She further alleged that she could not be held responsible or accountable for the loss of several accounts and resignation of some SMSI employees as these circumstances took place long before her husband joined ISS. More to that, her employment contract with SMSI did not mandate her to divulge the employment status of her husband whether he is unemployed or employed with other companies. For another, Sucaldito claimed that ISS cannot even be considered a competitor considering that it is engaged in catering services, a business which is totally different from SMSI's field of business which is recruitment services, i.e. SMSI essentially supplies workers to several establishments. For the foregoing reasons, Sucaldito thus claimed that she cannot be terminated on the ground of loss of confidence.[7]

Ruling of the Labor Arbiter and the NLRC

On July 30, 2012, Labor Arbiter Enrique L. Flores, Jr. resolved the case against Sucaldito and found that her dismissal from service was valid. In the Decision[8], the Labor Arbiter held that Sucaldito's position as DCC Controller is of such nature as to require a substantial amount of trust and confidence and under the circumstances of the case, SMSI cannot be expected to retain its trust and confidence and continue her employment by reason of her actuation which is perceived to be inimical to its interest. In dismissing the complaint, the Labor Arbiter however granted Sucaldito's claim for service incentive leave pay and 13[th] month pay.

Aggrieved, Sucaldito filed an appeal with the NLRC. On February 28, 2013, the NLRC issued a Decision partially granting the appeal of Sucaldito by declaring her dismissal illegal. It held that SMSI failed to prove by substantial evidence that valid grounds exist for terminating her employment due to loss of trust and confidence. It explained that SMSI has gone too far in terminating the services of Sucaldito merely because of the insinuation that the losses it incurred were due to her failure to divulge her husband's employment with its alleged competitor, and which it deems to be the recipient of its trade secrets and other essential documents which are in Sucaldito's custody by reason of her position as DCC Controller. It thus disposed of the case as follows:

"WHEREFORE, premises considered, complainant's appeal is PARTLY GRANTED. The assailed Decision of Labor Arbiter Enrique L. Flores Jr. dated July 30, 2012 is AFFIRMED with MODIFICATION in that complainant is hereby declared to have been illegally dismissed and, therefore, entitled to backwages and separation pay in lieu of reinstatement. The award of service incentive leave pay and proportionate 13[th] month pay for year 2012 is affirmed while complainant's claim for moral and exemplary damages is denied for lack of merit.

The Computation Division of the Office is hereby directed to make the necessary computations of the monetary award granted to complainant, which computation shall form an integral part of this decision.

SO ORDERED."

The NLRC denied[9] the Motion for Reconsideration[10] that SMSI subsequently filed, prompting the employer company to seek relief from this Court through the present petition for certiorari.

THE ISSUES

Petitioner SMSI cites the following grounds:

A) WHETHER OR NOT PUBLIC RESPONDENT FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN MODIFYING THE DECISION RENDERED BY LABOR ARBITER ENRIQUE L. FLORES JR;

B) WHETHER OR NOT HEREIN PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED FROM HER EMPLOYMENT;

C) WHETHER OR NOT HEREIN PRIVATE RESPONDENT IS ENTITLED TO HER MONEY CLAIMS;
and

D) WHETHER OR NOT PETITIONERS ARE ENTITLED TO DAMAGES, ATTORNEY'S FEES AND
COST OF SUIT.

In sum, SMSI basically raises the issue of whether or not the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed decision declaring Sucaldito illegally dismissed and granting her money claims.

THIS COURT'S RULING

The LA found that Sucaldito was dismissed for cause. The NLRC, on the other hand, found that she was illegally dismissed. It was the latter's finding that although Sucaldito holds a position of trust and confidence, being a DCC Contoller, SMSI failed to present evidence that she committed an act that would justify the loss of trust and confidence reposed in her.

We sustain the NLRC.

Loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds.[11]

Here, there is no question that Sucaldito occupies a position of trust and confidence. The next question to ask is whether she committed acts that would constitute just cause to terminate her employment.

Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts.[12] 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.[13] The loss of trust and confidence must spring from the voluntary or wilful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[14]

In this case, SMSI claimed that it lost its trust and confidence in Sucaldito by reason of the latter's non-disclosure or failure to divulge the employment of her husband as HR Manager of ISS , a catering service provider which the former claims to be a competitor company. Contrary to SMSI's position, We find that Sucaldito's nondisclosure of her husband's employment does not amount to a willful breach of trust.

First, the records is bereft of any evidence showing that SMSI expressly required Sucaldito to disclose or divulge to them the employment status or details of her spouse or any member of her immediate family with any other company, whether it be a competitor or not, or with a business engaged in a similar field as SMSI. In fact, the Job Description[15] of Sucaldito as presented by SMSI merely provides for her duties and responsibilities with no express provision mandating her to report to or inform the management any employment of any member of her immediate family in any of their competitors. Even Sucaldito's contract of employment with SMSI does not require her to disclose the same.

Secondly, the business engaged in by SMSI and ISS are totally different from each other. The former is engaged in recruitment services whereas the latter is engaged in catering services and this matter remains undisputed by SMSI. This fact considered, We cannot comprehend how the employment of Sucaldito's spouse with ISS can produce conflicting interest with that of Sucaldito who is employed in a company engaged in recruitment services and whose job involves the custody of sensitive documents, among others, such as but not limited to, names of clients, contracts and agreements entered into with clients. Plainly, SMSI failed to establish a substantial

connection between Sucaldito's employment and the loss of SMSI's clients and employees and her spouse's employment with ISS.

Thirdly, We find that Sucaldito's nondisclosure or failure to divulge her spouse's employment details was not intentional. As a matter of fact, she disclosed such fact to her area managers and co-employees even from the start of her husband's application until he was finally hired. Indeed, had she intentionally decided to conceal such fact, she could have chosen not to disclose her husband's employment to anybody, especially not among her co-workers and superiors. But the facts on hand show that she did actually disclose such fact. As such, and to Our mind, Sucaldito's lapse is, at best, an inadvertent or a careless act that does not merit the imposition of the penalty of dismissal.

Lastly, SMSI's allegation attributing its loss of several accounts as well as employees to Sucaldito's failure to disclose her husband's employment with ISS is unsupported by any competent or convincing evidence. While indeed some of its clients terminated their contracts and transferred to ISS and some of its employees resigned and transferred to ISS, there is no hard and concrete proof showing that Sucaldito has a hand in the movement of SMSI's clients and employees. It bears to note that in its Position Paper,[16] SMSI categorically stated that Sucaldito is not accused of delivering sensitive documents to ISS pertaining to its trade secrets and list of clients. Further, even the Minutes[17] of the administrative investigation on Sucaldito's case yielded no solid proof to indict her of betrayal to the company and/or conflict of interest. More importantly, SMSI failed to refute Sucaldito's contention that the company's loss of several accounts and resignation of its employees took place even before her husband joined ISS on January 25, 2012.

Consequently, the charges of conflict of interest and betrayal to the company not having been established, the dismissal of Sucaldito on the ground of loss of trust and confidence cannot be sustained. Therefore, no grave abuse of discretion can be attributed to the NLRC for issuing the assailed decision modifying the decision of the Labor Arbiter and declaring Sucaldito's termination from employment illegal.

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.[18] This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized.[19] However, it is reiterated that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.[20] Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause.[21] Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited ground cannot be allowed.

IN LIGHT OF THE FOREGOING, the instant petition is hereby DISMISSED. Accordingly, the Decision dated February 28, 2013 of the National Labor Relations Commission (First Division) STANDS AFFIRMED.

SO ORDERED.

Reyes, Jr., (Chairperson), and [**]Reyes Caprio, JJ., concur.

[**] Vice Associate Justice Mario V. Lopez who is on Official Leave from November 25-27, 2014, as per Office Order No. 486-14-RSF dated November 24, 2014.

[1] Rollo, pp. 3-22, filed October 14, 2013.

[2] Rollo, pp. 38-50.

[3] Rollo, Annex "O", pp. 110-127, dated December 3, 2012.

[4] Rollo, Annex "H", p. 61.

[5] Rollo, Annex "L", p. 71.

[6] Rollo, Annex "I", pp. 62-63.

[7] Rollo, Position Paper, Annex "M", pp. 72-78, filed June 27, 2012.

[8] Rollo, pp. 25-36.

[9] Rollo, Resolution, pp. 53-54, promulgated July 11, 2013.

[10] Rollo, Annex "P", pp. 118-134, dated March 25, 2013.

[11] *Bluer Than Blue v. Esteban*, G.R. No. 192582, April 7, 2014.

[12] *See Prudential Guarantee v. NLRC*, G.R. No. 185335, June 13, 2012.

[13] *Philippine Plaza Holdings, Inc. v. Episcopo*, G.R. No. 192826, February 27, 2013.

[14] *Coca-Cola v. Gacayan*, G.R. No. 149433, June 22, 2011.

[15] Rollo, Annexes "2-2C", pp. 96-99.

[16] Rollo, Annex "N", pp. 79-95, dated July 4, 2012.

[17] Rollo, Annex "K"

[18] *Sanden Aircon Phils. v. Ang*, G.R. No. 169260. March 23, 2011, citing *Caingat v. NLRC*, G.R. No. 154308, March 10, 2005.

[19] *Caingat v. NLRC*, G.R. No. 154308, March 10, 2005.

[20] *Lima Land, Inc., et al. v. Cuevas*, G.R. No. 169523, June 16, 2010.

[21] *Supra* note 14.

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