

EMELIA L. ANCAJAS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SEVENTH DIVISION), PHOENIX PUBLISHING HOUSE INC., MA. PILAR SIBAL BALBIN, MODESTO LUMBAN, ROY RABOR AND T...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

Before this Court is a Petition for Certiorari[2] under Rule 65 of the Rules of Court assailing the Decision[3] of the public respondent National Labor Relations Commission (NLRC) in NLRC Case No. VAC-01-000077-2011.

THE PARTIES

Petitioner is Emelia L. Ancajas and is the Complainant in RAB Case No. VII-05-0969-2010[4].

Public Respondent National Labor Relations Commission, Seventh Division holds its office at 2nd Floor, Orient Building, Gen. Echavez, Cebu City.

Private Respondent Phoenix Publishing House Inc. (Phoenix), is a corporation organized and existing in accordance with law and with main office at Phoenix Building, 927 Quezon Avenue, Quezon City. It has a branch office for its Visayas-Mindanao business operations Mayor Maxino V. Patalinjug, Jr. Ave., Sangi, Brgy. Pajo, Lapu-Lapu City, Cebu.

Private Respondents Ma. Pilar “Penny” Sibal Balbin is the Executive Vice-President; Modesto Lumban, the Vice-President while Roy Rabor is the Cebu Branch Manager of the respondent company. Private Respondents are all of legal age, Filipinos and with address at the care of the respondent company[5].

THE FACTS

In June 1996, complainant was employed by Phoenix Publishing House, Inc. as an Accounting Clerk. In the span of four (4) years, Ancajas rose to become the Accounting Head[6].

Respondents allege that the laxity of Ancajas in the performance of her work led to a loss of two million pesos (P2,000,000.00) in 2004 when a terminated sales agent took the said amount from the company under her watch. As a consequence, petitioner was subjected to disciplinary action.

On February 11, 2009, another loss occurred amounting to one hundred thousand eight hundred thirty & 36/100 pesos (P100,830.36). Said loss was incurred due to petitioner's lapses in her daily checking of official receipts as against deposit slips as part of the bank reconciliation process. For this infraction, petitioner was again meted disciplinary action.

Thereafter, it has come to respondent company's knowledge that petitioner knowingly gave instructions to guards

on duty to fraudulently punch the time card of an agency-hired driver in order to avoid paying the latter overtime pay. This incident allegedly spiraled into a labor case entitled, Elmer Corieta vs. Triple D (Central Manpower Service) and/or Imelda Timbal/ Phoenix Publishing House and/or Penny Sibal and Celestina Sarte. It was also alleged by private respondents that petitioner allowed a number of employees to receive overtime pay, even if they were no longer on duty[7].

Complainant admitted that sometime in July 2009, she instructed the company guards on duty to “punch in” the time card of an agency-hired driver. She reasoned that she did so in order to protect the company against unjustifiable claims for overtime pay. She cited, as in the case of the driver, the employee was no longer rendering service to the company but for the personal benefit of Ms. Celestina Sarte, who at that time was their Cebu Branch Manager.

She likewise admitted having called the attention of Sarte sometime on August 2009, to limit the payment of the overtime pay of the two (2) janitors to their actual time worked. Subsequently, on January 2010, Sarte was terminated by private respondent Phoenix.

On March 31, 2010, petitioner received a Memorandum[8] issued by private respondent Modesto Lumban directing the former to explain why he should not be subjected to disciplinary action or why her employment ought not be terminated for charges of fraud, willful breach of trust, and loss of trust and confidence. Realizing the sensitivity of her position, petitioner was placed in preventive suspension[9].

Petitioner submitted her written explanation[10] and attended the formal investigation held on April 27, 2010. Ancajas maintained her innocence against the charges indicted against her[11].

On May 5, 2010, a Notice of Termination[12] was issued by respondent Lumban to petitioner. The efficacy of which was to be effective immediately upon her receipt thereof[13].

The following day, Ancajas filed a complaint for illegal dismissal with monetary claims[14]. On November 11, 2010, the Labor Arbiter resolved the case and held petitioner's preventive suspension to be justified[15]. It held that respondents failed to establish by substantial evidence sufficient basis to terminate petitioner on the grounds of fraud and willful breach of trust and loss of trust and confidence. Thus, it held petitioner's dismissal to be illegal. From the the said conclusion, the Labor Arbiter declared petitioner to be entitled to reinstatement. It further held that since under the circumstances reinstatement is no longer feasible, it ruled for petitioner to grant separation pay equivalent to one month pay for every year of service[16].

Thus, it disposed,

WHEREFORE, premises considered, judgment is hereby rendered declaring the illegal dismissal of complainant.

Respondent Phoenix Publishing House, Inc. is hereby ordered to pay complainant Emelia Ancajas, the following:

1. Backwages -----

P 95,000.00

2. Separation Pay -----

P210,000.00

3. 13th Month Pay for 2010 -----

P 5,208.33

310,208.33

4. Attorney's Fees -----

P 31,020.83

TOTAL-----P341,229.16[17]

From the above ruling, private respondents filed a Notice of Appeal[18].

Contrary to the Labor Arbiter's findings, public respondent NLRC found petitioner's dismissal to be legal. It found petitioner to be a managerial employee. It ratiocinated that as a managerial employee, mere existence of belief that the trust has been breached would suffice for dismissal[19].

The NLRC noted[20] that petitioner admitted to instructing the company guards to "punch in" the time card of an agency-hired driver[21]. It held that the acts imputed against her were constitutive of fraud, willful breach of trust, as well as loss of trust and confidence which would tantamount to just causes for her termination. Public Respondent reasoned, "Going out of her way to cause such tampering of the time card is an infraction which can hardly be classified as trivial, especially with the nature of her position as Accounting Head and considering (sic) degree of trust bestowed upon her by her employer[22].

The NLRC also held that the respondent private company may not be faulted for losing its trust and confidence on petitioner. Her act of allowing the disbursements for unjustifiable claims for overtime pay when she could have disallowed the same is sufficient basis for the company's loss of trust.

The NLRC however held that the claims as to the company's loss of a substantial amount of money due to petitioner's laxity may no longer be taken against her as she was already duly sanctioned for it [23]

Thus, finding petitioner's dismissal to be valid, the NLRC ruled for the grant to petitioner of separation pay and backwages to be canceled. It further held that petitioner's 13th month pay for the year 2010 should only be reckoned until the effectivity of her preventive suspension. Finally, private respondent found petitioner to be no longer entitled to payment of her salaries, wages and other benefits including her proportionate payment of 13th month pay beyond 6 April 2010.

Hence, private respondent petitioner's money claims were computed as follows,

13th Month Pay

(1 January 2010 to 6 April 2010 = 3 mos. & 5 days)

P15,000.00/mo. X 3 mos =

P3,750.00

12

[P15,000.00/mo. / 26 days = P576.92]

P576.92 x 5 days = P 240.38

12

P3990.38[24]

Petitioner filed a Motion for Reconsideration[25]. The same was however denied in a Resolution dated June 24, 2011[26].

Aggrieved, petitioner now comes before this Court alleging grave abuse of discretion in 1.) holding that the acts committed by petitioner are constitutive of fraud, willful breach of trust as well as loss of trust and confidence tantamounting to just causes for terminating her from her employment; 2.) outrightly denying the petitioner's motion for reconsideration; 3.) in only awarding in favor of the petitioner 13th Month Pay amounting to P3990.38 only[27].

Petitioner argues that her actions were motivated by an intention to protect the company. She however points the irony when despite said intentions she is now being accused of having committed fraud and breach of trust and confidence. She argues that there is no intention on her part to cause injury. She further adds that her actions were done for a justifiable cause[28]. Petitioner argues that her actions were neither willful nor were founded on clearly established facts[29].

Private Respondents filed a Comment/Opposition[30]. Private Respondents assert that just causes exist warranting the termination of petitioner from employment. They argue that with the admissions of falsification of company records and payment of overtime pay despite non-entitlement of some employees, Phoenix had substantial evidence on its hands to impose penalties on petitioner[31].

They further add that petitioner's termination from employment also stemmed from repeated violation of company rules resulting to monetary loss to Phoenix. Considering the sensitivity of her position, Ancajas has become unfit to hold her position due to her recurring involvement in monetary losses in the company[32].

Private respondents assay, considering petitioner's dismissal is valid, her monetary awards grounded on illegal dismissal such as backwages, separation pay and attorney's fees, have no more leg to stand on[33].

In response to the Comment filed, petitioner filed a Reply and Rejoinder to Respondent's Comments to the Petition for Certiorari[34]. Petitioner contends that private respondents brought facts on appeal which were no longer included in the notice of violation and notice of termination. Petitioner contends that the inclusion of previous offenses regarding the monetary losses was a violation of the rules of fair play and due process[35].

We note the Rejoinder[36] filed by private respondents rebutting the arguments of petitioner in her reply Reply and Rejoinder.

ISSUE

A reading of petitioner's arguments would reveal that the lone issue for this Court to resolve is,

Whether or not the public respondent NLRC committed grave abuse of discretion in issuing the assailed Decision dated April 29, 2011.

OUR RULING

Petitioner's assignment of errors and arguments of imputing grave abuse of discretion on the part of the public respondent NLRC hinge solely on the issue of whether or not Ancajas was validly dismissed.

We find petitioner to have been validly dismissed.

In *Divine Word College of San Jose v. Aurelio*[37], the Supreme Court held that a Senior Bookkeeper is a position of trust and confidence. The same is true in the case of a Head Accountant[38].

There are two classes of positions of trust. The first class consists of managerial employees. They 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. The second class consists of cashiers, auditors, property custodians, etc.. They are defined as those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property[39]. Petitioner's job function as the Accounting Head clearly belong to the second class.

In *Bristol Myers Squibb (Phils.), Inc. v. Baban*[40], the Supreme Court enumerated the requisites for a just cause in order to terminate an employee based on loss of trust and confidence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.

Petitioner as the company's Accounting Head occupied a position of trust. The nature of petitioner's work involved confidential and sensitive information essential in the operations of the respondent company. As an accounting head, utmost trust is reposed upon her in monitoring the respondent company's financial transactions. The first requisite is clearly present.

We now discuss whether or not the actions of petitioner constituted a willful breach of trust that is founded on clearly established facts.

We find they do. It is of note that petitioner admitted to have instructed the guards to punch in a time card of an agency-hired driver.

In *Eric Alvarez, substituted by Elizabeth Alvarez Casarejos, vs. Golden Tri Bloc, Inc. And Enrique Lee*[41], the Supreme Court discussed,

The punching of time card is undoubtedly work related. It signifies and records the commencement of one's work for the day. It is from that moment that an employee dons the cape of duties and responsibilities attached to his position in the workplace. It is the reckoning point of the employer's corresponding obligation to him – to pay his salary and provide his occupational and welfare protection or benefits. Any form of dishonesty with respect to time cards is thus no trivial matter especially when it is carried out by a supervisory employee like the petitioner.

In the case at bar, even if the act of tampering of the time card was not carried by petitioner herself, the infraction would not have occurred had it not been for the order of petitioner. Petitioner subscribed to underhand means of allegedly protecting the interest of the company. She made use of her authority in bidding her subordinates into a wrongdoing. As noted by the NLRC, petitioner could have simply disallowed the claims for overtime pay if indeed the same were not justified.

We however dissent with public respondent when it ruled that petitioner's previous infractions may no longer be taken against her. The Totality of Infraction Rule as established by jurisprudence provides guidance in determining the sanction imposable to an employee. The rule provides that the employer may consider and weigh his other past infractions. Thus:

The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior onboard. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection[42].

These past lapses that led for respondent company to incur losses are also admitted by petitioner. In her written explanation on the incident on February 2009, petitioner wrote,

xxx Basically it is already my daily work to check the OR against the bank transaction. In the morning of February 11, 2009, I have checked the OR. Without any notification, the cashier received cash of Php 100,530.36 and Php 300.00 after checking the transaction. The said amount is an excess from the seminar budget. I found out that only OR#9652 and 9653 is not counterchecked.

I would like to apologize for bringing this incident to your office. We are now adapting a new system so that this will not happen again. I am hoping that the trust and confidence given to me by the company still remain[43]. Xxx

Considering the misdemeanors admitted by petitioner to have committed, private respondents had clear and convincing basis in concluding that Ancajas breached the respondent company's trust.

Assuming arguendo, that the other current charges imputed on petitioner were not clearly established. Petitioner's admission and previous misdemeanors sufficiently established just cause in severing her employment.

Hence, it appearing that petitioner was accorded procedural due process, Ancajas' dismissal is valid. Accordingly, no grave abuse of discretion was committed by the public respondent in resolving the assailed Decision.

WHEREFORE, the Petition for Certiorari is DISMISSED. The Decision of the National Labor Relations Commission (Seventh Division) in NLRC Case No. VAC-01-000077-2011 is hereby AFFIRMED.

SO ORDERED.

Lagura-Yap, and Quijano-Padilla, JJ., concur.

[1] Tessa Denilla was identified as a private respondent in NLRC Case No. VAC-01-000077-2011 but was no longer impleaded in the Petition for Certiorari.

[2] Rollo, page 3.

[3] Rollo, page 20.

- [4] Rollo, page 49.
- [5] Rollo, page 3-4.
- [6] Rollo, page 21.
- [7] Rollo, page 22.
- [8] Rollo, page 91.
- [9] Rollo, page 92.
- [10] Rollo, page 94.
- [11] Rollo, pages 23-24.
- [12] Rollo, page 104.
- [13] Rollo, page 103.
- [14] Rollo, page 71.
- [15] Rollo, page 55.
- [16] Rollo, page 66.
- [17] Rollo, page 67.
- [18] Rollo, page 68.
- [19] Rollo, page 26.
- [20] Rollo, page 27.
- [21] Rollo, page 94.
- [22] Rollo, page 28.
- [23] Rollo, page 29.
- [24] Rollo, page 30.
- [25] Rollo, page 32.
- [26] Rollo, page 47.
- [27] Rollo, page 10.
- [28] Rollo, page 13.
- [29] Rollo, page 16.
- [30] Rollo, page 138.
- [31] Rollo, page 146.
- [32] Rollo, page 146-147.
- [33] Rollo, page 148.
- [34] Rollo, page 152.

[35] Rollo, page 156.

[36] Rollo, page 175.

[37] G.R. No. 163706, March 29, 2007, 519 SCRA 497.

[38] Panday v. National Labor Relations Commission, G.R. No. 67664, May 20, 1992, 209 SCRA 122.

[39] Abelardo P. Abel vs. Philex Mining Corporation, Represented By Fernando Agustin, G.R. No. 178976, July 31, 2009.

[40] G.R. No. 167449, December 17, 2008, 574 SCRA 198.

[41] G.R. No. 202158, September 25, 2013.

[42] Merin vs. MRC, G.R. No. 171790, October 17, 2008, 569 SCRA 576.

[43] Rollo, page 147.

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