

JOSEFA S. DANGUILAN, PETITIONER, V. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION AND PHILIPPINE PLAZA HOLDINGS, INC., RESPONDENTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Resolution[2] dated February 14, 2007 of public respondent National Labor Relations Commission ("public respondent NLRC" or "NLRC" for brevity) in NLRC-NCR 00-01-00607-05 (CA NO. 048039-06). The Petition also questions public respondent NLRC's Resolution[3] dated May 31, 2007, which denied petitioner's eventual Motion for Reconsideration[4].

The antecedent facts are as follows:

Petitioner Josefa S. Danguilan ("petitioner" for brevity) was a Cashier[5] in the Cafe Plaza Restaurant[6] of private respondent Philippine Plaza Holdings, Inc. ("private respondent" for brevity).

The rest of the facts are those as stated in the Decision[7] of the Labor Arbiter dated December 29, 2005, which are as follows:

"xxx [Petitioner] reiterated her argument that the records are bereft of any clear of (sic) facts that constitute any such acts (serious misconduct, fraud gross dishonesty) attributable to her. In addition complainant (petitioner here) claims that there is no substantial evidence to support the conclusion that she took and misappropriated money intended for the Hotel. Finally, complainant (petitioner) claims that she was not confronted with the report of auditors.

The hotel in its reply pointed out as follows:

"The memorandum is very clear as to the particular act or omission of the complainant (petitioner). Complainant (petitioner) was made to explain why a Starwood Privilege Discount Card was applied on a transaction where the customers did not give such a card. The act resulted in the reduction of the amount settled and remitted to the hotel by PhP 805.74. In other words, instead of PhP 3,130.48 only PhP 2,324.60 went to the coffers of the Hotel xxx

xxx the Hotel has sufficient testimonial and documentary evidence, which included that of the complainant (petitioner) to support the termination of her employment on grounds of serious misconduct, commission of fraud, gross dishonesty and gross violation of the Hotel's Code of Conduct against acts of dishonesty

As may be culled from the testimonial and documentary evidence, which included the explanation of the complainant (petitioner) and her testimony during the administrative hearing the following facts are quite clear and undisputed, to wit:

- i) On 01 September 2004, an SGV Group of independent auditors availed of the services of Cafe Plaza
- ii) It was the complainant (petitioner), as cashier who settled the check in the amount of PhP 3,130.48 and

received payment of PhP 3,200 from the service attendant, Luzviminda Andal.

iii) The independent auditors did not give to the service attendant any Starwood Privilege Discount Card but such discount was illegally and improperly applied.

iv) Complainant (petitioner) was the cashier who settled the check but the change and the receipt given to customer (SGV auditors) was not based on the discounted receipt.

v) The service attendant Luzviminda Andal when asked by Ms[.] Verna Vidallon[,] the Hotel's Assistant Financial Controller, 'answered that she is sure that there was no discount card at that time.'

In complainant's (petitioner) rejoinder she denies being present in the administrative hearing involving Luzviminda Andal and claims that Ms. Andal and Ms. Episcope have filed similar illegal dismissal cases against the respondent hotel. Thus, complainant (petitioner) concludes that it is untenable to hold any unchallenged facts alluded thereto. xxx"[8] (Emphasis supplied)

On February 28, 2005, petitioner filed a Complaint[9] for "illegal dismissal and money claims for non-payment of salaries/wages, 13th month pay and service charge[,] [petitioner] also seeks assessment for moral and exemplary damages as well as attorney's fees"[10] against private respondent.

On December 29, 2005, the Labor Arbiter rendered a Decision[11] which dismissed petitioner's Complaint[12] for lack of merit[13].

Petitioner then filed an appeal[14] with public respondent NLRC. On February 14, 2007, public respondent NLRC issued its first assailed Resolution[15], which denied[16] the appeal for lack of merit.

After petitioner's Motion for Reconsideration[17] was denied by public respondent NLRC in its other assailed Resolution[18] dated May 31, 2007, petitioner filed the Petition at bench, praying as follows:

"WHEREFORE, it is most respectfully prayed to this Honorable Court the instant Petition be given due course and render following relief (sic);

1. Annulling the Resolutions promulgated on February 14, 2007 and May 31, 2007;
2. Ordering that the dismissal of the petitioner is illegal;
3. Ordering the private respondent to reinstate immediately the petitioner to her former position without loss of seniority and benefits; and
4. Ordering the private respondent to pay backwages, damages and attorney's fees.

Other relief and remedies are likewise prayed that are just and equitable in the premises."[19]

The Petitioner raised this sole ground:

"THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE APPEAL WHICH IN EFFECT UPHELD THE LEGALITY OF PETITIONER'S DISMISSAL FROM EMPLOYMENT."[20] (Capitalization was made in the original)

Contrary to petitioner's arguments in her sole assigned ground, petitioner was legally dismissed from employment.

Petitioner had argued as follows:

"The evidence relied upon by the public respondent in dismissing the appeal is the auditor's report and mere

assumption that the use of the Starwood Privelege (sic) Card has been established as against the factual version of the petitioner. It was held that the application of the discount in the settlement check was discovered because it was the SGV auditors who acted as customers. xxx

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But such findings are solely based on the report of the auditors whom the public respondent gave weight and credit against the assertions of the petitioner. As pointed out by the petitioner, the alleged SGV auditors were not presented for confrontation. The auditors' report does not have any signature to identify its author. It is part of due process in any investigation that petitioner must be give[n] the opportunity to confront the auditors. On the Receipt and Discount Slip, those showed positive evidence of the valid application of a discount. In the latter document (Discount Slip), it was shown that a discount card was presented by the guest and the slip was even signed by the guest whose signature appears above the date '9-01-04' and the receipt attached in the Show Cause Memo xxx likewise confirmed such fact. It is therefore untenable for the public respondent to conclude in the assailed Resolution that there was 'improper application of discount card[']'. Mere denial of the auditors, without corroborative evidence, documentary or testimonial, can not overcome the positive assertion of facts by the petitioner in her verified (under oath) Position Paper, Reply and Rejoinder.

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xxx It is submitted that said Show Cause Memo did not apprise her of the particular acts for which her dismissal is sought. Thus, the public respondent gravely abused its discretion to hold the dismissal 'legal' despite violation of procedural process.

In the case at bar, the petitioner has been serving the private respondent for twenty three (23) years with unblemished record, without previous derogatory record prior to her termination. The amount allegedly lost by the Hotel is mere P805.88 vis avis to her length of dedicated service. The severe penalty of dismissal given to the petitioner is too harsh despite those considerations, aside from lack of corroborative and substantial evidence to hold she was, indeed, guilty of 'Acts of Dishonesty', ['Misappropriation of Funds', ['Fraud', 'Gross Dishonesty', 'Serious Misconducts' and 'Loss of [T]rust and Confidence'.

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It is submitted that the evidence adduced by the private respondent in the case at bar, as shown in the records is unconvincing to support the termination of the petitioner. Any doubt should have been resolved in her favor."[21] (Emphasis Supplied)

Defeating petitioner's arguments however, is that private respondent had sufficiently proven that its termination of petitioner's employment was because of private respondent's loss of trust and confidence on petitioner, which loss of trust and confidence is a just cause for her dismissal[22].

As the records revealed, petitioner, as the cashier on duty[23] in private respondent's Cafe Plaza Restaurant[24] ("Restaurant" for brevity), had improperly applied a store discount in favor of a customer, which resulted to a "loss of income for the [Restaurant]"[25]. Such store discount in private respondent's Restaurant may only be given to a customer if the customer presents the "Starwood Discount Privilege Card" ("Discount Card" for brevity) to the service attendant or to the cashier.[26]

The reason for petitioner's act being improper is that when the Auditors from the Sycip, Gorres and Velayo Auditing Firm[27] ("SGV Auditors-Customers" for brevity), who "were hired by [private respondent] as professional shoppers to audit the various services of the hotel"[28], "posted and acted as customers"[29] of private respondent's Restaurant, petitioner, being the cashier who had "access to apply discounts and perform check settlement"[30], applied a store discount in favor of the SGV Auditors-Customers. Petitioner having

applied a store discount was reflected in the "settlement check number 567977"[31] ("subject transaction" for brevity) dated September 1, 2004. Such "settlement check" in turn, was "the document xxx retained by the [private respondent's Restaurant], which show[ed] the actual amount received by way of income of the [Restaurant] for the transaction." [32]

However, according to the SGV Auditors-Customers, "they did not present a Starwood [Discount] Privilege Card and the receipt given to them [did] not show the discount"[33]. All of these circumstances were as also found by the Labor Arbiter in his Decision[34] dated December 29, 2005, to wit:

"As may be culled from the documentary evidence and allegations on the pleadings on record, there is no dispute that there was an improper application of a discount using a Starwood Privelege (sic) Card on the transaction of SGV Auditors when they availed of the services of Cafe Plaza.

Was the application improper? Similarly, this question must be answered in the affirmative. It is not disputed [that] the settlement check number 567977 with a total bill of Three Thousand One Hundred Thirty Pesos and Forty-Eight Centavos (p3,130.48), shows that a Starwood Privilege Discount Card in the name of Arnold Andal was applied amounting to Eight Hundred Five Pesos and Eighty-eight Centavos (P808.88) (sic). The application of the discount reduced the amount settled and remitted to the Hotel to only Two Thousand Three Hundred Twenty Four Pesos and Sixty Centavos (P2,324.60). The auditors also stated that they did not present a Starwood Privilege Card and the receipt given to them does not show the discount.

The facts clearly show that only the complainant (petitioner), as cashier and the service attendant handled the transaction of the auditors. Complainant (petitioner) does not deny that she was the cashier who settled the check but denied that she applied any discount." [35] (Emphasis supplied)

Moreover, petitioner's improper application of a discount to the subject transaction could not have been committed by mere error or inadvertence. This, considering the fact that petitioner, as the cashier who handled the subject transaction, had known[36] that while the receipt which she had prepared and issued to the SGV Auditors-Customers reflected an amount of Three Thousand One Hundred Thirty Pesos and Forty-Eight Centavos (PhP3,130.48)[37], the "settlement check" which petitioner had also prepared for the same transaction only reflected an amount of Two Thousand Three Hundred Twenty-Four Pesos and Sixty Centavos (PhP2,324.60)[38].

Thus, petitioner's improper application of the store discount, by generating two different amounts for a singular customer transaction, which difference in the two amounts represented loss of income for private respondent, was sufficient basis for private respondent's loss of trust and confidence on petitioner. This, also considering that petitioner, as a Cashier[39] in private respondent's Restaurant, held "a position of responsibility, trust and confidence xxx such as the custody, handling, care, and protection of the employer's property and/or funds"[40].

All of these matters were as also found by public respondent NLRC in its Resolution[41] dated February 14, 2007, as follows:

"Finally, it was established and admitted by the appellant that she was the cashier who handled the transaction. The Labor Arbiter was correct in concluding that as a cashier who handled the transaction she cannot by mere denial evade responsibility imposed upon her to protect the interest of the Hotel. The mere denial of the complainant that she did not apply the discount cannot surmount the evidence extant that she was the cashier who handled the transaction and generated the receipt and the settlement check, the former bearing actual sales made and the latter bearing the discount. As the cashier who handled the transaction she could not have known that the receipt and the settlement check bore different amounts and the difference in the two amounts represents loss of income for the Hotel." [42] (Emphasis supplied)

Consequently, petitioner's acts amounted to a willful breach of the trust reposed in her by private respondent, and rendered petitioner unfit to continue working for private respondent[43].

Given that private respondents had sufficiently discharged its "burden of establishing facts as bases for an employer's loss of confidence in an employee"[44], then, private respondent's dismissal of petitioner from employment was legal. That this is the consequence is pursuant to the following pronouncement of the Supreme Court in *Philippine Plaza Holdings, Inc. vs. Ma. Flora M. Episcope*, G.R. No. 192826, February 27, 2013:

"On this point, the Court, in the case of *Bristol Myers Squibb (Phils.), Inc. v. Baban*, citing *Atlas Fertilizer Corporation v. National Labor Relations Commission*, ruled as follows:

As a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. 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, a labor tribunal cannot deny the employer the authority to dismiss him.

In addition, it must be observed that only substantial evidence is required in order to support a finding that an employer's trust and confidence accorded to its employee had been breached. xxx

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In the present case, records would show that Episcope committed acts of dishonesty which resulted to monetary loss on the part of PPHI and more significantly, led to the latter's loss of trust and confidence in her. Notwithstanding the impaired probative value of the unaudited and unsigned auditor's report, the totality of circumstances supports the foregoing findings:

First, it remains unrefuted that Episcope attended to the auditors when they dined at the Café Plaza on the date and time in question. In fact, Episcope herself admitted that she tendered Check No. 565938 bearing the amount of P2,306.65 and received the amount of P2,400.00 as payment;

Second, it is like wise undisputed that the check receipt on file with the Hotel for the same transaction reflected only the amount of P1,400.20 in view of the application of a certain Starwood Privilege Discount Card registered in the name of one Peter Pamintuan, while the receipt given to the auditors bore the undiscounted amount of P2,306.65 which thus, resulted to a P906.45 discrepancy. During the proceedings, both receipts were actually presented in evidence yet, Episcope never interposed any objection on the authenticity of the same; and

Third, when asked to explain the said discrepancy, Episcope merely imputed culpability on the part of the cashier, whom she claimed prepared all the receipts that were returned to the guests.

From the foregoing incidents, it is clear that Episcope was remiss in her duty to carefully account for the money she received from the café's guests. xxx Irrefragably, as an employee who was routinely charged with the care and custody of her employer's money, Episcope was expected to have been more circumspect in the performance of her duties as a service attendant. This she failed to observe in the case at bar which thus, justifies PPHI's loss of trust and confidence in her as well as her consequent dismissal." (Emphasis supplied)

Furthermore, contrary to petitioner's arguments, petitioner was accorded due process of law.

Private respondent had issued a "Show Cause Memo"[45] dated September 30, 2004 which directed petitioner to "explain in writing" the "questionable and invalid application of discounts as to be caused by [petitioner]"[46]. Petitioner then wrote a reply letter[47] dated October 1, 2004 to this "Show Cause Memo"[48]. Afterwards, private respondent issued another "Memo"[49] which "directed [petitioner] to attend the first administrative hearing xxx regarding the case wherein [petitioner] shall be given the opportunity to further explain [her] side on the matter". An Administrative Hearing[50] dated October 8, 2004 was then held between private respondent's

management and petitioner. Only after proper notice and hearing were afforded petitioner did private respondent issue the termination letter[51] dated November 4, 2004 to petitioner.

No cogent reason was therefore shown to justify deviation from the following findings of public respondent NLRC, which were pursuant to the facts and the law:

"We agree with the conclusion of the Labor Arbiter that the application of the discount was improper. The auditors who posed as customers confirmed that they did not present a discount card[,] but a discount has been applied. The receipt confirms that a discount card has not been presented because it bears the real amount of the transaction. While the settlement check confirms that a discount has been applied. Thus, contrary to the assertion of the appellant in her appeal, the receipt does not show the application of the discount. The discount was only reflected in the settlement check[.]

The respondent Hotel need not prove that the appellant pocketed the difference in the amounts of the receipt and the settlement check. It is sufficient that it was able to establish that a discount was improperly applied and that the discount did not go to the coffers of the Hotel."[52]

Indeed, the rule is settled that the findings of the Labor Arbiter, when affirmed by the NLRC, are accorded due respect and finality, and are binding upon the court[53] especially when supported by substantial evidence, as in this case.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, public respondent NLRC was therefore shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[54]

IN VIEW OF ALL THESE, the Petition is DENIED.

SO ORDERED.

Didican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 2-11.

[2] Rollo, pp. 13-17, "Resolution" penned by Commissioner Raul T. Aquino.

[3] Rollo, pp. 18-20.

[4] Rollo, pp. 94-97.

[5] Rollo, p. 72

[6] Rollo, p. 68

[7] Rollo, pp. 68-72, "Decision" penned by Labor Arbiter Aliman D. Mangandog.

[8] Rollo, pp. 69-70

[9] Rollo, p. 21

[10] Rollo, p. 68

[11] Rollo, pp. 68-72, "Decision" penned by Labor Arbiter Aliman D. Mangandog.

[12] Rollo, p. 21

- [13] Rollo, p. 72
- [14] Rollo, pp. 80-86
- [15] Rollo, pp. 13-17
- [16] Rollo, p. 16
- [17] Rollo, pp. 94-97
- [18] Rollo, pp. 18-20
- [19] Rollo, p. 9
- [20] Rollo, p. 6
- [21] Rollo, pp. 6-8
- [22] Philippine Plaza Holdings, Inc. vs. Ma. Flora M. Episcopo, G.R. No. 192826, February 27, 2013
- [23] Rollo, p. 49
- [24] Rollo, p. 68
- [25] Rollo, p. 16
- [26] Rollo, pp. 49-50
- [27] Rollo, p. 15
- [28] Rollo, 15
- [29] Rollo, p. 131
- [30] Rollo, p. 32
- [31] Rollo, p. 27
- [32] Rollo, p. 14
- [33] Rollo, p. 133
- [34] Rollo, pp. 68-72, "Decision" penned by Labor Arbiter Aliman D. Mangandog.
- [35] Rollo, pp. 71-72
- [36] Vicente Villanueva, Jr. vs. The National Labor Relations Commission Third Division, Manila Electric Company, Manuel Lopez, Chairman and CEO, and Francisco Collantes, Manager, G.R. No. 176893, June 13, 2012
- [37] Rollo, p. 26
- [38] Rollo, p. 27
- [39] Rollo, p. 72
- [40] Rolando P. Ancheta vs. Destiny Financial Plans, Inc. and Arsenio Bartolome, G.R. No. 179702, February 16, 2010
- [41] Rollo, pp. 13-17, "Resolution" penned by Commissioner Raul T. Aquino.

[42] Rollo, p. 16

[43] Rolando P. Ancheta vs. Destiny Financial Plans, Inc. and Arsenio Bartolome, G.R. No. 179702, February 16, 2010

[44] James Ben L. Jerusalem vs. Keppel Monte Bank, Hoe Eng Hock, Sunny Yap and Josefina Picart, G.R. No. 169564, April 06, 2011

[45] Rollo, p. 26

[46] Rollo, p. 26

[47] Rollo, pp. 28-29

[48] Rollo, p. 26

[49] Rollo, p. 30

[50] Rollo, pp. 49-50

[51] Rollo, pp. 31-33

[52] Rollo, pp. 15-16

[53] Letran Calamba Faculty and Employees Association vs. National Labor Relations Commission and Commission and Colegio De San Juan De Letran Calamba, Inc., G.R. No. 156225, January 29, 2008

[54] First Women's Credit Corporation, et al. vs. Glicerio Perez, et al., G.R. No. 169026, June 15, 2006.

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