

**ELVIRA C. GONZALES, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, AMERICAN MICRO-SYSTEMS, INC.,
(AMI-PHILIPPINES, INC.) RANDALL L. COOK, ET AL., RESPONDENTS.**

G.R. No. 115944. June 09, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for certiorari assailing the decision of the NLRC finding the dismissal of petition to be valid for allegedly breaching the trust and confidence reposed on her. The antecedent facts are as follows:

Petitioner Elvira C. Gonzales started to work as a Supervisor with private respondent American Microsystems, Inc. (AMI-PHIL.), entity engaged in the business of Micro-chips, since January 29, 1981.

Sometime in 1990, petitioner was sent to Japan to train on TAB inspection for a period of three months. After which, petitioner was made to train the Philippine operators at AMI-PHIL. She was then in charge of the TAB Inspection at AMI-PHIL.

In October, 1991, Mssrs. Nakayama and Nakamura visited AMI-PHIL. to recruit workers with TAB Inspection training to work in NIKON TAB (NTI) Japan for six months. Ten AMI-PHIL. employees were selected to be sent to Japan to work under the guise of trainees.

In November, 1991, petitioner signed a contract for TAB Inspection Training in Japan pursuant to an agreement between AMI-PHIL and NIKON TAB (NIT) of Japan.

Petitioner acted as group leader with four trainees under her supervision.

The contract stipulated that petitioner was to receive \$29.60 a day as training allowance or \$900 a month. She however alleges that she was promised to receive \$1,500 a month allowance.

While in Japan and actually working, petitioner complained and requested the additional \$600 a month as promised.

NTI of Japan thru Ms. Ebi Hara gave her the Yen equivalent of US\$300 additional allowance. Petitioner was told to accept it instead of the additional \$600 because the amount came from Japan and that she was the only one entitled to it. On December 25, 1991, considering that it was Christmas, petitioner treated the group. Thereafter, petitioner received the amount of \$300 equivalent in Japanese yen every month. Sometime in May, 1992, Mr. Mike Orleans, the company's production manager received reports from Japan that this monthly allowance did not reach the trainees.

On June 2, 1992 or after five months of training in Japan, AMI-PHIL. required petitioner to explain within eight (8) hours her alleged misappropriation of \$1,500 (\$300 x 5 months) given by NTI Japan.

On June 4, 1992, petitioner answered AMI-PHIL. She admitted that she received the \$300 monthly allowance but explained that it was a bonus and additional benefit for her given by the company (NTI of Japan) as per her

request for being the leader of the group.

On June 10, 1992, AMI-PHIL. terminated petitioner's services on the ground of violation of company rules and regulations specifically "defrauding or attempting to defraud in any manner the company of its funds or property."

Consequently, petitioner filed a complaint for illegal dismissal against AMI-PHIL.

On November 29, 1993, the Labor Arbiter in his decision ruled in favor of the petitioner, the dispositive portion thereof reading as follows:

WHEREFORE, premises considered, respondents are hereby ordered to reinstate complainant to her former position without loss of seniority rights and privileges and to pay backwages from the time of dismissal up to the date of this decision in the amount of Two Hundred Forty Six Thousand Eight Hundred Six Pesos and 77/100 (P246,806.77).

Respondents are hereby assessed 10% of the total monetary award as attorney's fees.

The counter-claims are hereby ordered dismissed.

SO ORDERED.[1]

On appeal to the NLRC by AMI-PHIL., the decision of the Labor Arbiter was reversed and set aside.

The NLRC found that petitioner was guilty of acts of dishonesty and misappropriation of company's funds which constituted a breach of trust and confidence reposed on employees occupying a supervisory position.

Hence, this petition.

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must however have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be some basis for such loss of confidence or that there is reasonable ground to believe if not to entertain the moral conviction that the concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.[2] To be a valid ground for dismissal, such loss of trust and confidence must be based on a wilful breach of trust.[3]

In the instant case, the basis for the loss of trust and confidence is quite unclear as to warrant the penalty of dismissal.

Petitioner understood that the amount of \$300 was for herself. She was promised to be paid \$1,500 a month instead of the \$900 in the agreement. Upon arrival in Japan, she was given \$300 and was told to accept it. She was nonetheless entitled to it being the leader of the group of trainees.

On the other hand, private respondents claim that petitioner requested an allowance for the whole group because in her previous trip, "she had to spend her own personal money from time to time to entertain the trainees under her who had become homesick." [4] The amount was intended for the whole group and not to petitioner alone.

Clearly, therefore, there is a divergence of opinions as to the use of the \$300 allowance.

Petitioner understood that the amount of \$300 a month was for her alone. Her letter-memorandum dated June 4, 1992 sufficiently explains her good faith in believing that she was entitled to it, which we find acceptable:

In due respect to all of you who made my 11 1/2 years stay in AMI-P fruitful, I would like to explain my side regarding the memo issued to me.

First of all, I want you to know that I have no intention of keeping this voluntary allowance for myself only.

This is not included in the contract but I personally request this amount to you with the approval of NMC. The reason for my request before I leave for Japan was that, I expect that my monthly allowance to be given for training is \$1500 as previously agreed during our first meeting with Sir Robert on TAB training for Japan. The actual amount I've been receiving is only \$900 and this was only discussed to me upon signing the contract. I asked for additional amount for myself being a leader of the group because of the big responsibility I have to handle while we were staying in Japan. So, we agreed the \$300 additional allowance. I did not discussed (sic) this to the other member because it was still under negotiation until we arrived at NTI-Japan. I even talked to Mr. Satomi (Plant Mgr.) if my request was granted but he mentioned that this was not described on the contract and advised me to wait a little longer until he can discuss this matter with Sir Randy Cook. I was surprised when it was approved one week before the end of our 1st month stay in Japan. There was no formal arrangement done and it was not clear to me that I have to spent (sic) all this amount for the group. I agreed that it is my responsibility in Japan to take out and treat or represent my 4 members to relieve them from boredom and homesickness for the duration of our stay in Japan by the use of this given amount. I made everything for them and made them all happy. We shared each other and I even work more than my inspectors and at the same time supervising them in all the best I can to show them that we're helping each other.

I admit that I saved the rest of the amount not consumed for the group because I thought that it was a bonus and additional benefit for me given by the company as per my request of being a leader of the group. I worked and strive hard for the company and we're making a very good performance on TAB inspection. We even requested to extend with my other members and the truth we're all excited and happy for that extension. Aside from this additional welfare allowance, we're also given individual bonuses everytime we are to render overtime.

In fairness to everybody, although I can't accept the fact that it was a violation to the company, I am willing to pay and return the money (unconsumed) to the company. I'm sorry if I made a wrong assumption.

Respectfully yours,

(Sgd.) E. Gonzales[5]

There was no clear-cut instruction that the \$300 monthly allowance was for the whole group. The contract did not contain any provision to that effect. Neither was there a showing of a company policy or practice giving extra money to the head of the team for the benefit of the entire group. The grant of monthly allowance came about only after petitioner realized such need during her second trip to Japan. The idea that the grant of the monthly allowance was for the group was brought to the attention of petitioner for the first time only after her stint in Japan. Elizabeth Catindig who was petitioner's successor stated that before they left for Japan, Mr. Orleans informed them about the monthly allowance supposedly enjoyed by and intended for the whole group. So when she took over leadership of the group after petitioner had left, they received the allowance and spent it for the whole group.[6]

We agree with the Labor Arbiter that the penalty of dismissal is very harsh under the circumstances and not commensurate to the alleged wrong doing, especially considering that it was not clearly shown that petitioner had acted in bad faith and with malice.

If at all that petitioner offered to return the money, this could not, contrary to public respondent's contention, mean an admission of guilt. This could emphasize and buttress her protestation of her good faith in believing that the money was intended for herself alone and if she only knew from the beginning that the allowance was not for her alone but for the whole group, she would not have kept it. Considering petitioner's eleven years of service with the company, we can hardly deem such infraction as an act of defrauding the company. We find no basis for petitioner's dismissal.

WHEREFORE, the petition is GRANTED. The assailed decision of the NLRC is REVERSED and the decision of the Labor Arbiter is REINSTATED.

SO ORDERED.

Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

Padilla, J., (Chairman), On Leave

[1] Rollo, p. 47.

[2] Pepsi Co. v. NLRC, 210 SCRA 277 (1992).

[3] PCIB v. NLRC, 247 SCRA 614 (1995).

[4] Rollo, p. 33.

[5] Rollo, p. 114.

[6] Id., at 44.

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