CONCORDE HOTEL, REPRESENTED BY MICHAEL ONG SIY, GENERAL MANAGER, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, AND ROBERTO PARADO, RESP...

G.R. No. 144089. August 09, 2001

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-144089/

KAPUNAN, J.:

This is an appeal,[1] with prayer for a writ of preliminary injunction and temporary restraining order, from the decision of the Court of Appeals[2] dated June 22, 2000 in C.A. G.R. SP. No. 57130 which affirmed the findings of the National Labor Relations Commission[3] that the dismissal of herein respondent Roberto Parado was without just cause.

The facts from which the present petition proceeds are as follows:

Petitioner Concorde Hotel is engaged in the business of a hotel service at the Europa Center, Legarda Road, Baguio City. Before opening its business to the public, petitioner engaged in a mass hiring of personnel through the Highlanders Management Services, a manpower service agency, to fill up positions in the hotel. Those recruited were subjected to a ten-day training and screening period. One of those recruited is herein private respondent Roberto Parado who applied and was hired by the hotel as assistant cook.

Sometime in January 1997, petitioner discovered that some of its stocks and merchandise were missing and unaccounted for in the inventory reports. When the hotel management conducted an inquiry among the employees, it found out that some of its employees, singly or in conspiracy with each other, had been bringing home canned goods, meat and poultry, plates, glasses, spoons and other utensils, including cloth napkins.

An in-house investigation was thereafter initiated by the management. Those departments whose stock inventories included items unaccounted for were asked to explain such irregularity. The identities of those who were allegedly involved in the pilferage were gathered from the employees. The Highlanders Agency was furnished a list of the employees allegedly involved in the incident. Those who were named in the list were called and asked to explain in writing on the same day. When nobody submitted the required written explanation, petitioner and Highlanders Agency issued separate notices of termination to the said employees.

Petitioner reported the incident to the Baguio City police on January 22, 1997 and the same was entered in the police blotter. Fifteen (15) names were initially listed as suspects in the theft incident. However, eight more names were added to the list. These names were allegedly furnished by other employees who were bothered by their conscience and decided to reveal the identities of the other employees involved in the pilferage. Private respondent was one of these additional suspects. Thereafter, he was terminated from employment.

On February 12, 1997, private respondent filed a complaint for illegal dismissal, non-payment of wages, overtime pay, premium pay for rest day and night shift and 13th month pay, backwages, separation pay, service charges,

damages and indemnity for non-observance of due process with the Labor Arbiter against petitioner, Milagros Ong Siy and Michael Ong Siy, doing business under the name and style Concorde Hotel.[4]

Private respondent alleged that on January 23, 1997, Michael Ong Siy, General Manager of Concorde Hotel, talked to him and tried to convince him to stand as witness against his co-employees suspected of having participated in the pilferage and whose services were terminated by the hotel. When he refused, he received a memorandum informing him that he was dismissed effective on that same day (January 23, 1997), for his alleged offenses in violation of the Hotel's Rules and Regulations, namely: (1) dishonesty (allowing food to be taken out of the kitchen without Order Slip); (2) rumor mongering/intriguing against the honor of co-employees; and (3) fraud or willful breach of trust and confidence.[5] Respondent claimed that these charges had no basis as he was in fact one of the two employees who complained to the police authorities that certain employees threatened them with harm at the time the incident of pilferage was discovered. He also received a memo from Highlanders Management Services dated January 22, 1997, informing him that his employment was terminated "for failure to satisfactorily meet the minimum of the Company's standards for its employees."[6]

Petitioner, on the other hand, maintained that after it reported the incident to the police, several employees, allegedly bothered by their conscience, approached management and named eight (8) more employees as among those who participated in the hotel theft. Private respondent was among those who were additionally named. When the management confronted him, he denied the accusations and even got angry with those who pinpointed him. The following day, January 23, 1997, the additional list of suspects was submitted by petitioner to the police authorities, which was noted in the police blotter as an addendum to the initial complaint lodged by petitioner. Private respondent was required to submit a written explanation on the same day and when he failed to do so, petitioner terminated private respondent's employment on the ground of violation of hotel rules and regulations.

On July 29, 1998, Labor Arbiter Jesselito Latoja dismissed the complaint for lack of merit. Private respondent, thus, appealed to the National Labor Relations Commission (NLRC). On October 19, 1999, the NLRC reversed the decision of the Labor Arbiter and found private respondent's dismissal from employment to be without cause. The dispositive portion of the NLRC's decision reads:

> WHEREFORE, premises considered, Complainant's appeal is GRANTED. The Executive Labor Arbiter's July 29, 1998 decision on the above-entitled case is REVERSED and SET ASIDE. This Office finds Respondents to have illegally dismissed Complainant from his employment.
>
> Respondents Michael Ong-Siy and Concorde Hotel, Inc. are ordered to solidarily pay Complainant the following:
>
> 1. Backwages .....P 158,100.00
> 2. Separation Pay..... 14,025.00
> 3. 10% Attorney's Fees..... 17,212.50
> TOTAL.....P 189,337.50
>
> SO ORDERED.[7]

Petitioner sought a reconsideration of the aforementioned decision but the same was denied on January 11, 2000 prompting petitioner to file a petition before the Court of Appeals. On June 22, 2000, the Court of Appeals affirmed the Commission's findings. The motion for reconsideration of this decision was, likewise, denied. Hence, this petition assigning the following issues:

> THE COURT OF APPEALS xxx ERRED IN AFFIRMING THE DECISION OF THE xxx NATIONAL LABOR RELATIONS COMMISSION, THE LATTER HAVING SET ASIDE THE DECISION OF THE EXECUTIVE LABOR ARBITER xxx BASED PRIMARILY ON THE ALLEGED FACT THAT SINCE NO

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> CRIMINAL CHARGES WERE FILED AGAINST THE PRIVATE RESPONDENT, THERE WAS NO JUST CAUSE IN THE TERMINATION OF HIS SERVICES;
>
> THE xxx COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO APPRECIATE THE FACT THAT IT WAS NOT THE HEREIN PETITIONER WHICH TERMINATED THE SERVICES OF THE PRIVATE RESPONDENT BUT IT WAS ANOTHER ENTITY;
>
> THE xxx COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DID NOT DISMISS THE CASE AS AGAINST MILAGROS ONG SIY, WHO WAS NOT A PARTY IN INTEREST IN THE CASE;
>
> THE xxx COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DENIED HEREIN PETITIONER'S MOTION FOR RECONSIDERATION POINTING OUT THE FOREGOING FACTS.[8]

Petitioner alleges that the Court of Appeals erred in affirming the finding of the NLRC that there was no just cause in the termination of private respondent's employment; that the basis for private respondent's dismissal was loss of trust and confidence, sanctioned by Art. 282 of the Labor Code, because he allowed food to be taken out of the kitchen without any order slip; that the fact that no criminal charges were filed against private respondent does not detract from the validity of his dismissal because proof beyond reasonable doubt is not required when the basis for an employee's termination is loss of trust and confidence; that, contrary to the findings of the Court of Appeals, private respondent was accorded due process as an in-house investigation was conducted prior to the termination; that private respondent was given the opportunity to present his side when he was required to submit a written explanation as to his participation or non-participation in the pilferage but he failed to comply therewith prompting management to terminate his services; that, assuming for the sake of argument that private respondent was not duly notified prior to his termination, such lack of notice does not make the dismissal illegal per se; and finally, that it was not the one which terminated the services of private respondent but Highlanders Agency.

We deny the petition for lack of merit.

The Court has repeatedly ruled that for an employee's dismissal to be valid, two requirements must be met: first, the employee must be afforded due process, i.e., he must be given an opportunity to be heard and to defend himself, and second, the dismissal must be for a valid cause.[9] The burden of proving that the dismissal of the employee was for a valid and authorized cause rests on the employer and the employer's failure to discharge such burden would mean that the dismissal was not justified and therefore illegal.[10]

Under Article 282 of the Labor Code, an employer may terminate the services of an employee for loss of trust and confidence:

> Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:
>
> xxx
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> xxx

The Court, however, is cognizant of the fact that in numerous dismissal cases, loss of trust and confidence has been indiscriminately used by employers to justify almost every instance of termination and as a defense against claims of arbitrary dismissal. In the case of General Bank and Trust Company vs. Court of Appeals,[11] the Court

came up with the following guidelines for the application of the doctrine of loss of confidence:

(1) loss of confidence which should not be simulated;

(b) it should not be used as a subterfuge for causes which are improper, illegal or unjustified;

(c) it should 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 earlier action taken in bad faith.

Hence, while an employer is at liberty to dismiss an employee for loss of trust and confidence, he cannot use the same to feign what would otherwise be an illegal dismissal.

Loss of confidence applies only to cases involving employees who occupy positions of trust and confidence, or to those situations where the employee is routinely charged with the care and custody of the employer's money or property.[12] It must be shown, or the employer must have reasonable ground to believe, if not entertain, the moral conviction that the employee concerned is responsible for the misconduct or infraction and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.[13] To be a valid ground for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established or proven facts.[14]

Petitioner is correct insofar as it considered the nature of private respondent's position as assistant cook as a position of trust and confidence. As assistant cook, private respondent is charged with the care of food preparation in the hotel's coffee shop. He is also responsible for the custody of food supplies and must see to it that there is sufficient stock in the hotel kitchen. He should not permit food or other materials to be taken out from the kitchen without the necessary order slip or authorization as these are properties of the hotel. Thus, the nature of private respondent's position as assistant cook places upon him the duty of care and custody of Concorde's property.

However, we uphold the findings of the Court of Appeals that petitioner Concorde Hotel failed to sufficiently establish the charge against private respondent which was the basis for its loss of trust and confidence that warranted his dismissal.

When petitioner learned of the missing stocks and the items unaccounted for in the inventories, it allegedly conducted an in-house investigation. Petitioner claims that the result of the investigation pointed to private respondent as one of the perpetrators of the pilferage. This was allegedly gathered from the other employees who voluntarily gave such information to the management because they were bothered by their conscience. However, there is no evidence on record to substantiate this charge allegedly made by private respondent's co-employees. Petitioner failed to present any written statement or the affidavits of such employees on the specific acts of pilferage committed by private respondent or the facts or circumstances describing his involvement therein.

The records are also bereft of any evidence showing that petitioner conducted any further investigation or that it verified the allegations by the other employees. While it is true that petitioner had the incident entered in the police blotter, the initial list of suspects did not include private respondent. His name was only added after management failed to persuade him to testify against his co-employees. Moreover, no criminal charge was ever filed by the petitioner against private respondent. While the filing of a criminal charge for an employee's alleged misconduct is not a prerequisite to his dismissal, and proof beyond reasonable doubt is not necessary to justify such dismissal, still the basis thereof must be clearly and convincingly established.[15] In this case, the facts regarding private respondent's actual participation in the acts of pilferage were not clearly established by Concorde. What the Court of Appeals correctly found as established in the records is the fact that private respondent was the one who complained to the police authorities after he was threatened with harm by certain employees at the time the incident of theft was discovered.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

It is also significant to note that in the memorandum of termination sent by petitioner to private respondent, aside from breach of trust and confidence, the other grounds for private respondent's dismissal were dishonesty and rumor mongering. Again, there is no evidence establishing the basis for these grounds. The specific acts which constitute these grounds were not even alleged by petitioner. In the termination letter sent by Highlanders Agency to private respondent, it was merely stated that the reason for his termination was failure to satisfactorily meet the minimum of the company's standards for its employees. This inconsistency in the charges made by petitioner and the agency against private respondent also militate against the validity of the latter's dismissal.

Finally, petitioner dismissed private respondent without according him due process. Before an employer can legally effect a dismissal, the employee sought to be dismissed must be furnished two written notices - the first is a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; the second, is a subsequent notice which informs the employee of the employer's decision to dismiss him. These requirements are mandatory, non-ompliance with which renders any judgment reached by management void and inexistent.[16]

Procedural due process requires that an employee be apprised of the charge against him, given reasonable time to answer the same, allowed ample opportunity to be heard and defend himself, and assisted by a representative if the employee so desires.[17] In this case, there is no evidence on record that prior to his termination, private respondent was duly served a notice apprising him of the specific acts imputed to him. The charge against private respondent was allegedly based on evidence furnished by his co-employees regarding his participation in the pilferage of company stocks. However, these charges were never reduced into writing and sent to private respondent. Moreover, he was not given any opportunity to confront these employees in order to rebut their accusations or to present his version of the incident. Private respondent only found out that he was being accused of theft when the hotel management confronted him about it on January 23, 1997. On the same day, he was required by petitioner to submit his written explanation on the matter and when he failed to do so, he was served a notice of termination. The termination notice served to private respondent by the agency was dated January 22, 1997, which was a day prior to his actual confrontation by the hotel management.

We affirm the Court of Appeals' finding that there was no legal justification for herein private respondent's dismissal. As to petitioner's claim that it was not the one who terminated private respondent from employment but the manpower agency, suffice it to say, that the evidence on record belies petitioner's claim. As borne by the records, petitioner, through its General Manager Michael Siy, sent a notice of termination to respondent Parado on January 23, 1997.

However, Mrs. Milagros Ong Siy cannot be held jointly and severally liable for the obligations of the petitioner for private respondent's failure to establish that she is a stockholder or an officer of Concorde Hotel, Inc.

WHEREFORE, the instant petition is hereby DISMISSED. The decision of the Court of Appeals, dated June 22, 2000 in C.A. G.R. SP No. 57130, is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

---

[1] The petition was originally filed as a special civil action for certiorari, prohibition and mandamus; however, in view of Rule 45 of the Rules of Court governing appeals from the Court of Appeals to the Supreme Court and this Court's ruling in St. Martin's Funeral Homes vs. NLRC (295 SCRA 494 [1998]), and considering the fact that the same was filed within the extended period for filing, the Court treated the petition as a petition for review on

certiorari.

[2] First Division.

[3] Second Division in NLRC NCR CA No. 016412-98 reversing the findings of the Executive Labor Arbiter in NLRC RAB-CAR-02-0069-97 which dismissed the complaint for illegal dismissal.

[4] Rollo, p. 54.

[5] Id., at 51.

[6] Id., at 50.

[7] Id., at 78.

[8] Id., at 10.

[9] Arboleda vs. NLRC, 303 SCRA 38 (1999).

[10] Azcor Manufacturing, Inc. vs. NLRC, 303 SCRA 26 (1999).

[11] 135 SCRA 569 (1985).

[12] Mabeza vs. NLRC, 271 SCRA 670 (1997).

[13] Pioneer Texturizing Corp. vs. NLRC, 280 SCRA 806 (1997); Canete, Jr. vs. NLRC, 315 SCRA 660 (1999).

[14] Manuel vs. NC Construction Supply, 282 SCRA 326 (1997); Gonzales vs. NLRC, 273 SCRA 125 (1997); Surigao del Norte Electric Cooperative vs. NLRC, 309 SCRA 233 (1999).

[15] Jardine Davies, Inc. vs. NLRC, 311 SCRA 289 (1999).

[16] Brahm Industries, Inc. vs. NLRC, 280 SCRA 828. (1997).

[17] Waterous Drug, Corp. vs. NLRC, 280 SCRA 735 (1997).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.