FELIX M. CRUZ, JR., PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION AND CITYTRUST BANKING CORPORATION,

G.R. NO. 148544. July 12, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a special civil action for certiorari under Rule 65 of the Rules of Court seeking to annul the April 27, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 52373 which affirmed the January 27, 1998 Decision of the National Labor Relations Commission (NLRC) and its Resolution, dated May 14, 1998 in NLRC NCR CA 011087-96 (NLRC NCR 00-10-06448-93-A).

The factual and procedural antecedents of the case, as summarized by the CA, are as follows:

> Cruz [herein petitioner Felix M. Cruz, Jr.] was an employee of private respondent Citytrust Banking Corporation (or Citytrust) from October 8, 1979. He held the confidential position of Micro Technical Support Officer, with the following duties and responsibilities: (a) Evaluate and recommend from various departments/units request for Micro Computers received by the Bidding Committee. (b) Further evaluate and accept the bids submitted including recommendation therof, which were done by the Technical Committee of the Bank (Petitioner's Affidavit, p. 102, rollo). The good performance of Cruz did not remain unnoticed for on several occasions he was recognized with awards and citations, given salary increases (Exhs, "A to H", "J-K", pp. 45-50, 52-53, rollo) and promoted to Authorized Signer on May 1, 1991. (Exh. "I", p. 51, rollo).
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> But after all his years of reputed fealty and good service with the company, something unexpected and besmirching was uncovered. There were feedbacks and informations that certain irregularities were being committed in the bidding process and purchase of computers, an area within the powers and responsibilities of Cruz. To clarify matters, a special investigation was conducted by the Citytrust Internal Audit Group and it was found out that indeed there were unauthorized and unreported commissions and rebates given out by one of its computer suppliers, MECO Enterprises, Inc. (MECO), for purchases made by Citytrust. This was corroborated by the letter dated August 5, 1992 (Exh. "1", p. 148, rollo) of the President and Controller [sic] of MECO certifying that Cruz has received commissions and rebates amounting to P105,192.00 just for the period of September 1992 to March 1993.
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> With this damaging result of the investigation, Citytrust sent a show-cause memorandum (Exh. "13", p. 161, rollo) to Cruz on August 6, 1993 placing him under a 30-day preventive suspension and directing him to appear in an administrative hearing by the Ad Hoc Committee. Cruz submitted the said memorandum, the Ad Hoc Committee heard the matter, and found Cruz guilty of fraud, serious misconduct, gross dishonesty and serious violation of Bank policies, regulations and procedure. For the resultant loss of confidence, Citytrust terminated Cruz from employment effective October 6, 1993 (Exh "15", pp. 164-165, rollo).
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> Aggrieved by this, Cruz filed before the Labor Arbiter an action for Illegal Dismissal and Damages claiming that Citytrust denied him due process and hastily dismissed him from service. After the submission of position papers and presentation of witnesses, the Labor Arbiter rendered decision in favor of Cruz disposing that:

> "WHEREFORE, premises considered, judgment is hereby rendered, ordering respondent to reinstate complainant to his former position without loss of seniority rights with full backwages which up to the promulgation of this Decision amounted to THREE HUNDRED EIGHTY SEVEN THOUSAND SEVEN HUNDRED NINETY (P387,790.00) Pesos, subject to adjustment upon actual reinstatement; to pay complainant his 13th month pay in the sum of THIRTY TWO THOUSAND THREE HUNDRED FIFTEEN & 83/100 (P32,315.83) Pesos; and to pay the sum of FIFTY THOUSAND (P50,000.00) Pesos as and for damages, plus attorney's fees in the sum of FORTY SEVEN THOUSAND TEN & 58/100 (P47,010.58) Pesos representing ten percent (10%) of the monetary award due complainant, subject also to adjustment.
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> SO ORDERED." (p. 26, rollo)
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> From this decision Citytrust appealed to the NLRC, which through its Second Division rendered the Decision dated January 27, 1998 wherein the ruling of the Labor Arbiter was set aside and went on dismissing the case for lack of merit. (p. 37, rollo).
>
> Cruz filed a motion for its reconsideration but this was denied for lack of merit....[2]

Cruz then filed a petition for certiorari with this Court. In a Resolution dated February 15, 1999,[3] the Court referred the petition to the CA for appropriate action and disposition, pursuant to the ruling in the case of St. Martin Funeral Homes v. National Labor Relations Commission.[4]

On April 27, 2001, the CA rendered the presently assailed Decision denying due course to and dismissing the petition. Sustaining the NLRC, the CA held that while it is true that the signature of petitioner does not appear in the check vouchers, other pieces of evidence prove that he benefited from the proceeds of the checks issued; that there is substantial evidence to hold petitioner liable for soliciting and receiving monetary considerations from a supplier; that his act constituted a willful breach of his employer's trust and confidence which justifies his termination from employment; that petitioner's dismissal from employment was the result of a thorough investigation and hearing where he was given the opportunity to explain his side.

Instead of a motion for reconsideration, petitioner filed the present petition for certiorari predicated on the following grounds:

> THAT PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ABUSE(D) ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF JURISDICTION IN SETTING ASIDE THE DECISION OF THE LABOR ARBITER A QUO
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> THAT HONORABLE COURT OF APPEALS ABUSED ITS DISCRETION IN CONCLUDING THAT EXHIBITS 2 TO 10 [IN] WHICH PETITIONER'S SIGNATURE DOES NOT APPEAR, THE FACTS REMAIN THAT HE BENEFITED FROM THE ALLEGED ANOMALOUS TRANSACTIONS, ONE MA. CRESENCIA MANGUERRA ENCASHED THE CHECK USING THE BANK ACCOUNT OF PETITIONER ALLEGING THAT THE LATTER IS PETITIONER['S] PARAMOUR.[5]

Petitioner claims that while his name appears in the check vouchers issued by MECO, marked as Exhibits "2" to "10", the incontrovertible fact remains that his signature does not appear in any of said vouchers. Not being a signatory of any of the said check vouchers, petitioner contends that there can be no basis in concluding that he ever received any commission, special discount or rebate from MECO. Petitioner also asserts that he was denied due process because he was not given the opportunity to refute the charges imputed against him. While it is true that private respondent conducted an investigation, petitioner claims that the same was done without his participation.[6]

In its Comment, private respondent contends that the present petition for certiorari is not the proper remedy to assail the subject decision of the CA. Private respondent asserts that a petition for certiorari under Rule 65 of the

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Rules of Court may be availed of only when a party has no adequate remedy in the ordinary course of law. Petitioner argues that what petitioner should have done was to file a petition for review on certiorari under Rule 45 of the Rules of Court, and that petitioner's failure to file a petition for review cannot be remedied by the filing of a special civil action for certiorari. Even assuming that petitioner is allowed to institute the present petition for certiorari, private respondent contends that the same must still be dismissed because what is being assailed are the factual findings of the CA and the NLRC and settled is the rule that in certiorari proceedings under Rule 65 of the Rules of Court, judicial review does not go as far as to evaluate the sufficiency of evidence upon which the NLRC based its determinations, the inquiry being limited essentially to whether or not said tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion. In any case, private respondent further contends that petitioner failed to prove that the CA committed grave abuse of discretion because pieces of documentary and oral evidence bear out the fact that petitioner indeed received various amounts from MECO either as commission, special discount or rebate without private respondent's knowledge and approval.[7]

The Court does not find merit in the present petition for the following reasons:

First, it is well settled that the remedy to obtain reversal or modification of judgment on the merits is appeal.[8] This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of facts or of law set out in the decision.[9] In the present case, the CA disposed of CA-G.R. SP No. 52373 on the merits. Petitioner claims that he received the Decision of the CA on May 17, 2001. Consequently, he had 15 days from said date of receipt of assailed judgment, or until June 1, 2001, within which to file a petition for review on certiorari, the reglementary period prescribed by Rule 45 of the Rules of Court to avail of said action. On July 9, 2001 close to two months after said receipt, petitioner filed the present petition. Evidently, petitioner has lost his remedy of appeal. The filing of the instant petition for certiorari cannot be used as a means of recovering his appeal as it is settled that certiorari is not a substitute for lost appeal.[10] The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[11]

Second, assuming for the sake of argument that the present petition for certiorari is the appropriate remedy, the records of the instant case show that petitioner failed to file a motion for reconsideration of the decision of the appellate court, thus, depriving the CA of the opportunity to correct on reconsideration such errors as it may have committed. The first paragraph of Section 1, Rule 65 of the Rules of Court clearly states that in order for a person to avail of the special civil action of certiorari, he must be left with no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, to wit:

> SECTION 1. Petition for Certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board of officer, and granting such incidental reliefs as law and justice may require. (Italics supplied)

A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy expressly available under the law.[12] The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for certiorari to afford the court or tribunal the opportunity to correct its error, if any.[13] This rule is subject to certain recognized exceptions, to wit:

> (a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
>
> (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

> (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
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> (d) where, under the circumstances, a motion for reconsideration would be useless;
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> (e) where petitioner was deprived of due process and there is extreme urgency for relief;
>
> (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
>
> (g) where the proceedings in the lower court are a nullity for lack of due process;
>
> (h) where the proceeding was ex parte or in which the petitioner had no opportunity to object; and
>
> (i) where the issue raised is one purely of law or where public interest is involved.[14]

None of these exceptions are present in the instant case. Hence, petitioner's unjustified failure to file a motion for reconsideration of the decision of the CA before recourse to this special civil action was made calls for the outright dismissal of this case.

Third, going into the merits of the case, the Court finds that the dismissal of the instant petition is warranted for failure of petitioner to show grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CA.

Petitioner was dismissed from employment on the ground, among others, of loss of trust and confidence. Loss of trust and confidence, as a valid ground for dismissal, must be substantiated by evidence. Jurisprudence has distinguished the treatment of managerial employees or employees occupying positions of trust and confidence from that of rank-and-file personnel, insofar as the application of the doctrine of trust and confidence is concerned. In Caoile v. National Labor Relations Commission, the Court had occasion to explain as follows:

> Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[15] (Emphasis supplied)

In addition, the language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. 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.[16] Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer.[17] Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary.[18] And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer.[19] In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence[20] or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer.[21] The betrayal of this trust is the essence of the offense

for which an employee is penalized.[22]

There is no dispute that petitioner is a confidential employee. During his cross-examination, he testified that aside from evaluating and recommending the purchase of Micro Computers, he also supervises the maintenance of computer hardware including the installation of computers for Citytrust in all of its branches nationwide.[23] It is clear from the foregoing that petitioner is not an ordinary rank-and-file employee. His job entails the observance of proper company procedures relating to the acquisition, installation and maintenance of computers which, undeniably, are vital to the operations of his employer. Moreover, his functions are not limited to a specific unit of Citytrust but extend to all branches of his employer nationwide. Thus, his job involves a high degree of responsibility requiring a substantial amount of trust and confidence on the part of his employer.

The question that remains then is whether there is substantial evidence to prove that petitioner is guilty of the charges imputed against him as to justify Citytrust in dismissing him from employment on the ground of loss of trust and confidence.

Petitioner contends that without his signatures appearing in the check vouchers issued by MECO, there can be no basis in coming up with the conclusion that he received and appropriated commissions and rebates without the knowledge and authority of Citytrust.

The Court is not persuaded.

Petitioner's reliance on the case of Atlas Consolidated Mining & Development Corp. v. National Labor Relations Commission[24] is misplaced. In the said case, the private respondent, who is an employee of petitioner corporation, was charged with the unauthorized withdrawal and misappropriation of 192 liters of gasoline from company stocks and for knowingly allowing company personnel to work on company time in the assembly of a privately-owned vehicle. To prove the first charge, the petitioner company presented in evidence entries in a logbook showing gasoline withdrawals allegedly made by private respondent. In ruling against the petitioner company, the Court held that since respondent's signature does not appear in the logbook, there is no proof that he actually withdrew and received the gasoline. In fact, the Court ruled that the logbook cannot be relied upon to establish the alleged dishonesty of private respondent. Neither did the Court give credence to the testimonies of the witnesses against him. In sum, no competent evidence was presented to prove the private respondent's liability. This is not the situation in the present case.

It is true that the check vouchers alone are not sufficient to prove his guilt owing to the fact that his signatures do not appear in any of these vouchers. However, aside from the abovementioned check vouchers, there are other pieces of evidence presented by Citytrust which petitioner failed to refute and which points to the fact that he received commissions or rebates from MECO. The evidence consists of the following: (1) admission made by petitioner in his letter, dated August 3, 1993, that he received material considerations from MECO since 1992;[25] (2) certification issued by MECO categorically stating that he was paid commissions totaling P105,192.00;[26] (3) testimonies of Leoncio Araullo, Vice President of Citytrust; and Ma. Lourdes Foronda, Assistant Vice President for Staff Services Division of the Human Resources Department of Citytrust, that petitioner admitted having received the amounts of P1,000.00 and P500.00 from Art Cordero, an officer of MECO, claiming that these amounts are "for the boys"; (4) statements in the affidavit of Florante del Mundo, auditor at the Internal Audit Department of Citytrust that two of the checks issued by MECO in favor of petitioner were either encashed by the latter's common-law-wife or deposited in his account.[27] In addition, the Court agrees with the CA that annotations appearing in the check vouchers issued by MECO such as "Payment for the Rebate Given to Boy Cruz of Citytrust"[28] and "Payment for the Sales Rebate Given to Boy Cruz of Citytrust"[29] are confirmations of the fact that the checks were issued and given specifically by MECO to

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petitioner in consideration of his office and services. These pieces of evidence, when taken together, would constitute substantial evidence to prove petitioner's guilt; and his failure to satisfactorily explain or rebut them only strengthens Citytrust's case against him.

Thus, petitioner's acceptance of commissions and rebates from MECO, without the knowledge and consent of Citytrust and without said rebates and commissions being reported and turned over to the latter, are acts which can clearly be considered as a willful breach of the trust and confidence reposed by Citytrust upon him. Settled is the rule that an employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer.[30] A company has the right to dismiss its employees if only as a measure of self-protection.[31] This is all the more true in the case of supervisors or personnel occupying positions of responsibility.[32] In the present case, the Court finds that the CA did not commit grave abuse of discretion when it ruled that Citytrust is justified in dismissing petitioner from his employment for loss of trust and confidence.

Petitioner contends that he was denied his right to due process because the investigation conducted by Citytrust was done ex-parte and he was not given the opportunity to confront the witnesses against him. Petitioner's concept of the opportunity to be heard is the chance to ventilate one's side in a formal hearing where he can have a face-to-face confrontation with his accusers. It is well settled that the basic requirement of notice and hearing in termination cases is for the employer to inform the employee of the specific charges against him and to hear his side and defenses.[33] This does not, however, mean a full adversarial proceeding.[34] The parties may be heard through pleadings, written explanations, position papers, memorandum or oral argument.[35] In all of these instances, the employer plays an active role by providing the employee with the opportunity to present his side and answer the charges in substantial compliance with due process.[36] In the present case, petitioner cannot claim that he was denied due process because he was able to respond to the letter of Citytrust dated August 6, 1993.[37] Moreover, he admitted in his cross-examination before the labor arbiter that he was able to attend the investigation of the ad hoc committee formed by Citytrust where he was shown the check vouchers issued by MECO, informed of the charges against him and was given further opportunity to explain his side.[38] Hence, the fact alone that he was not able to confront the witnesses against him during the investigation conducted by Citytrust does not mean that he was denied his right to due process. What is frowned upon is the absolute lack of notice and hearing.[39]

As to the requirement of notice, the Labor Code provides that before an employee can be validly dismissed, the employer is required to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and, (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reasons therefor.[40] Citytrust complied with the first requirement of notice when it informed petitioner through a letter, dated August 6, 1993, of the charges against him, directing him to explain in writing why his employment should not be terminated and, thereafter, to appear in a hearing to be conducted by the company to give him further opportunity to explain his side.[41] Citytrust also complied with the second requirement of notice when it sent a memorandum dated September 28, 1993, to petitioner informing him of his dismissal from employment and the reasons therefor.[42]

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Panganiban, C.J. (Chairman), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ,. concur.

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[1] Penned by Justice Roberto A. Barrios and concurred in by Justices Ramon Mabutas, Jr. (retired) and Edgardo P. Cruz.

[2] CA rollo, pp. 198-200.

[3] Id. at 71.

[4] 356 Phil. 811 (1998).

[5] Rollo, p. 10.

[6] Id. at 10-13.

[7] Id. at 121-130.

[8] Manacop, et. al. v. Equitable PCIBank, et. al., G.R. No. 162814-17, August 25, 2005, 468 SCRA 256, 271.

[9] Id.

[10] Delgado v. Court of Appeals, et. al., G.R. No. 137881, December 21, 2004, 447 SCRA 402, 412.

[11] Rosete v. Court of Appeals, 393 Phil. 593, 600 (2000).

[12] Madrigal Transport Inc. v. Lapanday Holdings Corporation, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 136.

[13] Metro Transit Organization, Inc. v. Court of Appeals, 440 Phil. 743, 751 (2002).

[14] Id.

[15] 359 Phil. 399, 406 (1998).

[16] P.J. Lhuillier, Inc. v. National Labor Relations Commission, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798.

[17] Id. at 798-799.

[18] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

[19] Id.

[20] Philippine National Construction Corporation v. Matias, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 161.

[21] Caingat v. National Labor Relations Commission, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 152.

[22] Id.

[23] TSN, April 19, 1994, p. 5.

[24] 352 Phil. 1088 (1998).

[25] Exhibit "N"/ "14", records, p. 68.

[26] Exhibit "Q", records, p. 73.

[27] Exhibit "15", records, p. 172.

[28] Exhibit "10", id. at 33.

[29] Exhibit "11", id. at 34.

[30] MGG Marine Services, Inc. v. National Labor Relations Commission, 328 Phil. 1046, 1067 (1996).

[31] Id.

[32] Id.

[33] Homeowners Savings and Loan Association, Inc. v. National Labor Relations Commission, 330 Phil. 979, 1001 (1996).

[34] Id.

[35] Id.

[36] Id.

[37] See Exhibit "N"/"14", supra.

[38] TSN, April 19, 1994, pp. 25-27.

[39] Sunrise Manning Agency Inc. v. National Labor Relations Commission, G.R. No. 146703, November 18, 2004, 443 SCRA 35, 43 citing Paat v. Court of Appeals, 334 Phil. 146 (1997).

[40] Arboleda v. National Labor Relations Commission, 362 Phil. 383, 389 (1999).

[41] Exhibit "M/"13", records, p. 67.

[42] Exhibit "O"/"15", records, p. 70.

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