

HOUSE OF SARA LEE, PETITIONER, VS. CYNTHIA F. REY, RESPONDENT.

G.R. NO. 149013. August 31, 2006

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AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Certiorari under Rule 45 seeking to reverse and set aside the Decision[1] dated August 25, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 51653 which affirmed the Decision dated October 29, 1998 of the National Labor Relations Commission (NLRC); and the CA Resolution[2] dated July 4, 2001 which denied the petitioner's[3] Motion for Reconsideration.

The case originated from a Complaint for illegal dismissal instituted on September 24, 1996 by the respondent against the petitioner before the NLRC Arbitration Branch No. 10 in Cagayan de Oro City. The Complaint prayed for reinstatement with full backwages without loss of seniority rights, payment of 13[th], 14[th] and 15[th] month pay, and the award of moral damages and attorney's fees.

The essential facts:

The House of Sara Lee (petitioner) is engaged in the direct selling of a variety of product lines for men and women, including cosmetics, intimate apparels, perfumes, ready to wear clothes and other novelty items, through its various outlets nationwide. In the pursuit of its business, the petitioner engages and contracts with dealers to sell the aforementioned merchandise. These dealers, known either as "Independent Business Managers" (IBMs) or "Independent Group Supervisors" (IGSs), depending on whether they sell individually or through their own group, would obtain at discounted rates the merchandise from the petitioner on credit and then sell the same products to their own customers at fixed prices also determined by the petitioner. In turn, the dealers are paid "Services Fees," or sales commissions, the amount of which depends on the volume and value of their sales. Under existing company policy, the dealers must remit to the petitioner the proceeds of their sales within a designated credit period, which would either be 38 days for IGSs or 52 days for IBMs, counted from the day the said dealers acquired the merchandise from the petitioner. To discourage late remittances, the petitioner imposes a "Credit Administration Charge," or simply, a penalty charge, on the value of the unremitted payment. Additionally, if the dealer concerned has overdue payments or is said to be in "default," he or she cannot purchase additional products from the petitioner. The dealers under this system earn income through a profit margin between the discounted purchase price they pay on credit to the petitioner and the fixed selling price their customers will have to pay. On top of this margin, the dealer is given the Service Fee, a sales commission, based on the volume of sales generated by him or her. Due to the sheer volume of sales generated by all of its outlets, the petitioner has found the need to strictly monitor the 38- or 52-day "rolling due date" of each of its IBMs and IGSs through the employment of "Credit Administration Supervisors" (CAS) for each branch. The primary duty of the CAS is to strictly monitor each of these deadlines, to supervise the credit and collection of payments and outstanding accounts due to the petitioner from its independent dealers and various customers, and to screen prospective IBMs. To discharge these responsibilities, the CAS is provided with a computer equipped with control systems through which data is readily generated. Under this organizational setup, the CAS is under the

direct and immediate supervision of the Branch Operations Manager (BOM).

Cynthia Rey (respondent), at the time of her dismissal from employment, or on June 25, 1996, held the position of Credit Administration Supervisor or CAS at the Cagayan de Oro City branch of the petitioner. Respondent was first employed by the petitioner in July 16, 1993 as an Accounts Receivable Clerk at its Caloocan City branch. In November 1993, respondent was transferred to the Cagayan de Oro City branch retaining the same position. In January 1994, respondent was elevated to the position of CAS. At that time, the Branch Operations Manager or BOM of the Cagayan de Oro City branch was a certain Mr. Jeremiah Villagrancia. In March 1995, respondent was temporarily assigned to the Butuan City branch.

Sometime in June 1995, while respondent was still working in Butuan City, she allegedly instructed the Accounts Receivable Clerk of the Cagayan de Oro outlet, a certain Ms. Magi Caroline Mendoza, to change the credit term of one of the IBMs of the petitioner, a certain Ms. Mariam Rey-Petilla, who happens to be respondent's sister-in-law, from the 52-day limit to an "unauthorized" term of 60 days. The respondent made the instruction, the petitioner avers, just before the computer data for the computation of the Service Fee accruing to Ms. Rey-Petilla was about to be generated. Ms. Mendoza then reported this allegedly unauthorized act of respondent to her Branch Operations Manager, Mr. Villagrancia. Acting on the report, as the petitioner alleges, BOM Villagrancia discreetly verified the records and discovered that it was not only the 52-day credit term of IBM Rey-Petilla that had been extended by the respondent, but there were several other IBMs whose credit terms had been similarly extended beyond the periods allowed by company policy. BOM Villagrancia then summoned the respondent and required her to explain the unauthorized credit extensions. The petitioner alleges that during that confrontation, respondent admitted her infractions and begged the BOM not to elevate or disclose the matter further to higher authorities. In a letter dated June 22, 1995, Villagrancia formally reported the matter to higher management, stating that respondent, "in tears and remorse" and confiding "her sincerest apology," personally admitted that the credit terms of certain IBMs were adjusted in the computer for purposes of computing the Service Fees.[4] On June 24, 1995, Villagrancia formally served a "show-cause" letter to respondent and placed her on "indefinite suspension" effective on the same day.[5] On June 27, 1995, respondent submitted her explanation denying the accusations made against her and stated that the "discrepancies" in the service fees may have been the result of deadlines falling on holidays, after "reconsiderations" had been requested by the IBM concerned and with the full knowledge of and approval by BOM Villagrancia as part of his campaign to increase collections.[6] Additionally, in the same letter-response, respondent vehemently denied that she waived her right to explain as well as any admission she allegedly made before Villagrancia, and she pointed to the latter as the author of the "discrepancies." [7]

As a consequence of the discovery of the foregoing alleged "anomalous practice" of extending the credit terms of certain IBMs, management undertook an audit of the Cagayan de Oro City and Butuan City branches. During the process, the petitioner alleges, respondent was interviewed by the auditors before whom she again openly admitted her infractions. Upon being furnished a copy of the Auditor's Report, portions of which read:

x x x x

OBJECTIVE OF THE AUDIT UNDERTAKEN

This activity has been conducted to establish facts that would determine whether Ms. Cynthia Rey did change the credit terms or not for whatever reason resulting in the company's payments of undue service fees.

AUDIT FINDINGS

We conducted examination of Service Fee Report for 15 selected IBMs with the largest service fee pay-outs from November 1993 up to April 1995 for Cagayan de Oro Branch and from February 1995 to March 1995 for

Butuan Service Center. Set forth are the results of this activity:

CAGAYAN DE ORO BRANCH

FINDING

In all 15 samples, credit terms were changed by then CAS Cynthia Rey beyond 52 days to as high as 90 days as evidenced by the IBM Credit Terms Exception Report The exception report revealed that the CAS with User ID "credit1" often changes/increases the credit terms of several IBMs, since February 1994, usually a day before or during SF cut-off dates (20[th], 21[st], 22n[d], or 23[rd]of the month) and would return it to original credit terms after completion of SF print-outs. Total SF discrepancy for the 15 samples as a result of credit term adjustment amounts to P 211K x x x x

It is apparent that credit term adjustments resulted in payment of significant amount of undue service fees. Such fraudulent practice clearly favors the interest of the IBMs to the detriment of the company. This constitutes conflict of interest and should be dealt with accordingly.

x x x

FINDING

Ms. Cynthia Rey was on maternity leave from March 07, 1994 up to May 30, 1994 during which time no changing of credit term was recorded by the parameter 23.8.2. This simply means that no credit term adjustment was made during the period Ms. Rey was on leave. Again, this confirms that without Ms. Rey around, nobody ever changed/adjusted the credit terms beyond 52 days.

x x x x

BUTUAN SERVICE CENTER

FINDING

On a concurrent capacity as OIC and CAS of Butuan Service Center starting sometime February 1995, Ms. Cynthia Rey changed the credit terms of IBMs as shown in the IBM Credit Terms Exception Report Total discrepancies for February and March 1995 Service Fees as a result of the credit term adjustments amounts to P3,716.44 Analysis showed that credit terms used by Cynthia for each of the IBMs/IBM/IGSs ranged from 55 to 90 days x x x x

Surprised with the Exception Reports, Ms. Rey admitted having done the credit term adjustments at Butuan. Her statements therefore showed inconsistencies as she previously denied this allegation. However, she cited no clear reasons for such malpractice.

Recommendation

Materiality of the amount involved is not the issue at hand. Her admission to the auditor of the violation committed does not absolve her from being meted disciplinary actions as determined by management. We would like to emphasize that any leniency on this case might have far reaching implications to the branch operations and the company as a whole.

x x x.[8]

Petitioner, on July 29, 1995, directed respondent again to explain, but in more detail, the alleged "anomalies" uncovered by the audit. After requesting more time to review the report and submit her comment, on July 31, 1995, respondent requested instead that a formal investigation be conducted in the presence of her lawyer.[9] In the meantime, respondent's suspension was lifted, but without prejudice to the outcome of the administrative investigation.[10] On September 7, 1995, the petitioner conducted a formal hearing which was attended by

respondent and her counsel of record.[11] Subsequently, respondent and her counsel affixed their respective signatures on the transcripts of the hearing.[12]

Meanwhile, on April 15, 1996, BOM Villagrancia resigned. Upon his resignation, respondent managed the Cagayan de Oro branch for three months pending the appointment of a new BOM.

On the basis of the hearing, the alleged voluntary admissions of respondent, and the findings of the auditor's report, the petitioner, on June 25, 1996, formally dismissed the respondent for breach of trust and confidence.[13]

On September 24, 1996, as stated above, respondent filed her Complaint for illegal dismissal, backwages and damages, with the Labor Arbiter. On April 30, 1998, the Labor Arbiter rendered a decision in favor of the respondent, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing, judgment is hereby entered ordering [petitioner] House of Sara Lee to immediately pay [respondent] Cynthia F. Rey the sum of P177,052.05 as full backwages from July 1, 1996 up to the date of this decision; 13th month pay in the sum of P18,666.67 and separation pay in the sum of P40,000.00 and likewise to pay the sum of P23,571.72 equivalent to 10% of the aggregate monetary award as attorney's fees.

The rest of the claims are dismissed for lack of merit.

SO ORDERED.[14]

To the Labor Arbiter, the question to be resolved is whether the petitioner validly terminated respondent's employment on the ground of loss of trust and confidence. In declaring the termination illegal, the Labor Arbiter held that the petitioner, as employer, failed to discharge its burden of proof in showing that the dismissal was for a just or authorized cause; that, in particular, the petitioner failed to establish that respondent was the very person who allegedly manipulated the credit terms of certain IBMs through the computer terminals, since other employees had access to the same; that respondent's alleged admissions before Villagrancia, her BOM, and M.D. Sabayle, the company auditor, are based on self-serving evidence; that the petitioner failed to substantiate the loss of P211,000.00 which it imputed to the respondent; that the petitioner failed to show that it apprised its employees of the terms of the company policy which respondent allegedly violated, or, in other words, that respondent was not fully informed of the possible sanctions for such acts; that reinstatement would be impractical under the circumstances since the relations of the parties were already strained, hence, the award of full backwages and separation pay is justified; that petitioner failed to refute the claim for 13th month pay, hence, as a statutory relief, respondent should be awarded the same; and that the claims for 14th and 15th month pay as well as moral and exemplary damages should be denied for having no legal basis.

Aggrieved, the petitioner appealed to the NLRC. On October 29, 1998, the NLRC rendered its Decision dismissing the appeal. In affirming the Decision of the Labor Arbiter, the NLRC additionally held that if indeed benefits accrued to the IBMs by virtue of the credit term extensions, it was BOM Villagrancia who benefited from this scheme which he himself adopted; that the auditor's report showed that the scheme had been a "long standing practice" of the branch office of the petitioner; that after Villagrancia resigned, respondent was left to manage the Cagayan de Oro branch which, at that time, registered the highest growth rate and for which reason respondent earned a commendation from the petitioner; and that the loss of trust and confidence advanced by the petitioner is negated by the fact that respondent, after Villagrancia's resignation, was allowed to manage the Cagayan de Oro City branch and by the fact that she was commended for her good performance.

The petitioner appealed to the CA under Rule 65. On August 25, 2000, the CA dismissed the Petition on the sole ground that factual issues are not proper subjects for a special civil action of certiorari.

The petitioner is now before this Court under Rule 45, assigning the following errors:

I.

IN DISMISSING THE PETITION FOR CERTIORARI ASSAILING THE RESOLUTIONS OF THE NATIONAL LABOR RELATIONS COMMISSION IN THE LABOR CASE BELOW ON THE GROUND THAT FACTUAL ISSUES ARE NOT THE PROPER SUBJECT OF CERTIORARI, THE COURT OF APPEALS HAS IN EFFECT DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE.

II.

IN DOING SO, THE COURT OF APPEALS DEVIATED FROM ESTABLISHED DOCTRINES LONG SETTLED BY CONSISTENT JURISPRUDENCE ENUNCIATED BY THIS HONORABLE COURT.[15]

We grant the petition.

As a preliminary matter, we shall resolve the procedural concern raised by the respondent. She maintains that no grave abuse of discretion was committed by the NLRC. This is incorrect.

In the recent case of Manila Memorial Park Cemetery, Inc. v. Panado,[16] we held that where the NLRC or the labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, the extraordinary writ of certiorari will lie.[17] While as a general rule, the factual findings of administrative agencies are not subject to review by this Court, it is equally established that we will not uphold erroneous conclusions which are contrary to the evidence, because the agency a quo, for that reason, would be guilty of a grave abuse of discretion. Nor is this Court bound by conclusions which are not supported by substantial evidence.[18] The substantial evidence rule does not authorize any finding just as long as there is any evidence to support it. It does not excuse administrative agencies from considering contrary evidence which fairly detracts from the evidence supporting a finding.[19]

In this case, the NLRC and the CA consistently ignored the following facts established in the record:

a)

respondent, during the formal hearing on September 7, 1995, in the presence of her counsel, clearly admitted in several instances that, beginning June 1994, she herself actually extended, on a monthly basis, the credit terms of certain IBMs from the company-fixed 52 days to as high as 90 days;[20]

b)

as Credit Administration Supervisor, she knew the appropriate credit terms (38 days for IGSs and 52 days for IBMs) under the company guidelines and which would serve as the bases for the computation of the correct Service Fees or sales commissions;[21]

c)

she was fully aware of the financial implications whenever she would extend the credit terms, in that all late remittances by the IBMs concerned would be considered in the computation of their Service Fees which would not otherwise be due to them under company guidelines;[22]

d)

the computation of the Service Fees, on many occasions, had been finalized, processed, and printed out;[23]

e)

she changed the credit terms in the Cagayan de Oro branch under the alleged "blanket approval" of BOM Villagracia;[24]

f)

she changed the credit terms in the Cagayan de Oro branch since it was a "standard practice" in Caloocan City where she had been previously assigned;[25]

g)

during her stint in the Butuan City branch, she admitted that there had been no such "blanket approval," but she nonetheless kept changing the credit terms because, according to her, this had become "standard practice" in the Cagayan de Oro branch as well;[26]

h)

in several instances, she acted on her own accord and without the requisite authority in extending the credit terms, since there were no specific nor direct instructions from Villagracia to change those terms;[27]

i)

she even assisted Mr. Villagracia and Ms. Mendoza in the process of changing the credit terms since they were ignorant of the procedure;[28]

j)

she would change the credit terms whenever the IBMs concerned would ask for "reconsideration;"[29] and finally,

k)

her statements suffered notable inconsistencies, oscillating between denying or not remembering the alleged act and categorically admitting having done them.[30]

The consideration of the foregoing facts, as disclosed in the record, justifies a different conclusion. Although numerous exceptions to the general rule have been fairly established in case law, it must be stressed that the meticulous constitution of the factual findings are functions that principally lie with the NLRC and the CA as well as the other tribunals that may come under the review power of the Supreme Court. It is a strict judicial policy to hand down an incisive ruling in the first instance in order to relieve this Court from exercising its extraordinary powers of excavating the facts, so that the Court may thoroughly devote its energies to the disposition of questions of law, and only questions of law, under the extent of Rule 45.

Contrary to the findings of the NLRC and the CA, the Court holds that respondent was dismissed for a just cause.

Law[31] and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence.[32] More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination.[33] Loss of confidence as a just cause for dismissal is premised on the fact that an employee concerned holds a position of trust and confidence. This situation applies where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related," such that the employee concerned is unfit to continue working for the employer.[34]

The degree of proof required in labor cases is not as stringent as in other types of cases.[35] It must be noted, however, that recent decisions of this Court have distinguished the treatment of managerial employees from that

of rank-and-file personnel in the application of the doctrine of loss of trust and confidence.[36] 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 to 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 is sufficient that there is some basis for the loss of confidence, 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.[37]

In the present case, the respondent is not an ordinary rank-and-file employee. The nature of her work requires a substantial amount of trust and confidence on the part of the employer. Being the Credit Administration Supervisor of the Cagayan de Oro and Butuan City branches of the petitioner, respondent occupied a highly sensitive and critical position and may thus be dismissed on the ground of loss of trust and confidence. The duties of the respondent included the strict monitoring of the 38- or 52-day "rolling due date" of each of its IBMs and IGSs, as well as the supervision of the credit and collection of payments and outstanding accounts due to the petitioner from its dealers. More importantly, respondent has a direct hand in the preparation and computation of the Service Fees or sales commissions accruing to each dealer. The computation of these commissions depends on whether the dealer concerned was able to remit the sales proceeds within the 38-day or 52-day rolling deadline.

Clearly, respondent's position involves a high degree of responsibility requiring trust and confidence. The position carried with it the duty to observe proper company procedures in the fulfillment of her job, as it relates closely to the financial interests of the company. Respondent's unauthorized extensions of the credit periods of the dealers are prejudicial to the interest of the petitioner and bear serious financial implications: First, the dealer concerned is allowed to withhold remittances to the company for his or her credit purchases beyond the expiration of the 38- or 52-day rolling deadline; second, the Credit Administration Charges or interest penalties are not imposed on the erring dealer; third, the dealer concerned is allowed to purchase goods on credit despite the fact that he or she has not remitted payment, which is against company policy; and fourth, undue Service Fees were unknowingly paid by the company to certain IBMs. Moreover, respondent was not guilty of one-time unauthorized extension of the credit terms, but of repeated acts over the course of several months. Her bare, unsubstantiated and uncorroborated denial of her participation in the anomalies does not prove her innocence nor disprove her alleged guilt,[38] especially considering that she would vacillate between admitting and denying the charges. On the contrary, such denial or failure to rebut the serious accusations hurled against her militate against her innocence and strengthen the adverse averments of the petitioner.[39] The requirement that there must be some basis or reasonable ground to believe that the employee is responsible for the misconduct was sufficiently met in this case.

The NLRC and the CA held that there were other co-employees who had access to the same computer terminals, hence, it cannot be pinpointed who was responsible. Even if this is true, as respondent argues, this point is not material. It must be stressed that the respondent was the Credit Administration Supervisor, one tasked to directly supervise each and every collectible due to the petitioner. Recently, this Court has held that even if the employee had no actual and direct participation in the alleged anomalies, his failure to detect any anomaly that would normally fall within the scope of his work reflects his ineffectiveness and amounts to gross negligence and incompetence, which are, likewise, justifiable grounds for his dismissal; and that it is not necessary to prove the employee's direct participation in the irregularity, for what is material is that his actuations were more than sufficient to sow in his employer the seed of mistrust and loss of confidence.[40] The records show that respondent, by her very own admission, actually participated in the foregoing irregularities. Although the petitioner could not directly and wholly attribute the monetary loss of P211,000.00 linked to the 15 samples as

reflected in the Auditor's Report, to the actuations of the respondent, it is conceded in all quarters that the repeated and unauthorized extensions of the credit terms no doubt have serious financial implications that affect the company as a whole. Whether the petitioner was financially prejudiced is immaterial.[41] What matters is not the amount involved, rather, it is the fraudulent scheme in which the respondent was involved, and which constitutes a clear betrayal of trust and confidence. In fact, there are indications that these acts had been done before, and probably would have continued had it not been discovered.[42]

The Court is not impressed with respondent's claim that Villagracia, her BOM at that time, "cleverly pinned her down" as the culprit; that he deleted from the computer files all the credit extensions that took place; and that he "created a scenario" for a graceful exit. There is nothing in the record that would substantiate these bare allegations. Nor can the Court accept respondent's assertion that she was never apprised of the company policies with respect to the allowable credit terms. As Credit Administration Supervisor, the respondent cannot feign ignorance of the irregularity as she was sufficiently aware that the credit extensions she made were beyond acceptable limits. By her very own admission, and in the presence of her counsel, she was fully aware of the company-fixed rolling due dates for the dealers and that their commissions were to be determined by their timely remittances of the sales proceeds. In other words, respondent was aware of the financial implications of her extension of the credit terms, especially the outcome where the consideration of late remittances, after the extension, would unduly inflate the sales commissions. It is also an established fact that the petitioner, to ensure the correct computation of the commissions, installed internal control systems in the computer terminals and that respondent, through "practice" and "experience," acquired the proficiency and computer literacy as to be able to override these control systems in order to make the changes[43] in clear deviation from company policy.

But the respondent, quoting the agencies a quo, insists that her extensions of the credit terms of certain dealers were predicated on a "long standing policy" in the Cagayan de Oro branch, and that this "arrangement" had the "blessings of the manager." She did not prove these allegations. While case law provides that where a violation of company policy or breach of company rules and regulations was found to have been tolerated by management, then the same could not serve as a basis for termination,[44] in this case respondent failed to show that her extensions of the credit terms were condoned by management. Her BOM, Mr. Villagracia, categorically denied that he had given her the requisite and direct authority to change the credit terms. When the respondent, while in Butuan City, instructed Ms. Mendoza, the Accounts Receivable Clerk of the Cagayan de Oro outlet, to change the credit terms of IBM Mariam Rey-Petilla, respondent's sister-in-law,[45] to an unauthorized term of 60 days, she reported this instruction to Villagracia who, in turn, verified the records and reported his findings to higher management. Villagracia even reprimanded Ms. Mendoza for carrying out respondent's instructions.[46] As a consequence, higher management immediately undertook an audit of the Cagayan de Oro and Butuan City branches where the respondent had been assigned. And, as a consequence, an Auditor's Report was issued, expressly finding the respondent guilty of violating company policy. Respondent was again directed by the higher authorities to explain, in more detail, the anomalies uncovered by the audit. The foregoing activities negate the suggestion that management tolerated respondent's unauthorized extension of credit terms. Despite the marked inconsistencies of her statements during the formal investigation, respondent only offered the following explanation: because of the alleged "standard practice" in the Caloocan City branch where she worked as an Accounts Receivable Clerk, she assumed that the extensions can be done in the Cagayan de Oro City branch and where she allegedly procured the "blanket approval" of BOM Villagracia; and that, since this "standard practice" had allegedly taken root in Cagayan de Oro City (mainly owing to her activities), she assumed that the same can be carried over to the Butuan City branch, even without any "blanket approval" of her BOM. These declarations, self-serving as they are, taken together, are also not demonstrative of any acquiescence on the part of management. Even if the Court were to accept her allegation that Villagracia deleted the pertinent files and

destroyed evidence otherwise favorable to her, she must at least show how such evidence, if hypothetically produced, would constitute an adequate defense against the charge of carrying out unauthorized acts. At any rate, even if the Court finds credible her accusation that Villagracia "cleverly pinned her down" as the culprit, she will not be exonerated for that reason alone, since it is established that she directly and actively participated in the acts which amounted to violations of company policy. Certainly the prerogative lies with the company to hold Villagracia accountable, if indeed he was: the option to discipline lies with the employer. But since Villagracia was not made a party in this proceeding, further discussion on the point is useless.

Respondent argues that the loss of trust and confidence as Credit Administration Supervisor had been effectively negated by the fact that she was made to occupy the position of Branch Operations Manager for three months immediately after Villagracia resigned. This act of the petitioner, respondent reasons, is an express recognition of her capability and integrity or trustworthiness as an employee.[47] To support this contention, she adduces several cash advance slips which she signed as BOM as evidence of her appointment.[48] Even in light of this "promotion," it must be noted that at the time she occupied this position, which the petitioner asserts was done in an acting capacity only, the investigation over the anomalies committed by respondent had been pending. The Memorandum dated August 21, 1995 reinstating respondent and granting her request to conduct a formal investigation with the presence of counsel expressly stated that the reinstatement is "without prejudice" to "a reinvestigation" of her case.[49] Pending the final outcome of the investigation, respondent, as with all persons, has in her favor the presumption of innocence, and for this reason she may even be entitled to a promotion in due course. But after due investigation and marshalling of facts, after the employer forms a moral conviction that indeed the employee breached its trust and confidence, and despite such promotion, the employer may then proceed to dismiss the erring employee.

As stated, the rules on termination of employment and the penalties for infractions, insofar as fiduciary employees are concerned, are not necessarily the same as those applicable to the termination of employment of ordinary employees. Employers, generally, are allowed a wider latitude of discretion in terminating the employment of managerial personnel or those of similar rank performing functions which by their nature require the employer's trust and confidence, than in the case of ordinary rank-and-file employees.[50] There can be no doubt that the respondent's continuance in the sensitive fiduciary position of Credit Administration Supervisor would be patently inimical to the interests of the petitioner. It would be oppressive and unjust to order the petitioner to take her back, for the law, in protecting the rights of the employee, authorizes neither oppression nor self-destruction of the employer.[51]

The award of 13th month pay must be deleted. Respondent is not a rank-and-file employee and is, therefore, not entitled to thirteenth-month pay.[52]

However, the NLRC and the CA are correct in refusing to award 14th and 15th month pay as well as the "monthly salary increase of 10 percent per year for two years based on her latest salary rate." The respondent must show that these benefits are due to her as a matter of right.[53] The rule in these cases is, she who alleges, not she who denies, must prove. Mere allegations by the respondent do not suffice in the absence of proof supporting the same.[54] With respect to salary increases in particular, the respondent must likewise show that she has a vested right to the same, such that her salary increases can be made a component in the computation of backwages. What is evident is that salary increases are a mere expectancy. They are by nature volatile and dependent on numerous variables, including the company's fiscal situation, the employee's future performance on the job, or the employee's continued stay in a position.[55] In short, absent any proof, there is no vested right to salary increases.[56]

The claims for moral and exemplary damages, as correctly held by the NLRC and the CA, should be denied for

having no basis in fact and law.[57] The award of attorney's fees should likewise be deleted for the same reason.[58]

And last, the Court is constrained to delete the award of separation pay. Well-settled is the rule that separation pay shall be allowed only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on her moral character.[59] Inasmuch as the reason for which the respondent was validly separated involves her integrity, which is required for the position of Credit Administration Supervisor, she is not worthy of compassion as to deserve separation pay for her length of service.[60]

WHEREFORE, the petition is GRANTED. The challenged Decision and Resolution of the Court of Appeals are hereby SET ASIDE and a new one entered DECLARING respondent's dismissal valid. The complaint of respondent is DISMISSED.

No pronouncement as to costs.

SO ORDERED.

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

[1] Penned by Associate Justice Eloy R. Bello, Jr. (retired), with Associate Justices Delilah Vidallon-Magtolis (retired) and Elvi John S. Asuncion, concurring.

[2] Id.

[3] The name of the petitioner as a party-in-interest should read "Sara Lee Philippines, Inc." which is the legal entity that owns and manages the business and its various divisions. See rollo, pp. 77. The caption may also read "Sara Lee Philippines, Inc., doing business under the name and style House of Sara Lee."

[4] Rollo, p. 102-103.

[5] Id. at 104.

[6] Id. at 105.

[7] Id.

[8] Id. at 421-422, 425-426 (emphasis in the original).

[9] Id. at 107.

[10] Id. at 108.

[11] Id. at 110-180.

[12] Id. at 180.

[13] Id. at 181.

[14] Id. at 228-229.

[15] Id. at 20-21.

[16] G.R. No. 167118, June 15, 2006.

[17] Manila Memorial Park Cemetery, Inc., citing Zarate, Jr. v. Olegario, 331 Phil. 278 (1996).

[18] *Samahan ng mga Manggagawa sa Bandolino-LMLC v. National Labor Relations Commission*, 341 Phil. 635, 645 (1997); *Labor v. National Labor Relations Commission*, G.R. No. 110388, September 14, 1995, 248 SCRA 183, 196.

[19] *Samahan ng mga Manggagawa sa Bandolino-LMLC v. National Labor Relations Commission*, *supra*.

[20] Minutes of the Formal Investigation, September 7, 1995, at 10-12, 20-23, 49, 67, 70, rollo, pp. 119-121, 129-132, 158, 176, 179.

[21] *Id.* at 1-2, 4, rollo, pp. 110, 112-113.

[22] *Id.* at 14, 23, rollo, pp. 123, 132. Cf. *id.* at 32, 36, 40, 53, 58, 67, rollo, pp. 141, 145, 149, 162, 167, 176.

[23] Minutes of the Formal Investigation, September 7, 1995, at 24-27, 29-31, 33-35, 41, 53, 67, rollo, pp. 133-136, 138-140, 142-144, 150, 162, 176.

[24] *Id.* at 11-12, 67, 70, rollo, pp. 120-121, 176, 179.

[25] *Id.* at 9, 49, rollo, pp. 118, 158.

[26] *Id.* at 12-13, 16-17, 71, rollo, pp. 121-122, 125-126, 180.

[27] *Id.* at 11, 34-35, 47-48, 54, 71; rollo, pp. 120, 143-144, 156-157, 163, 180.

[28] Minutes of the Formal Investigation, September 7, 1995, at 27, 48-50; rollo, pp. 136, 157-159.

[29] *Id.* at 9, 20, 71; rollo, pp. 118, 129, 180.

[30] See, e.g., *id.* at 5, 10, 33-34, 41-42, 44-45, 47, 49-50, 53, 55-56, 59-60; rollo, pp. 114, 119, 142-143, 150-151, 153-154, 156, 158-159, 162, 164-165, 168-169.

[31] The Labor Code provides:

Art. 282. An employer may terminate an employment for any of the following causes:

x x x x

(c) Fraud or willful breach of the trust reposed in him by his employer or his duly-authorized representative.

x x x x

[32] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 528-529, citing *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 406 (1998).

[33] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, *supra*, citing *Kwikway Engineering Works v. National Labor Relations Commission*, G.R. No. 85014, March 22, 1991, 195 SCRA 526, 529, citing *Lamsan Trading, Inc. v. Leogardo, Jr.*, 228 Phil. 542, 547 (1986); *New Frontier Mines, Inc. v. National Labor Relations Commission*, 214 Phil. 443 (1984); *Associated Citizens Bank v. Ople*, No. L-48896, February 24, 1981, 103 SCRA 130.

[34] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, *supra*, citing *Caoile v. National Labor Relations Commission*, *id.*

[35] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, *supra*, citing *Pearl S. Buck Foundation, Inc. v. National Labor Relations Commission*, G.R. No. 80728, February 4, 1990, 182 SCRA 446.

[36] *Cruz, Jr. v. Court of Appeals*, G.R. NO. 148544, July 12, 2006; *Etcuban, Jr. v. Sulpicio Lines, Inc.*, *supra*.

[37] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, *supra*, citing *Caoile v. National Labor Relations Commission*, *supra*;

Cruz, Jr. v. Court of Appeals, id.

[38] See *Nokom v. National Labor Relations Commission*, 390 Phil. 1228, 1241 (2000).

[39] Id.

[40] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, supra.

[41] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, supra.

[42] Id.

[43] Minutes of the Formal Investigation, September 7, 1995, at 12, 48-50, 52, 54, 59-61, 65; rollo, pp. 121, 157-159, 161, 163, 168-170, 174;

[44] See *Coca-Cola Bottlers Philippines, Inc. v. Vital*, G.R. No. 154384, September 13, 2004, 438 SCRA 277, 283; *Permex, Inc. v. National Labor Relations Commission*, 380 Phil. 79, 87 (2000), citing *Tide Water Associated Oil Co. v. Victory Employees and Laborers' Association*, 85 Phil 166 (1949).

[45] Minutes of the Formal Investigation, September 7, 1995, at 24; rollo, p. 133.

[46] Id. at 26; rollo, p. 135.

[47] Rollo, p. 197.

[48] Id. at 214-220.

[49] Rollo, p. 108.

[50] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, supra, citing *Gonzales v. National Labor Relations Commission*, G.R. No. 131653, March 26, 2001, 355 SCRA 195, 208.

[51] See *San Miguel Corporation v. National Labor Relations Commission*, 200 Phil. 725, 729-730 (1982).

[52] See *Salafranca v. Philamlife Village Homeowners Association, Inc.*, 360 Phil. 652, 668 (1998).

[53] See *Equitable-PCI Bank v. Sadac*, G.R. No. 164772, June 8, 2006.

[54] Id.

[55] Id.

[56] See *Equitable-PCI Bank v. Sadac*, id.

[57] See CIVIL CODE OF THE PHILIPPINES, Arts. 2217-2220, 2229-2235.

[58] See LABOR CODE OF THE PHILIPPINES, Art. 111 (1974); Civil Code of the Philippines, Art. 2208.

[59] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, supra note 32, citing *Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, No. L-80609, August 23, 1988, 164 SCRA 671.

[60] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, supra note 32, citing *Pacaña v. National Labor Relations Commission*, G.R. No. 83513, April 18, 1989, 172 SCRA 473.

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