

## THE COCA-COLA EXPORT CORPORATION, PETITIONER, VS. CLARITA P. GACAYAN, RESPONDENT.

*G.R. No. 149433. June 22, 2011*

Ponente: LEONARDO-DE CASTRO, J.

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### LEONARDO-DE CASTRO, J.:

For resolution is the Motion for Reconsideration filed by petitioner The Coca-Cola Export Corporation (petitioner company) of our Decision promulgated on December 15, 2010, denying its petition for review on certiorari of the Decision dated May 30, 2001, and subsequent Resolution dated August 9, 2001 of the Court of Appeals in CA-G.R. SP No. 49192.

In our Decision dated December 15, 2010, we affirmed with modification the decision of the Court of Appeals which ruled that respondent Clarita P. Gacayan (respondent Gacayan) was illegally dismissed from her employment with petitioner company. We upheld the appellate court's order that respondent Gacayan be reinstated to her former position, if possible, otherwise to a substantially equivalent position without loss of seniority rights and full backwages. We, however, modified the award of backwages, ruling that they should be computed from the time the compensation was not paid up to the time of respondent Gacayan's reinstatement.

In support of its motion, petitioner company advanced the following arguments:

I.

"LOSS OF TRUST AND CONFIDENCE," AS A JUST CAUSE FOR TERMINATION, IS NOT RESTRICTED TO MANAGERIAL EMPLOYEES BUT LIKEWISE APPLIES TO "SUPERVISORS OR OTHER PERSONNEL OCCUPYING POSITIONS OF RESPONSIBILITY."

II.

RESPONDENT'S BREACH OF PETITIONER'S TRUST IS CLEARLY SUPPORTED AND BORNE BY THE RECORDS.

III.

RESPONDENT'S WRONGFUL, MALICIOUS, AND FRAUDULENT INTENT IS EVIDENT FROM THE RECORDS.

IV.

RESPONDENT'S DISMISSAL IS NOT "HARSH" BUT IS COMPLETELY COMMENSURATE TO THE SEVERITY OF HER ACTS. THE COURT'S ORDER FOR RESPONDENT'S REINSTATEMENT WITH BACKWAGES REWARDS GROSS DISHONESTY AND ENNOBLES BREACH OF TRUST. [1]

To resolve the instant motion, it is necessary to restate briefly the factual background of the case.

One of the benefits enjoyed by the employees of petitioner company was the reimbursement of meal and

transportation expenses incurred while rendering overtime work. This was allowed only when the employee worked overtime for at least four hours on a Saturday, Sunday, or holiday, and for at least two hours on weekdays. The maximum amount allowed to be reimbursed was one hundred fifty (P150.00) pesos. It was in connection with this company policy that respondent Gacayan, then a Senior Financial Accountant, was made to explain the alleged alterations in three (3) receipts which she submitted to support her claim for reimbursement of meal expenses, to wit: 1) McDonald's Receipt No. 875493 dated October 1, 1994 for P111.00; 2) Shakey's Pizza Parlor Receipt No. 122658 dated November 20, 1994 for P174.06; and 3) Shakey's Pizza Parlor Receipt No. 41274 dated July 19, 1994 for P130.50.

Petitioner company sent respondent Gacayan several memoranda requiring her to explain why her claims for reimbursement should not be considered fraudulent since there were alterations, i.e., the dates of issuance of the receipts and the food items purchased as enumerated thereon, in the receipts she submitted.

Consequently, respondent Gacayan submitted her explanation denying any personal knowledge in the commission of the alterations on the subject receipts.

Petitioner company then conducted a hearing and formal investigation on the matter to give respondent Gacayan an opportunity to explain the issues against her and to present her side. After attending the first scheduled hearing and participating thereat, respondent Gacayan did not attend the succeeding hearings, citing her doctor's advice to rest, and likewise complaining of the alleged partiality of the investigating committee against her.

In a letter dated April 4, 1995, petitioner company dismissed respondent Gacayan for fraudulently submitting tampered and/or altered receipts in support of her petty cash reimbursements in gross violation of the company's rules and regulations.

On June 6, 1995, respondent Gacayan filed a complaint with the National Labor Relations Commission (NLRC).

In a Decision dated June 17, 1996, the Labor Arbiter dismissed respondent Gacayan's complaint for lack of merit. This was affirmed by the NLRC in its Resolution dated April 14, 1998.

On appeal, the Court of Appeals reversed the NLRC and ruled that the penalty imposed on respondent Gacayan was too harsh. The Court of Appeals ordered the immediate reinstatement of respondent Gacayan to her former position or to a substantially equivalent position without loss of seniority rights and with full backwages. Hence, petitioner company filed with this Court a petition for review on certiorari which was denied in our Decision dated December 15, 2010.

In our Decision dated December 15, 2010, we declared that respondent Gacayan's dismissal from employment was not grounded on any of the just causes enumerated under Article 282 [2] of the Labor Code since petitioner company, in its termination letter dated April 4, 1998, neither mentioned its alleged loss of trust and confidence in respondent Gacayan, nor discussed the alleged sensitive and delicate position of respondent Gacayan requiring the utmost trust of petitioner company.

Petitioner company now begs us to reconsider this pronouncement, arguing that respondent Gacayan's position as a "Senior Financial Accountant with the Job Description of a Financial Project Analyst" has duties which clearly qualify her as one occupying a position of trust and responsibility, thus:

8.1. Provides support in the form of financial analyses and evaluation of alternative strategies or action plans to assist management in strategic and operational decision-making.

8.2. Scope of work is mainly financial analysis but may include assessment of tax, legal, regulatory, socio-political, marketing, operating, and other considerations.

8.3. Liaises with the Bottler to comply with Corporate Bottler financial reporting requirements and to ensure Bottler's plans are aligned with TCCEC's [Respondent's]. Includes:

- Business Plan.
- Monthly Rolling Estimate.
- Monthly variance analysis (vs Budget and prior year, Pesos and Dlr\$)
- Dividend Declared Report and monitoring of dividend remittances.
- Quarterly reports.
- Analysis of financial issues/questions raised by Corporate.
- Presentation charts.

8.4. Assists management on various initiatives on ad hoc basis (scope of work depends on objectives).

- Ad hoc requests from Corporation for Information.
- Accounting for REFPET project costs.
- Foundation 3-year plan.
- Finance representative in MRP II project.
- CCFEL ROSS conversion project.
- BLI and BII recapitalization.[3]

According to petitioner company, respondent Gacayan had access to and was responsible for confidential, delicate, and sensitive matters, particularly relating to its operations and finances. Moreover, petitioner company maintains that respondent Gacayan was in-charge of the proper handling of funds as "among her tasks was the preparation of the Business Plan, Monthly Rolling Estimate, Monthly variance analysis (vs Budget and prior year, Pesos and Dlr\$), Dividend Declared Report and monitoring of dividend remittances, and Quarterly reports." [4] Petitioner company further calls on the Court to affirm our ruling in *Divine Word College of San Jose v. Aurelio* [5] and *Panday v. National Labor Relations Commission* [6] that a Senior Bookkeeper (in the former case) or a Branch Accountant (in the latter case) held a position of trust and confidence.

Likewise, petitioner company maintains that respondent Gacayan's "act of falsifying or altering receipts in order to secure unwarranted reimbursements, not only once, but on three (3) separate occasions, were clearly established by the evidence on record and unambiguously displays [r]espondent [Gacayan]'s wrongful intent." [7]

After due consideration of the motion for reconsideration, we find the same impressed with merit.

It is well-settled in our jurisdiction that loss of trust and confidence constitutes a just and valid cause for an employee's termination. In *Etcuban, Jr. v. Sulpicio Lines, Inc.*, [8] this Court held:

Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence. This situation holds 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 as would show the employee concerned to be unfit to continue working for the employer. [9]

In the instant case, respondent Gacayan was the Senior Financial Accountant of petitioner company. While respondent Gacayan denies that she is handling or has custody of petitioner's funds, a re-examination of the records of this case reveals that she indeed handled delicate and confidential matters in the financial analyses and evaluations of the action plans and strategies of petitioner company. Respondent Gacayan was also privy to the strategic and operational decision-making of petitioner company, a sensitive and delicate position requiring the

latter's utmost trust and confidence. As such, she should be considered as holding a position of responsibility or of trust and confidence.

We revert to the findings of the Labor Arbiter, as affirmed by the NLRC, that respondent Gacayan betrayed the trust and confidence reposed on her when she, ironically a Senior Financial Accountant tasked with ensuring financial reportorial/regulatory compliance from others, repeatedly submitted tampered or altered receipts to support her claim for meal reimbursements, in gross violation of the rules and regulations of petitioner company. Upon review, even the Court of Appeals did not absolve respondent Gacayan of wrongdoing but rather merely held that dismissal was too harsh a penalty for her infraction.

It has oft been held that loss of confidence should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith. It bears stressing that what is at stake here are the sole means of livelihood, the name and the reputation of the employee. [10]

Verily, in *Tiu and/or Conti Pawnshop v. National Labor Relations Commission*, [11] we held that 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 the employer. Ordinary breach will not suffice; it must be willful. 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. [12] And in the case of supervisors or personnel occupying positions of responsibility, like respondent Gacayan, the loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee. [13]

Thus, petitioner company must sufficiently and convincingly show that the loss of trust and confidence in respondent Gacayan was founded on clearly established facts, incidents and substantial evidence.

In its motion for reconsideration, petitioner company emphasized the clear and convincing evidence on record that respondent Gacayan breached the trust and confidence reposed in her when she repeatedly submitted tampered or altered receipts to support her claim for meal reimbursement. Petitioner company maintained that respondent Gacayan cannot mistakenly file a claim for overtime meal allowance reimbursement for a day she knew she was not entitled to, as she did not actually render overtime work. Petitioner company reiterated its evidence showing that respondent Gacayan acted with wrongful, malicious and fraudulent intent when she repeatedly submitted tampered or altered receipts.

With regard to the first receipt in question, McDonald's Receipt No. 875493 dated October 1, 1994 for P111.00, petitioner company was able to secure a certification [14] from the issuing branch of McDonald's that said receipt was not issued on October 1, 1994 but on October 2, 1994. The second receipt, Shakey's Pizza Parlor Receipt No. 122658 dated November 20, 1994 for P174.06, was actually for three orders of Bunch of Lunch and not a single order of Buddy Pack with Extra Mojos as claimed by respondent Gacayan. Petitioner company presented the sworn affidavit [15] of the delivery personnel of Shakey's Pasong Tamo to attest to this fact. Lastly, the third receipt, Shakey's Pizza Parlor Receipt No. 41274 dated July 19, 1994 for P130.50, was found to be actually issued on July 17, 1994. Moreover, another employee who supposedly shared the food with respondent Gacayan denied in a sworn affidavit [16] that she partook of the said meal. In sum, petitioner company highlighted in its motion that the gravity of respondent Gacayan's offense lies in the inherent dishonesty of her alteration of the said receipts even though the amounts she received were minimal sums.

Respondent Gacayan intentionally, knowingly, purposely, and without justifiable excuse, submitted tampered or altered receipts to support her claim for meal reimbursement. Respondent Gacayan failed to sufficiently refute the

charges against her for the submission of said fraudulent items of expense. All she did was to deny any personal knowledge in the commission of the alterations in the subject receipts and to point fingers at other people who may have done the alterations. [17]

First, respondent Gacayan blamed the McDonald's staff for the mistake in the date on the first receipt. She also blamed her sister's driver for allegedly giving her a wrong receipt. Second, respondent Gacayan blamed the delivery staff of Shakey's for bringing yet another wrong receipt. She allegedly requested the delivery personnel to merely write the correct items which she ordered and to sign the said receipt to authenticate the alterations made in order to avoid the hassle of having to wait for a replacement receipt. This, however, was contradicted by the delivery personnel who narrated that what was ordered and what he delivered were three orders of Bunch of Lunch and not a Buddy Pack. The delivery personnel further recounted that the call for delivery on that particular day was made by a certain Leah Gatayan (Gacayan) who turned out to be respondent Gacayan's daughter who was with her in the office as evidenced by the logbook entry of the security guard in respondent Gacayan's office. Third, respondent Gacayan claimed to have shared a meal with a certain CAV (Corazon A. Varona), who executed an affidavit denying such an instance of meal-sharing with her.

Although the amounts involved in the subject receipts were relatively small, or only the dates and/or items ordered were altered or tampered with, respondent Gacayan's act of submitting fraudulent items of expense adversely reflected on her integrity and honesty, which is ample basis for petitioner company to lose its trust and confidence in her.

On the issue of due process, petitioner company complied with all the aforementioned requirements for the valid dismissal of respondent Gacayan. We quote with approval the Labor Arbiter in his disquisition, to wit:

As far as the notice requirement is concerned, the law requires the employer to give two (2) kinds of notices to the employee sought to be terminated:

'It is evident from the said provisions that the employer is required to furnish an employee who is to be dismissed two (2) written notices before such termination. The first is the notice to apprise the employee of the particular act or omissions for which his dismissal is sought. This may loosely be considered as the proper charge. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. This is in consonance with the express provisions of law on the protection of labor and the broader dictates of procedural due process. Non compliance therewith is fatal because these requirements are conditions sine qua non before dismissal may be validly effected. (Tiu vs. National Labor Relations Commission, 215 SCRA 540, 551-552, emphasis added).'

Tested against the foregoing yardstick, the termination of complainant [herein respondent] is clearly valid.

Respondents [herein petitioner] complied with the notice requirement strictly to the letter. Complainant [respondent] was given the first notice which the Supreme Court amply termed in the foregoing jurisprudence as the 'proper charge.' This Office further notes that more than one notice was given to the complainant [respondent]. In fact, complainant [respondent] was repeatedly directed to answer the charges against her. As she in fact did.

Complainant [Respondent] was given repeated opportunities to ventilate her side through the numerous hearings scheduled by the respondents [petitioner]. But after attending only the first hearing, complainant [respondent] suddenly refused in fact she failed to attend the two (2) other hearings. [Even] when she came to know that the Shakey's delivery man was going to be invited.

It was only after the evidence against complainant [respondent] was received and her fraudulent participation morally ascertained that respondents [petitioner] finally decided to terminate his (sic) services. And after arriving at a conclusion, complainant [respondent] was consequently informed of her termination which was the sanction imposed on her.

Again, following the yardstick laid down by the Tiu doctrine cited above, the procedure in terminating complainant [respondent] was definitely followed. Her termination is therefore valid (sic) and must be upheld for all intents and purposes.

Certainly, complainant cannot now belatedly claim that she was denied due process. For it was her who repeatedly refused to subsequently appear before the formal administrative investigation conducted by respondent company [petitioner].

'Due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard. It is obvious that if he opts to be silent where he has the right to be (sic) speak, he cannot later be heard to complain that he was unduly silenced.' (Pepsi Cola Distributors of the Philippines, Inc. vs. National Labor Relations Commission, G.R. No. 100686, August 15, 1995) [18]

Evidence shows that respondent Gacayan was properly notified of the charges against her. She received several memoranda [19] from petitioner company requiring her to explain in writing why her claims for reimbursement for meal expenses should not be considered fraudulent since there were alterations in the receipts she submitted. Petitioner company also sent respondent Gacayan a letter [20] dated January 3, 1995 directing her to explain why she should not be subjected to disciplinary sanctions for her violations of the company's rules and regulations which punishes with dismissal the submission of any fraudulent item of expense. Petitioner company even advised respondent Gacayan to bring along a counsel of her choice at the hearings conducted to investigate the matter.

Respondent Gacayan submitted her explanation and denied any knowledge of the commission of alterations on the receipts which she submitted. She even appeared and participated at the proceedings of the investigation. Clearly, respondent Gacayan was given ample opportunity to present her side and rebut the evidence against her.

Despite all the chances given by petitioner company for respondent Gacayan to present her case, respondent Gacayan failed to attend the succeeding hearings and merely filed applications for leave. [21] Petitioner company, however, continued to send notices [22] to respondent Gacayan informing her of the re-setting of the continuation of the investigation on January 23, 1995 and March 15, 1995. With respondent Gacayan's continued absence at the scheduled hearings and after the evidence was evaluated, petitioner company finally dismissed respondent Gacayan for fraudulently submitting tampered or altered receipts in support of her petty cash reimbursements.

Given the foregoing, it is evident that the required procedural due process for respondent Gacayan's termination was fully complied with. The letter dated January 3, 1995 served on respondent Gacayan was the written notice specifying the charges against her, while the subsequent letter [23] dated April 4, 1995 served as the written notice of termination.

In fine, petitioner company had sufficiently discharged its burden of proving that the dismissal of respondent Gacayan was for just cause, that it was made within the parameters of the law, and that respondent was afforded due process pursuant to the basic tenets of equity, justice and fair play. We agree with petitioner company that to allow respondent Gacayan to be reinstated to her former position with payment of backwages would tend rather to reward dishonesty and enoble breach of trust by employees to the prejudice of the employer.

This Court has always reminded that:

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be expected that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play.  
[24]

WHEREFORE, in view of the foregoing, we GRANT the Motion for Reconsideration filed by petitioner The Coca-Cola Export Corporation and RECONSIDER our Decision dated December 15, 2010. The assailed Decision dated May 30, 2001 and Resolution dated August 9, 2001 of the Court of Appeals in CA-G.R. SP No. 49192 are REVERSED and SET ASIDE. The Resolutions dated April 14, 1998 and June 19, 1998 of the National Labor Relations Commission are hereby AFFIRMED.

**SO ORDERED.**

Corona, C.J., (Chairperson), Velasco, Jr., Peralta,[\*] and Perez, JJ., concur.

[\*] Per Raffle dated December 15, 2010.

[1] Rollo, p. 644.

[2] ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

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

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[3] Rollo, pp. 646-647.

[4] Id. at 647.

[5] G.R. No. 163706, March 29, 2007, 519 SCRA 497.

[6] G.R. No. 67664, May 20, 1992, 209 SCRA 122.

[7] Rollo, p. 649.

[8] G.R. No. 148410, January 17, 2005, 448 SCRA 516.

[9] Id. at 528-529.

[10] Philippine National Construction Corporation v. Matias, 497 Phil. 476, 489 (2005).

[11] G.R. No. 83433, November 12, 1992, 215 SCRA 540.

[12] Id. at 547.

[13] *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 406 (1998).

[14] *Rollo*, p. 144.

[15] *Id.* at 147.

[16] *Id.* at 163.

[17] *Id.* at 115.

[18] *Id.* at 281-285.

[19] *Id.* at 142 and 145.

[20] *Id.* at 149-150.

[21] *Id.* at 117-118.

[22] *Id.* at 161 and 168.

[23] *Id.* at 169-170.

[24] *Amkor Technology Philippines, Inc. v. Juangco*, G.R. No. 166507, January 23, 2007, 512 SCRA 325, 331.

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