

TRIUMPH INTERNATIONAL (PHILS.), INC., PETITIONER, VS. RAMON L. APOSTOL AND BEN M. OPULENCIA, RESPONDENTS.

G.R. No. 164423. June 16, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 20 February 2004 and Resolution dated 5 July 2004 in CA-G.R. SP No. 69280. The Court of Appeals reversed the Decision[3] dated 16 July 2001 and Order dated 20 December 2001 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 026159-00 (NLRC NCR Case No. 39-01-0422-00).

The Antecedent Facts

Respondent Ramon L. Apostol (Apostol) was hired as assistant manager by petitioner Triumph International (Phils.), Inc. (TIPI) in March 1991, and was holding the same position until TIPI's termination of his employment on 21 January 2000. On the other hand, respondent Ben M. Opulencia (Opulencia) was hired as a warehouse helper by TIPI sometime in 1990, and was the company's warehouse supervisor at the time of the termination of his employment on 21 January 2000. Apostol was the immediate superior of Opulencia.

On 14 and 15 August 1999, TIPI conducted an inventory cycle count of its direct and retail sales in its Muñoz warehouse. The inventory cycle count yielded discrepancies between its result and the stock list balance as forwarded on 14 August 1999. Consequently, Leonardo T. Gomez (Gomez), TIPI's Comptroller, issued a memorandum dated 24 August 1999, addressed to Virginia A. Sugue (Sugue), TIPI's Marketing Services Manager -Direct, and R.S. Silva, Marketing and Sales Manager-Retail, requesting for a reconciliation of the discrepancies. On 6 September 1999, Sugue issued a memorandum addressed to Gomez, explaining that the discrepancy could be attributed to pilferage of finished goods at the warehouse, as stated in the affidavit dated 31 August 1999 of Opulencia, TIPI's Warehouse Supervisor. Two days later, or on 8 September 1999, Sugue sent a "show-cause letter" to Apostol, TIPI's Assistant Manager-Warehouse and Distribution, requiring him to explain in writing the negative variance based on the inventory cycle count. The letter also placed Apostol on leave with pay, pending the investigation being conducted by TIPI. Sugue issued a similar letter to Opulencia. On 10 September 1999, Apostol sent a letter-memorandum to Sugue, explaining that the negative variance was due to pilferage of finished goods by Alfred Hernandez, a security consultant of TIPI. Apostol also objected to his being placed on leave with pay. On the same day, Gomez issued a memorandum addressed to Sugue, stating that in the reconciliation of stock development report against stock list, he noted that significant adjustments were made by Opulencia and approved by Apostol.[4] Gomez asked Sugue if she approved such adjustments,[5] and at the same time, requested the latter to direct Opulencia and Apostol to explain the adjustments.

On 16 September 1999, Apostol issued a memorandum[6] addressed to Sugue, copy furnished Gomez, explaining the significant adjustments, to wit:

(1) Adjustments to conform against the physical existence of stock balance of 15,836 pcs. x x x

This is the adjustment made in accordance with the agreed cycle count during the Direct Sales coordination meeting with RSV, VAS and RLA of SMSD-Direct Sales. These are documented adjustments to correct the stocklist balance. This measure was agreed in order to address numerous complaints of dealers regarding unserved orders.

(2) Discrepancy on Stock transfer from Retail Sales to Direct Sales of 1,784 pcs. x x x

There are also adjustments to conform against the physical existence of stock balance of spot items mostly transfer from Retail Sales. There are also documented adjustments and are meant to correct the stocklist balance.

For his part, Oplencia explained in another memorandum of the same date that the adjustments "were made to address the problem of variances between the stocklist balance and the actual stocks. These were covered by the usual stock adjustment reports which were approved by the Asst. Manager-Warehouse and Distribution [i.e., Apostol]." [7] Oplencia wrote Sugue a separate letter-memorandum objecting to his being placed on leave with pay.

On 22 October 1999, Sugue issued a memorandum [8] informing Apostol of the following findings of the TIPI investigation, to wit:

- An inventory count was conducted at the Muñoz warehouse on the 14[th] and 15[th] of August 1999. The inventory count uncovered the pilferage of 15,574 pieces of finished products amounting to more or less P3.5 million;
- Adjusting entries to the stock list totaling to (sic) 17,620 were made without proper investigation and reconciliation with the Accounting Department in conformity with the Company's records and accountability;
- The warehouse keys, which should have been with (sic) Mr. Apostol's custody, were entrusted to the custody of contractual and/or regular employees in violation of the Company's Standard Operating Procedure;
- Mr. Apostol failed to report the alleged fact of pilferage of Mr. Alfredo A. Hernandez, which act of pilferage having been committed under Mr. Apostol's area of control and supervision; and
- On September 29, 1999, in a telephone conversation with Mr. Ralph Funtilla, Personnel Manager of the Company, Mr. Apostol uttered profane, indecent, abusive, derogatory remarks and indecorous words, and even threatened the former.

Sugue also required Apostol to show cause, within 24 hours, why he should not be terminated by TIPI for loss of confidence. [9] On 27 October 1999, Apostol issued a reply to Sugue's memorandum, stating the following: [10]

- The variance uncovered by the inventory cycle count is caused by pilferage. He referred to the report of Ms. Sugue to Mr. Gomez stating such fact;
- The adjustments were made with the full knowledge of the Accounting Department of the company as reflected in a Summary Transaction Report which said department has a copy and which it never questioned. The adjusting entries to the stock list were made in accordance with the agreed cycle count during the Direct Sales coordination meeting in order to correct the stock list balance. These adjustments were done in order to address the numerous complaints of dealers regarding unserved orders. The adjusting entries do not violate any company rule and regulation or any of the Company's internal control systems. This procedure has also been followed since the start of the Direct Sales operations where adjustments are made on the stock list to conform with the actual situation;
- The entrusting of the keys to warehouse staff is a practice since 1990 and had been known to all concerned, and no objections were relayed with regard to this practice. Sufficient control had been imposed in order to

ensure that the staff member who had custody of the key may not pilfer any stock;

- The pilferage of Mr. Hernandez was reported to Ms. Sugue and Mr. Valderama; and
- No profane, indecent, abuse (sic), derogatory language, or threats were uttered against Mr. Funtilla.

TIPI conducted administrative investigations on 20 December 1999 and 10 January 2000. On 21 January 2000, TIPI, through Sugue, served notices to Apostol and Oplencia, stating that their employment had been terminated for committing infractions of the company's rules and regulations. Specifically, Apostol was found to have committed Offense No. 3 (Fraud or willful breach by an employee of the trust reposed in him by the Company) and Offense No. 25 (Using, uttering or saying profane, indecent, abusive, derogatory and/or indecorous words or language against the employer or supervisor), while Oplencia was found to have committed Offense No. 3 only.

On 28 January 2000, Apostol and Oplencia filed with the Labor Arbiter a complaint for illegal dismissal and non-payment of salaries and other benefits against TIPI.

On 28 July 2000, the Labor Arbiter^[11] rendered a Decision dismissing the Complaint for lack of merit.^[12] On appeal, the NLRC affirmed the Decision of the Labor Arbiter.^[13] Apostol and Oplencia filed a motion for reconsideration, but this was denied by the NLRC.^[14]

The Court of Appeals' Ruling

Apostol and Oplencia filed with the Court of Appeals a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, assailing the Decision of the NLRC. On 20 February 2004, the Court of Appeals rendered judgment, reversing and setting aside the NLRC Decision. The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, the instant petition is GRANTED. The assailed Decision dated July 16, 2001 and Order dated December 20, 2001, of the public respondent NLRC, First Division, Quezon City in NLRC NCR CA No. 026159-00 (NLRC NCR CASE NO. 39-01-0422-00) are REVERSED and SET ASIDE. In lieu thereof, the private respondent is hereby ordered to reinstate the petitioners with full backwages from the time their employments were terminated on January 21, 2000 up to the time the decision herein becomes final. However, if reinstatement is no longer feasible, due to the strained relation between the parties, the private respondent is ordered to pay the petitioners their separation pay equivalent to one (1) month pay for every year of service and, in addition, to backwages.

SO ORDERED.^[15]

TIPI filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution of 5 July 2004.^[16]

Hence, this appeal.

The Issues

TIPI raises the following issues:

- 1. Whether the Court of Appeals exceeded its jurisdiction when it reversed the factual findings of the Labor Arbiter and the NLRC by reevaluating the evidence on record;
- Whether the Court of Appeals contravened prevailing jurisprudence by requiring a higher quantum of proof for the dismissal of managerial employees on the ground of loss of trust; and
- Whether the Court of Appeals gravely erred in ruling that respondents were illegally dismissed.

The Court's Ruling

We find the appeal meritorious.

At the outset, respondents contend that the issues raised by TIPI in this case entail an evaluation of the factual findings of the Court of Appeals, which is proscribed in a petition for review on certiorari where only questions of law may be raised. Respondents refer to Section 1, Rule 45 of the 1997 Rules of Civil Procedure which states:

Section 1. Filing of petition with Supreme Court. -- A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied)

Applying the above rule, respondents maintain that the instant petition should be dismissed *motu proprio* by this Court.

As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law. However, jurisprudence has recognized several exceptions to this rule. In *Almendrala v. Ngo*,^[17] we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by certiorari, to wit:^[18] (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

In this case, the factual findings of the Court of Appeals are different from those of the NLRC and the Labor Arbiter. These conflicting findings led to the setting aside by the Court of Appeals of the decision of the NLRC which affirmed the Labor Arbiter. In view thereof, we deem a review of the instant case proper.

On whether the Court of Appeals exceeded its jurisdiction when it reversed the factual findings of the Labor Arbiter and the NLRC

TIPI contends that a reevaluation of the factual findings of the NLRC is not within the province of a petition for certiorari under Rule 65. TIPI asserts that the Court of Appeals can only pass upon such findings if they are not supported by evidence on record, or if the impugned judgment is based on misapprehension of facts -- which circumstances are not present in this case. TIPI also emphasizes that the NLRC and the Labor Arbiter concurred in their factual findings which were based on substantial evidence and, therefore, should have been accorded great weight and respect by the Court of Appeals.

Respondents, on the other hand, contend that the Court of Appeals neither exceeded its jurisdiction nor committed error in reevaluating NLRC's factual findings since such findings are not in accord with the evidence on record and the applicable law or jurisprudence.

The power of the Court of Appeals to review NLRC decisions via a Petition for Certiorari under Rule 65 has been settled as early as our decision in *St. Martin Funeral Home v. NLRC*.^[19] In said case, we held that the proper

vehicle for such review is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court, and that the case should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts.[20] Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902,[21] the Court of Appeals --pursuant to the exercise of its original jurisdiction over petitions for certiorari -- is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[22] Section 9 clearly states:

x x x

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x

However, equally settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[23] But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.[24]

In this case, the NLRC sustained the factual findings of the Labor Arbiter. Thus, these findings are generally binding on the appellate court, unless there was a showing that they were arrived at arbitrarily or in disregard of the evidence on record. Questioned in a petition for certiorari under Rule 65, these factual findings were reexamined and reversed by the Court of Appeals for being "not in accord with the evidence on record and the applicable law or jurisprudence." [25] To determine if the Court of Appeals' reexamination of factual findings and reversal of the NLRC decision are proper and with sufficient basis, it is incumbent upon this Court to make its own evaluation of the evidence on record.

On whether the Court of Appeals erred in ruling that respondents were illegally dismissed

In cases of termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process.[26] Dismissals of employees have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality in the manner of dismissal, which constitutes procedural due process.[27]

Apostol and Oplencia were dismissed by TIPI allegedly for committing Offense No. 3 or "fraud or willful breach by an employee of the trust reposed in him by the company or the company's representative." Apostol was also found to have committed Offense No. 25 or "using, uttering or saying profane, indecent, abusive, derogatory and/or indecorous words or language against the employer or the supervisor." These grounds are among the just causes for termination of employment under Article 282 of the Labor Code, to wit:

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. (Italicization supplied)

Termination of employment based on Article 282 mandates that the employer substantially comply with the requirements of due process under the rules implementing the Labor Code, to wit:[28]

Section 2. Security of Tenure. x x x

x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side;

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(iii) a written notice of termination served on the employee, indicating that upon, due consideration of all the circumstances, grounds have been established to justify his termination.

x x x

There is no question that TIPI, in dismissing Apostol and Opulencia, complied with the above requirements of procedural due process. The Court of Appeals even pointed out in its decision some of the documentary proofs of such compliance. We quote the pertinent portion of the Court of Appeals' decision, viz:

x x x In the present case, the evidence shows that the private respondent [TIPI] had substantially complied with the requirements of procedural due process. The private respondent sent the following to the petitioners: (a) show cause letters addressed to the petitioners [Apostol and Opulencia] requiring them to explain in writing within 48 hours upon receipt, the discrepancy on the cycle count conducted on the Muñoz warehouse on August 14-15, 1999 and placing both of them on leave with pay until further notice pending investigation on the matter; (b) memorandum dated October 22, 1999 addressed to petitioner Apostol showing the findings after the investigation was conducted by the private respondent, requiring him to explain within 24 hours from receipt why he should not be terminated from his employment for loss of confidence; and (c) the notices of termination dated January 21, 2000.[29]

Thus, we are left with the question on whether the alleged causes for dismissal of respondents Apostol and Opulencia are supported by substantial evidence.

Apostol and Opulencia were dismissed mainly on ground of fraud or willful breach of trust. As previously mentioned, fraud or willful breach of the employer's trust is a just cause for termination of employment under Article 282(c) of the Labor Code. This provision is premised on the fact that the employee concerned holds a position of trust and confidence, a situation which exists where such employee is entrusted by the employer with confidence on delicate matters, such as care and protection, handling or custody of the employer's property.[30] 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.[31]

Recent decisions of this Court have distinguished the treatment of managerial employees from that of the rank-and-file personnel,[32] insofar as the application of the doctrine of loss of trust and confidence is concerned.[33] 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.[34] 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.[35] Hence, in the case of managerial employees, proof beyond reasonable doubt is not required.[36] It is sufficient that there is some basis for the employer's loss of trust and 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 of his position.[37] Nonetheless, the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests and not on the employer's arbitrariness, whims, and caprices or suspicion.[38]

In this case, Apostol and Oplencia were not ordinary rank and file employees; they were managerial and supervisory employees. Apostol was TIPI's assistant manager for warehouse and distribution, while Oplencia was a warehouse supervisor. They were entrusted with the management and handling of the company's warehouse goods.

In the Notices of Termination,[39] TIPI explained the cause for dismissal of the respondents in this manner:

x x x

Offense No. 3 states that:

Fraud or willful breach by an employee of the trust reposed in him by the Company or the Company's Representative is a ground for dismissal.

x x x

An inventory count was conducted at the Muñoz warehouse on the 14[th] and 15[th] of August 1999 by the Company's Accounting Department. The inventory count uncovered the shortage/pilferage of 15,574 pieces of finished products amounting to more or less P3.5 Million.

It was further uncovered that you have made unauthorized and unreported adjusting entries to the stocklist totaling 17,620 pieces, without proper investigation and reconciliation with the Accounting Department, in conformity with the Company's records and accountability.

Such an action on your part constitutes a clear violation of the established internal control procedures of the Company which are meant primarily to safeguard Company assets. As required by generally accepted internal control standards, all inventory-related adjustments should be authorized by Management, including, but not limited to the preparation of formal reports indicating the parties responsible for as well as the parties who approved such adjustments. In this respect, it is the Company's finding that you have failed to comply with such mandatory internal control requirement.

As a responsible officer of the Company, you are mandated to strictly observe such internal control procedures, knowing fully well the adverse consequences of breakdown in internal control. More so, since you are directly responsible for the custody and safekeeping of goods, in the "direct sales" warehouse. Your culpable negligence in this respect, has resulted in millions of pesos lost in pilfered goods which could have been uncovered earlier had you reported to Management the abnormal discrepancy in the amount of inventory per stocklist vis-a-vis the actual inventory count. (Emphasis supplied)

Thus, respondents were found by TIPI to have made unauthorized and unreported adjusting entries to the stocklist without proper investigation and reconciliation with the Accounting Department, without prior authorization by management, and without preparation of formal reports indicating the parties responsible for the adjustments and

those who approved the same. This, according to TIPI, is a clear violation of the company's internal control procedures, which resulted to the loss of the company's trust and confidence in the respondents.

Internal control procedures are usually adopted by large manufacturing companies, such as petitioner TIPI, to efficiently monitor production and safeguard company assets and inventories. As part of its internal control procedure, TIPI requires the conduct of a monthly physical inventory in the finished goods warehouse, with an accompanying report as to discrepancies between the records and actual count.[40] Adjusting entries can be made on the inventory report, provided that a specific procedure is followed. This procedure, which was outlined in the affidavit[41] of Zenaida Galang, TIPI's assistant manager-operations accounting, was never questioned by the respondents. It provides:

x x x

3. The procedure for making an adjusting entry to the inventory report is as follows: First, the Sales and Marketing Services Department, including Mr. Ramon Apostol, must recommend that such adjusting entry should be made. Second, the Department Head, namely, Ms. Virginia A. Sugue, must approve such recommendation. Third, the adjustment made is reflected in the stock development report prepared by Mr. Apostol, noted by Ms. Sugue and submitted to me [Galang] for my checking and review on or before the 10[th] day of [the] month. Fourth, the adjustment made must be reviewed and approved by Leonardo T. Gomez, the Chief Financial Officer of Triumph.

Respondents do not deny making adjustment entries to the stocklist. In fact, both admitted making such adjustments in the office memoranda and affidavits submitted as evidence in this case.[42] The question, therefore, is whether respondents Apostol and Opulencia, in making such adjustments, violated TIPI internal control procedures.

After a careful evaluation of the evidence on record, we are convinced that the respondents made unauthorized adjustments in TIPI's stocklist, in violation of the company's internal control procedures. This act warrants respondents' dismissal for willful breach of employer's trust.

Respondents claim that they made the adjustments[43] in accordance with the agreed cycle count during the Direct Sales coordination meeting with other TIPI managerial employees,[44] and that these were documented adjustments made to correct the stocklist balance.[45] They also claim that the adjustments were made with full knowledge of the Accounting Department, as reflected in a Summary Transaction Report which remained in the custody of said department.[46]

These claims of the respondents are negated by the statements of other TIPI employees. In an affidavit dated 17 May 2000, Galang, the person handling the TIPI's accounting records pertaining to the inventory report of the Direct and Retail Sales Department, stated that she was not informed by either Apostol or Opulencia that they would make adjusting entries to the stocklist. Moreover, the Stock Development Reports submitted to her by Apostol and Opulencia for the months of April to July 1999 did not reflect that they made adjusting entries. We quote the relevant portion of Galang's affidavit, thus:

x x x

4. I was not informed by either Mr. Ramon L. Apostol or Mr. Ben M. Opulencia, the persons-in-charge of the Muñoz warehouse, that they will be making adjusting entries to the stocklist balance in the total quantity of 15,836 pieces under the heading "Adjustment to conform against physical existence of stock balance," as follows:

April 1999

5,435

May 1999

1,383

June 1999

6,011

July 1999

3,007

TOTAL

15,836

5. The stock development reports that were submitted to me by Mr. Apostol and Mr. Opulencia in the months that the above adjusting entries were made did not reflect that they made adjusting entries.

6. I never gave any formal or informal authority to either Mr. Opulencia or Mr. Apostol to make such adjusting entries to the stocklist balance because it is not within my authority to do so. I can only recommend, after my review, that an adjusting entry be made but it is Mr. Gomez who gives the final approval.

7. I was shocked when Mr. Apostol informed me only after the inventory cycle count done in August 14 and 15, 1999 that he made adjusting entries to the stocklist balance without going through with the above procedures as I have never encountered an adjusting entry being made in such a manner in my twenty-one (21) years with Triumph.[47] (Emphasis supplied)

It is also apparent from the memorandum dated 10 September 1999,[48] sent by Gomez, TIPI's chief financial officer, to Sugue, that Gomez did not know of the adjustments made by Apostol and Opulencia. In the memorandum, Gomez informed Sugue that in the Reconciliation of the Stock Development Report against Stocklist (ending inventory as of 13 August 1999), he noted "significant adjustments done by Mr. Ben Opulencia and approved by Mr. Mon Apostol x x x." Gomez asked Sugue if she approved the adjustments and even requested her (Sugue) to ask Opulencia and Apostol to explain the adjustments.

Sugue, on the other hand, stated in her affidavit dated 26 April 2000,[49] that although she might have given Apostol an informal authorization to make any adjusting entry, she still expected Apostol to submit a formal report for her (Sugue's) approval; and that she received no such formal report from Apostol or Opulencia, but discovered that adjustments were made only sometime in July or August, after the cycle count was completed.[50]

Moreover, respondents' claim that the adjustments were with full knowledge of the Accounting Department as reflected in the Summary Transaction Report remains unsubstantiated. No Summary Transaction Report was

adduced in evidence. Considering the importance of such report which could have proven respondents' allegation that the adjustments made were formally documented and had, at least, the authorization of the accounting department, failure of respondents to exert effort to secure and present the same as evidence is beyond us.

As regards respondents' claim that the adjustments were made pursuant to a long standing company practice and with the informal authorization of Sugue, suffice it to say that considering TIPI's formal requirements in making adjusting entries, an informal and verbal authorization given by Sugue, even if true, cannot be considered sufficient, especially considering the materiality of the discrepancies involved in this case and the resulting loss to the company.

Finally, we quote with approval the following findings of the Labor Arbiter:

It has been established that none of the steps [for making adjustments] were undertaken by complainants when they made the entry adjustments. x x x

What makes the case worse for the complainants [respondents] is that these entry adjustments were made as far back as April 1999. These entry adjustments could have accounted for the discrepancies discovered during the August 4 and 15, 1999 cycle count, aside from the pilferages committed by Mr. Hernandez, assuming these pilferages were true. Yet, complainants never volunteered this fact to the Company officials. It was only after the discovery by Mr. Gomez of these unauthorized entry adjustments that they admitted to have made such adjustments.

Because of the total disregard of the complainants of the internal control procedure of the Company, the latter was definitely prejudiced since it was in a sense "blind" as to the real status of the stocks it has on hand in the warehouse being supervised by the complainants. This being the case, the Company would have had no idea as to whether it should increase or decrease its inventory level vis-a-vis the existing market conditions and whether or not its operations are profitable.

Regarding the pilferage allegedly committed by Mr. Hernandez, this Office finds that such allegations are, in fact, irrelevant in these proceedings. Assuming, arguendo, that such pilferage existed, it does not and cannot exculpate complainants from facing the consequences of the unauthorized entry adjustments they committed.[51]

Considering the foregoing, we find that respondents Apostol and Oplencia were dismissed by TIPI for a valid and just cause. The relationship of employer and employee, specially where the employee has access to the employer's property, necessarily involves trust and confidence.[52] Where the rules laid down by the employer to protect its property are violated by the very employee who is entrusted and expected to follow and implement the rules, the employee may be validly dismissed from service.

Finding the dismissal of respondents Apostol and Oplencia, based on willful breach of employer's trust, valid, we deem it unnecessary to further rule on TIPI's other ground for Apostol's dismissal, i.e., uttering indecent, abusive and derogatory words against his supervisor. Note, however, that such act of an employee, if substantially proven, may be considered as serious misconduct which would warrant the termination of his employment.

WHEREFORE, we GRANT the petition. We REVERSE the Court of Appeals' Decision dated 20 February 2004 in CA-G.R. SP No. 69280, and REINSTATE the Decision dated 16 July 2001 and Order dated 20 December 2001 of the National Labor Relations Commission in NLRC NCR CA No. 026159-00 (NLRC NCR Case No. 39-01-0422-00).

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Delilah Vidallon- Magtolis and Jose L. Sabio, Jr., concurring.

[3] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo, concurring.

[4] CA rollo, pp. 367-368. The significant adjustments referred to are:

(1) Adjustments to conform against physical existence of stock balance of 15,836 pcs.

(2) Discrepancy on stock transfer from Retail to Direct Sales of 1,784 pcs.

[5] Id.

[6] Id. at 369.

[7] Id. at 370.

[8] Rollo, pp. 36-37.

[9] Id.

[10] Id. at 37-38.

[11] Labor Arbiter Pedro C. Ramos.

[12] Rollo, p. 157.

[13] Id. at 207.

[14] Id. at 211.

[15] Id. at 47.

[16] Id. at 49.

[17] G.R. No. 142408, 30 September 2005, 471 SCRA 311.

[18] Id. at 322, citing *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 86; *Aguirre v. Court of Appeals*, G.R. No. 122249, 29 January 2004, 421 SCRA 310, 319; and *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279 (2002).

[19] 356 Phil. 811 (1998).

[20] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, 16 October 2006, 504 SCRA 336; *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 457 Phil. 993, 1006 (2003).

[21] An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980.

[22] *R & E Transport, Inc. v. Latag*, 467 Phil. 355, 364 (2004).

[23] C. Planas Commercial v. NLRC, 362 Phil. 393 (1999); Hacienda Fatima, v. National Federation of Sugarcane Workers-Food and General Trade, 444 Phil. 587 (2003).

[24] Id.; R & E Transport, Inc. v. Latag, supra.

[25] Rollo, p. 47.

[26] Tirazona v. Court of Appeals, G.R. No. 169712, 14 March 2008, 548 SCRA 560; Shoemart, Inc. v. NLRC, G.R. No. 74229, 11 August 1989, 176 SCRA 385, 390.

[27] Id.

[28] Sec. 2(d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code.

[29] Rollo, p. 43.

[30] Jardine Davies, Inc. v. NLRC, 370 Phil. 310, 318-319 (1999).

[31] Id., citing Aris Philippines, Inc. v. NLRC, G.R. No. 97817, 10 November 1994, 238 SCRA 59, 62.

[32] Article 212(m) of the Labor Code defines a "managerial employee" as "one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees." A "supervisory employee" is one "who, in the interest of the employer, effectively recommends such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment." All employees not falling within these two definitions are considered "rank-and-file employees."

[33] Velez v. Shangri-la Edsa Plaza Hotel, G.R. No. 148261, 9 October 2006, 504 SCRA 13, 26.

[34] Id.

[35] Id., citing Maquiling v. Philippine Tuberculosis Society, Inc., 491 Phil. 43 (2005).

[36] Manila Electric Company v. NLRC, G.R. No. 60054, 2 July 1991, 198 SCRA 681, 687.

[37] Jardine Davies, Inc. v. NLRC, supra note 30, citing Sajonas v. NLRC, G.R. No. 49286, 15 March 1990, 183 SCRA 182, 188.

[38] Manila Electric Company v. NLRC, supra; Velez v. Shangri-la Edsa Plaza Hotel, supra, citing Samson v. National Labor Relation Commission, 386 Phil. 669 (2000).

[39] CA rollo, pp. 380-381.

[40] Id. at 385; TIPI Internal Memorandum dated 27 November 1979, Re: Finished Goods Warehouse, states:

- Effective end of November, there should be a monthly physical inventory in the finished goods warehouse with an accompanying report as to discrepancies between the records and actual count.

x x x

[41] Id. at 405. Dated 17 May 2000.

[42] Id. at 369 (Memorandum dated 16 September 1999 sent by Apostol to Sugue), 370 (Memorandum dated 16 September 1999 sent by Ofulencia to Sugue), 371 (Joint Affidavit dated 10 January 2000, executed by Apostol and Ofulencia), and rollo, p. 37 (Reply-Memorandum dated 27 October 1999 sent by Apostol to Sugue).

[43] Adjustments to conform against the physical existence of stock balance of 15,836 pcs.

[44] That is, RSV (Valderama), VAS (Sugue) and RLA of SMSD-Direct Sales.

[45] CA rollo, pp. 369-370. Memoranda dated 16 September 1999 of Apostol and Opulencia.

[46] Rollo, p. 37. Reply-Memorandum dated 27 October 1999 of Apostol.

[47] CA rollo, pp. 405-406.

[48] Id. at 367.

[49] Id. at 407-410.

[50] The Affidavit dated 26 April 2000 of Virginia Sugue states:

x x x

6. During the hearing of December 22, 1999, which was recorded on tape, Atty. Cleofe Villar-Verzola asked me the following questions: "And as the superior, the immediate superior of these two respondents [Apostol and Opulencia], do you know of any act which they committed which would constitute willful breach of trust reposed on them by the company?" to which I answered, "Well, only in as far as the stock adjustments are concerned. I was not informed that adjustments were actually really made on stocks."

7. During the same hearing, Atty. Cresencio Meneses questioned me on whether I authorized Mr. Apostol or Mr. Opulencia to make adjusting entries to the stocklist balance. The following are his questions and my answers:

Atty. Menses:

In the said memo dated September 16, 1999 x x x there was a statement made by Mr. Apostol stating that this is the adjustment made in accordance with the agreed cycle count during the direct sales coordination meeting with RSV, VAS, LRA of SMSD-Direct Sales. Can you confirm that there was a direct sales coordination meeting between you, Mr. Apostol, Mr. Valderama and Mr. Opulencia? x x x

Ms. Sugue:

Coordination meetings. These are monthly meetings. But I cannot remember of a coordination meeting that there was an agreement about a cycle count.

Atty. Meneses:

So, you were not aware. You don't remember any meeting wherein an agreement as to a cycle count was made between you, Mr. Valderama and Mr. Apostol?

Ms. Sugue:

No, I don't remember.

Atty. Meneses:

Were you aware, Mr. Sugue? Did Mr. Apostol inform you that adjusting entries will be made with the stock balance book?

Ms. Sugue:

As regards to cycle?

Atty. Meneses:

Yes?

Ms. Sugue:

Yes. He did. He said he made in the past, he has made adjustments in the stocklist.

Atty. Meneses:

But were you informed that you will be making adjusting entries to the present stocklist as per agreed upon between you, Mr. Valderama and himself?

Ms. Sugue:

Sorry, can you repeat the question?

Atty. Meneses:

At any point in a direct sales coordination meeting as stated by Mr. Apostol, did you authorize him to make an adjusting entry to the stock balance?

Ms. Sugue:

I said I cannot remember a meeting that has taken place, a coordination meeting that a cycle count was being agreed upon. So in that regard, I don't remember anything but as regards making adjustments in the stocklist is concerned, there were some discussions not in that type of venue. Probably in meetings with only Mr. Apostol about when he said he was conducting a cycle count already. I asked him if he can consult with the finance department about the procedure for stocklist adjustment.

Atty. Meneses:

So you just told him to consult with the finance department as to the procedure in adjusting, in stock adjustments?

Ms. Sugue:

Specifically for cycle count.

Atty. Meneses:

But you did not authorize him whether verbally or in writing to make such an adjustment?

Ms. Sugue:

There was no formal memo. I said to consult finance department about the stocklist adjustment. So later on he came back to me. He said he has already consulted Zeny Galang of finance and then of course, that he has been making adjustments in the past being with the company for 10 years already and that actually, that stocks, there's a master record. There's a forecast stock development being handled by finance that is the master records that cannot be tampered with or adjusted and that serves as the control records wherein he will be forced any variances on this master record with, of course, being explained by budget.

x x x

Atty. Meneses:

Just one last question to Ms. Sugue. Did you authorize Mr. Apostol to make any adjusting entry?

Ms. Sugue:

Not formally. It was, there were a series, a couple of discussions about stock adjustment. There might have

been, I cannot remember. There are small notes that are passed on from him to me but I expected, of course, even if there was informal authority to adjust the stocklist, I expected a report on the final number, on the final figure of adjustment for my approval.

Atty. Meneses:

Did you receive such final report from Mr. Apostol as to the final figure of the adjustment?

Ms. Sague:

No, there was none of the report.

Atty. Meneses:

One final... Did Mr. Apostol officially inform you in writing that he made an adjusting entry to the stocklist balance?

Ms. Sague:

No. He did not. I only discovered, as I said, when the adjustments were made sometime in July or August, when the cycle count is finished. Then I got to know about some final figure.

4.

I did not give any formal authorization to either Mr. Apostol or Mr. Opulencia to make adjusting entries to the stocklist balance. Neither did either of them give me a formal report that they made adjusting entries to the stocklist balance.(Italicization supplied)

[51] Rollo, pp. 151-152. Decision of the Labor Arbiter, pp. 7-8.

[52] Philippine Education Co., Inc. v. Union of Philippine Education Employees, et al., 107 Phil. 1003 (1960).

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