MANILA MEMORIAL PARK CEMETERY, INC. AND/OR ENRIQUE B. LAGDAMEO, PETITIONERS, VS. DELIA V. PANADO, RESPONDENT.

G.R. No. 167118. June 15, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

We are urged in this Petition for Review on Certiorari to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals dated 30 March 2004 and 9 February 2005, respectively, in CA-G.R. SP No. 74640. Said Decision and Resolution annulled and set aside the Resolutions[3] of the National Labor Relations Commission (NLRC) and ordered the reinstatement of respondent Delia V. Panado.

The records establish the following antecedents:

Petitioner Manila Memorial Park Cemetery, Inc. (MMPCI) is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of developing and maintaining memorial parks in various parts of the country.

Petitioner Enrique B. Lagdameo is MMPCI's executive vice-president and chief operating officer.

Respondent Delia V. Panado was formerly employed by petitioner MMPCI as Park Information Officer at its memorial park in Sucat, Parañaque for which she was compensated P10,300.00 monthly.[4] As Park Information Officer, respondent was tasked with the following duties and responsibilities: attending to customer's and client's needs; arranging interment/cremation; arranging tent rentals and marker orders; receiving and filing interment order relay; handling park collections and petty cash funds; remitting park collections either to the bank or the cashier; typing daily interment schedule; and performing other duties as may be assigned.[5]

Sometime in February 2000, respondent arranged the rental of tents by the Obice family to be used during the first death anniversary of a member of their family on 20 February 2000.

In May 2000, respondent likewise coordinated the rentals of tents and chairs with a certain Teresita So. The tents and chairs were supposed to be used by the So family on 24 May 2000.

Subsequently, petitioner MMPCI conducted an internal audit where it was revealed that a discrepancy existed between the services supposedly rendered by petitioner MMPCI and the amount of money it received as payment for said services. As a result of this discovery, petitioner Lagdameo wrote respondent a memorandum dated 19 July 2000 requesting the latter to explain in writing within 72 hours why her employment should not be terminated due to her alleged failure to remit or her withholding of the rental payments for certain transactions she entered into in behalf of petitioner MMPCI.[6] Attached to the memorandum was a table summarizing these transactions, to wit:

> TENT RENTAL ACCOUNTABILITY
> FOR THE PERIOD JANUARY 1 TO JUNE 30, 2000

EMPLOYEE NAME OF DECEASED DATE SERVICED AMOUNT TOTAL

Delia V. Panado Alfredo (Obice), Jr. Feb. 20 P1,000

Teresita So May 24
1,000.00

Trumencia Togonon June 3
160.00

GRAND

TOTAL

P2,160.00

In her 21 July 2000 letter-response to the aforementioned memorandum,[7] respondent stated that she did not receive a single centavo from the rentals of petitioner MMPCI's properties. As regards the transaction with the So family, respondent explained that Julius Munar, her supervisor, had promised to allow the So family free use of the tent and the chairs as the deceased member of the So family was a cousin of his wife. It so happened that on the day the reservation was placed over the phone, Munar was on his day off, compelling respondent to deal with the So family by herself.

With respect to the dealings with the Obice and the Togonon families, respondent stated in her letter that their respective families undertook to drop by respondent's office to settle their obligations. Unfortunately, no payment was received from the Obices and the Togonons. In the end, respondent admitted that she was at fault because of her failure to follow-up the payments for the rentals of petitioner MMPCI's properties.

During the same investigation, Erlinda Obice, wife of the deceased Alfredo Obice, executed the following written statement:

Aug. 9, 2000

I, Erlinda M. Obice, certify that I personally paid the rental for the 2 tents during the 1[st] death anniversary of my husband, Alfredo, last Feb. 20, 2000, in the presence of Mang Aguilar Santiago.

Signed

ERLINDA M. OBICE[8]

For his part, the witness identified in Erlinda's statement, Aguilar Santiago, executed a sworn statement dated 12 August 2000 where he acknowledged that he was the one who received the amount of one thousand pesos from the Obice family and that he turned over the money to Sany Briquilo (sic) at petitioner MMPCI's office.[9]

Respondent's explanation, however, was not as convincing as she had hoped because on 25 August 2000, she received a notice of termination stating -

24 August 2000

TO : DELIA V. PANADO
FROM : EXECUTIVE VICE PRESIDENT
SUBJECT : NOTICE OF TERMINATION

Your response to my memorandum on unremitted tent rental dated July 19, 2000 has been considered

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seriously. In effect you were saying that the Servicing Supervisor himself promised a free use of the tent rental and chairs to Teresita So, the deceased, as the latter you said is a cousin of his wife. The final arrangement however was personally done by you and you could have informed the relatives of our SOP or asked for a written instruction from Mr. Munar.

Who called whom and when? What is the name of the family member of Prumencia (Togonon) and Alfredo Obice whom you talked with? Mrs. Erlinda M. Obice paid the rental for 2 tents that very day of February 20, 2000. It was given to Santiago Aguilar which was remitted to Aniceto Brequillo. So what do you mean in your July 21, 2000 response when you said the "the family promised over the phone to drop by the office to settle their obligation?"

In your desire to explain why you have not remitted or why you have withheld the rental payments and why you should not be terminated for cause, you gave ambiguous answers. However, the fact still remains that you have been remiss of your duties and responsibilities. Not following up rental fees after the service has been rendered especially when one (1) week or a couple of months had passed is "gross and habitual neglect of your duties" (1104E: 4.17) and/or "willfully refusing specific instruction" (1104E: 6.1) on Tent Rental SOP. Both of which DISMISSAL is the penalty.

Starting September 25, 2000 your services with MMP will officially be terminated.

Signed
ENRIQUE B. LAGDAMEO
Executive Vice President[10]

Thereafter, respondent wrote a letter to petitioner Lagdameo in an attempt to further explain her side of the story. The pertinent portion of her letter provides:

MR. ENRIQUE B. LAGDAMEO
EVP-COO
Manila Memorial Park

Dear Sir,

x x x

In our discussion, it appeared that I was trying to cover-up the misdeeds of Mr. Sonny Brequillo and impliedly accused of making false statements when I mentioned in my July 21 letter that the Obice family promised over the phone to settle their tent rental obligation where in fact the amount was already handed over to Mr. S. Brequillo through Mr. S. Aguilar, MMP employee and husband of the Obice's caretaker. I believe both personnel could attest to the truthfulness of the circumstances. In truth, the request of Mrs. Obice was processed by my office February 1 or 20 days prior to the (deceasedï¿½s) death anniversary (Feb. 20).

As it was our policy to carry out said rental transaction on pure C.B.D. (collect before delivery of service), I emphasized this company policy when the Obice Family called me sometime February 18[th] and requested to make the payment (on February 20) which I entertained since it was inconvenient for them to travel back and forth considering they lived in Antipolo Rizal. I was not made aware nor advised of the tent rental payment since all the while I was trying to reach the Obice Family thru the phone no. registered in our office. Perhaps, I was not so resourceful and skilled compared to our Audit Team who were successful in tracing the new address and phone no. of the deceased's wife, Mrs. Erlinda Obice.

I really thought when Mr. Peña forced me to sign those xerox copy to tent rental indicated I agree for salary deduction, clear up everything and at the same time connotes that I humbly admit that there (was) a negligence on my part, by not following up those payments.

> x x x
>
> Respectfully yours,
>
> Signed
> Delia V. Panado[11]

In the end, respondent's efforts proved to be fruitless as petitioner MMPCI did not act on her letter-request for reconsideration. This prompted respondent to file a complaint for illegal dismissal with claim for damages, attorney's fees, 13[th] month pay, reinstatement, and backwages.

In a Decision dated 14 March 2001,[12] Labor Arbiter Potenciano S. Cañizares, Jr. dismissed respondent's Complaint for lack of merit ratiocinating as follows -

> After careful examination of the facts and the evidence, We believe that the respondents terminated the services of the complainant (respondent herein) under Article 282 (c)[13] of the Labor Code and in a valid exercise of management prerogative. Her act of appropriating to herself company money can only be called inequitable, unfair and dishonest, or fraudulent, or deceitful. With such conducts of an employee, no employer or business can prosper, to the prejudice not only of its owner but also to the other diligent employees who may lose their jobs upon the downfall of the business.[14]

The findings and conclusion of the labor arbiter were affirmed by the NLRC through its Resolution promulgated on 18 June 2002[15] the dispositive portion of which reads:

> WHEREFORE, premises considered, the appealed Decision is hereby, AFFIRMED en toto.
>
> The instant appeals is hereby, DISMISSED for lack of merit.[16]

Aggrieved, respondent instituted a Petition for Certiorari before the Court of Appeals which ruled in her favor, thus:

> WHEREFORE, the petition is hereby GRANTED. The assailed Resolutions of public respondent National Labor Relations Commission are ANNULLED and SET ASIDE. Respondent Manila Memorial Park Cemetery, Inc. is hereby ordered to reinstate petitioner Delia V. Panado to her former position or its equivalent without loss of seniority rights or privileges plus full backwages computed from the time her salaries were withheld until she is finally reinstated.[17]

The Court of Appeals observed that, contrary to the findings of the labor arbiter and the NLRC, the records are bereft of evidence indicating that respondent appropriated for herself company money. In fact, according to the Court of Appeals, it was never proven that respondent even got hold of the money paid by the Obice family as Aguilar claimed that he handed over the same to Brequillo and not to respondent. Moreover, respondent could not have possibly appropriated the payment received from the So family as even petitioner MMPCI did not deny that the So family used the tent free of charge.

The Court of Appeals also held that while it agreed with petitioner MMPCI with regard to respondent's negligence in the performance of her duty, still, such negligence did not amount to a willful breach of trust which could justify her dismissal from service under Article 282 (c) of the Labor Code. Neither can petitioner validate respondent's dismissal by invoking Article 282(b) of the Labor Code as it requires gross and habitual neglect of duty to warrant the termination of employment. In this case, it was never shown that respondent was previously remiss in the performance of her job.

Petitioner MMPCI's Motion for Reconsideration was denied by the Court of Appeals in its Resolution dated 09 February 2005.[18]

Now, petitioner MMPCI is before this Court impugning the Court of Appeals' decision on the following grounds:

> THE COURT OF APPEALS' DECISION AND RESOLUTION DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LAW AND JURISPRUDENCE IN REVERSING THE UNIFORM RULINGS OF THE NLRC AND THE LABOR ARBITER, IN PARTICULAR:
>
> - THE COURT OF APPEALS GROSSLY ERRED IN ADOPTING PRIVATE RESPONDENT'S MISTAKEN ARGUMENTS AS TO THE CAUSE OF HER DISMISSAL WHEN THE RECORDS OF THE NLRC SUPPORT THAT PRIVATE RESPONDENT WAS ESSENTIALLY TERMINATED FOR VIOLATING COMPANY RULES AND ARTICLE 282 (C) OF THE LABOR CODE.
>
> - THE LABOR ARBITER AND THE NLRC'S FINDINGS ON THE MISREPRESENTATION OR DECEPTION COMMITTED BY PRIVATE RESPONDENT UPON MMPCI ARISING FROM THE UNREPORTED PAYMENT MADE BY THE OBICE FAMILY HAS MORE THAN SUFFICIENT EVIDENTIARY BASIS AND SHOULD NOT HAVE BEEN SET ASIDE BY THE COURT OF APPEALS.
>
> - THE LABOR ARBITER AND THE NLRC'S FINDINGS ON THE NEGLECT OF PRIVATE RESPONDENT IN THE PERFORMANCE OF HER DUTIES ARISING FROM THE ARRANGEMENT OF THE TENT RENTAL TO TERESITA SO FREE OF CHARGE WITHOUT A WRITTEN INSTRUCTION IS ALSO DULY SUPPORTED BY THE EVIDENCE AND SHOULD NOT HAVE BEEN SET ASIDE BY THE COURT OF APPEALS.
>
> - THE DISCIPLINARY CASES OF JULIUS MUNAR AND SONNY BREQUILLO ARE IRRELEVANT AND IMMATERIAL TO PRIVATE RESPONDENT'S CASE AND SHOULD NOT HAVE BEEN CONSIDERED BY THE COURT OF APPEALS IN THIS CASE.
>
> - THE LENGTH OF PRIVATE RESPONDENT'S SERVICE WITH MMPCI IS NOT A BAR TO HER TERMINATION DUE TO DISHONESTY.[19]

Essentially, the issue presented for our consideration is whether or not there is adequate basis to terminate respondent's employment.

As a preliminary matter, we shall resolve the procedural concern raised by petitioners. They maintain that the Court of Appeals should not have taken cognizance of the case as no grave abuse of discretion was committed by the NLRC. Such argument is untenable.

For a Petition for Certiorari to prosper, the following requisites must be present: (1) the writ is directed against a tribunal, a board or an officer exercising judicial or quasi-judicial functions: (2) such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[20]

There is grave abuse of discretion "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[21]

In the case of Daniel V. Zarate, Jr. v. Hon. Norma C. Olegario,[22] we held that where the NLRC or executive 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.

As will be shown later, the NLRC's Resolution dated 18 June 2002[23] finds no substantial support in the evidence on record. It was only proper, therefore, for the Court of Appeals to give due course to the Petition for

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Certiorari filed by respondent herein.

Having disposed of the procedural matter, we shall now proceed to resolve the substantive questions presented in this case.

Petitioners argue that the Court of Appeals erred in declaring that the ground for respondent's dismissal was her alleged misappropriation of company money which is punishable under Article 282(c) of the Labor Code. Petitioners claim that the notice of termination sent to petitioner clearly stated that the cause for her dismissal was her "neglect in following-up the payments for the [park] services that she arranged, plus her failure in complying with basic company policy of C.B.D. (collect before delivery of services)" and not her embezzlement of company funds as the Court of Appeals held.[24] Petitioners, therefore, argue that they did not bear the burden of presenting evidence to prove that respondent indeed misappropriated petitioner MMPCI's funds as respondent was not charged with such offense in the first place.

In addition, petitioners claim that although both the labor arbiter and the NLRC stated that "[respondent] appropriated for herself company money which can only be called inequitable, unfair, and dishonest or fraudulent and deceitful," such statement should not be treated as the ratio decidendi of their respective findings.[25] Instead, petitioners would like to direct our attention to the labor arbiter's and the NLRC's conclusions that respondent's employment was validly terminated pursuant to Article 282(c) of the Labor Code. The argument fails to persuade.

It is undisputed that in his Decision, the labor arbiter referred to the aforementioned provision of the Labor Code as the legal basis for the termination of respondent's employment. A reading of the remainder of the paragraph where Article 282(c) of the Labor Code was alluded to, however, would reveal that ultimately, the labor arbiter validated petitioners' personnel action based on her purported misappropriation of company funds, thus:

> After careful examination of the facts and the evidence, We believe that the respondents (petitioners herein) terminated the services of the complainant (respondent herein) under Article 282(c) of the Labor Code and in a valid exercise of management prerogative. Her act of appropriating to herself company money can only be called inequitable, unfair and dishonest, or fraudulent, or deceitful. With such conducts of an employee, no employer or business can prosper, to the prejudice not only of its owner but also to the other diligent employees who may lose their jobs upon the downfall of the business.[26]

Based on the above-quoted paragraph, it is crystal clear that the labor arbiter's finding of "fraud or willful breach"[27] of petitioners' trust committed by respondent was based not on the grounds contained in the notice of termination that petitioners sent to respondent but on her alleged misappropriation of petitioner MMPCI's money. The NLRC, through its18 June 2002 Resolution, affirmed the labor arbiter's Decision, to wit:

> In the case at bar, the records clearly show that the respondents-appellees were able to establish that herein complainant-appellant was terminated from the service under Article 282(c) of the Labor Code, as amended, and, in a valid exercise of management prerogative. As established, the complainant-appellant appropriated to herself company money which can only called "inequitable, unfair and dishonest or fraudulent, or deceitful" (Records, p. 106). The documents as adduced by respondents-appellees and as admitted by the complainant-appellant herself, (1) the Obice family paid the cost of rental; (2) that as early as February 1, 2000, the complainant-appellant already knew about this payment, and, (3) notwithstanding said knowledge, complainant-appellant misrepresented to the respondent-appellee company that the Obice family had not yet paid the cost of the tent rental.[28]

With this conclusion, the question inevitably posed is whether or not evidence exists to support the claim that respondent misappropriated company funds. On this point, we sustain the Court of Appeals' evaluation that -

> [There is] no evidence extant in the records that shows -- or even suggests - that petitioner Panado indeed

> appropriated for herself company money, contrary to the findings made by the Labor Arbiter and affirmed by public respondent NLRC. In fact, the evidence shows that petitioner Panado never got hold of any company money as far as the transactions involving the Obice and So families are concerned. In the matter of the rentals paid by the Obice family, her co-employee Santiago Aguilar admitted having received payment from Obice but that he remitted the same to Sonny Brequillo, another employee. No mention was made of petitioner Panado. Upon the other hand, respondent MMPCI does not deny that the tent and chair rentals of the So family were arranged free of charge because the latter are relatives of petitioner's supervisor Julius Munar. Hence, there was no rental payment to speak of or to appropriate. It is clear that the conclusion of public respondent NLRC that petitioner Panado committed fraud or willful breach of trust in that she appropriated for herself company money was founded on pure speculation and is downright erroneous.[29]

Petitioners next argue that despite the lack of evidence establishing that respondent profited from her transactions with the Obice family, her dismissal from service was still sanctioned by Article 282(c) of the Labor Code. According to petitioners, respondent flaunted her dishonesty when she initially stated, through her letter dated 21 July 2000, that she knew nothing about the payment made by the Obice family and then claiming later on that said customers had "in fact" settled their obligation. Petitioners likewise enumerated the following instances to bolster their claim that respondent was aware that the Obice family had already paid for their use of the tent and lied about it to petitioners:

First, as the park information officer, respondent was tasked to inquire as to whether the Obice family had already paid their obligation to petitioner MMPCI. The length of time that had lapsed from 20 February 2000, when the Obice family paid for their use of the tent, until 21 July 2000, when respondent wrote her letter-explanation to petitioners' memorandum of 19 July 2000, provided respondent with ample opportunity to find out if the Obice family still owed petitioner MMPCI for their use of the tent.

Second, respondent admitted that as early as 1 February 2000, she had already processed the request of the Obice family and that on 18 February 2000, she was able to talk to a member of the Obice family to confirm their payment on 20 February 2000.

Third, respondent was aware that the Obice family would be in the memorial park on 20 February 2000 and yet she did not exert any effort to collect payment from them as required by the CBD policy of petitioner MMPCI.

Lastly, petitioners assert that respondent was obviously lying when she claimed that she had a difficult time communicating with the Obice family. Petitioners maintain that respondent knew fully well that the members of the Obice family would be within the park premises on20 February 2000, therefore, she had the occasion to communicate with them regarding the payment for the tent rental.[30]

The inconsistent and dubious assertions of respondent with respect to her transaction with the Obice family unmasked her untruthfulness and constituted infidelity or breach of her employer's trust.[31]

It is undeniable that an employer has the right, under the law, to dismiss an employee based on fraud or willful breach of the trust bestowed upon him by his employer or the latter's authorized representative. This right of an employer is a means to ensure his self-protection for understandably, he is not expected to keep in his employ a person whose fidelity and credibility, at least as far as his employment is concerned, had already been tarnished.

An employer's prerogative to dismiss his employee, however, is not absolute. The court, in the exercise of its inherent power to interpret the law, has declared the guidelines that every employer must observe in terminating the services of his employee. Particularly in the case of Article 282(c) of the Labor Code, this Court has made the following pronouncement:

> It is of course settled that an employer may terminate the services of an employee due to loss of trust and

> confidence. However, the loss must be based not on ordinary breach by the latter of the trust reposed in him by the former, but, in the language of Article 282(c) of the Labor Code, on willful breach. A 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. Elsewise stated, it must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.[32] (Underscoring ours.)

In this case, petitioners miserably failed to abide by the requirement of the law. They charged respondent with fraud and willful breach of employer's trust based on her contradictory statements relating to the transaction involving the Obice family. Unfortunately for petitioners, we do not see any semblance of fraud or willful breach of trust on respondent's part. Concededly, petitioners are correct in saying that a comparison of respondent's letters to petitioner Lagdameo would reveal their inconsistency; still, the discrepancy is innocuous and did not give rise to fraud and willful breach of trust as petitioners claim.

Petitioners also insist that respondent was guilty of misrepresentation and deception in that she initially tried to conceal her knowledge of the fact that the Obice family had already paid their obligation to petitioner MMPCI.[33] This assertion is rather incredulous considering that among respondent's responsibilities in office were to arrange tent rentals, handle park collections, and remit the same to the bank or cashier; therefore, it would have benefited respondent had she admitted at the earliest instance that the Obice family had already settled their obligation. Such admission on her part would have shown that she was performing her duties as park information officer. The fact, however, that respondent disavowed any knowledge of payment from the Obice family in her first letter to petitioner Lagdameo only proves that she was not aware, during that time, that the Obice family had already paid the tent rental. This conclusion also finds support in the sworn statement of Aguilar wherein he asserted that he was the one who received the payment from the Obice family and that he remitted the same to Brequillo. Clearly, respondent did not have any participation as far as receipt of the Obice family's payment was concerned which should explain her lack of knowledge on the matter. It could very well be that respondent became aware of said payment only during the conduct of the investigation conducted by petitioner MMPCI when she was confronted with the written statements of Obice and Aguilar.

Similarly, we cannot justify respondent's termination from service for fraud or willful breach of trust based solely on the grounds enumerated by petitioners in their Petition and Memorandum. Said enumeration is utterly lacking in substantial evidence and does not constitute a sound foundation for petitioners' contention that respondent committed misrepresentation warranting her severance from service.

Moreover, it is well-settled that the term "trust and confidence" is restricted to managerial employees[34] or those "who [are] 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, or to effectively recommend such managerial actions."[35]

We cannot, however, completely disregard respondent's negligence as by her own admission in her 21 July 2000 letter, she failed to follow-up the payment for the tent rental with the Obice family as she was required to do. As correctly pointed out by petitioners, opportunities were not totally wanting in order for respondent to facilitate the collection of payment from the Obice family and yet she failed to take advantage of any of those chances. The admitted inaction on respondent's part confirms petitioners' contention that she was negligent in the performance of her duties and responsibilities.

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Article 282(b) of the Labor Code, however, imposes a stringent condition before an employer may terminate an employment due to "gross and habitual neglect by the employee of his duties."

To sustain a termination of employment based on this provision of the law, the negligence must not only be gross but also habitual. Gross negligence implies a want or absence of or a failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[36]

We sustain the finding of the Court of Appeals that in this case, respondent's negligence falls below the standard provided by law. Notably, petitioners did not deny that at the time this dispute arose, respondent had been in petitioner MMPCI's employ for more than twelve years without any blemish in her record. In addition, the amount involved in this transaction was only P1,000.00.[37] Given these factors, we find that dismissal is too severe a penalty to mete out on respondent.

Anent the charge involving the So family, petitioners assert that petitioner MMPCI has guidelines with respect to rendering free services to its customers. Petitioners explain that respondent should have first obtained the written permission of Munar, the deceased's relative and respondent's supervisor, or asked Teresita So to present written instructions from Munar before respondent approved the free use of tent by the So family. We rule in favor of petitioners in this point.

In resolving this issue, the Court of Appeals gave significance to the affidavit executed by Munar where the latter admitted that while it was respondent who transacted with the So family, it was he who told the So family not to pay the rentals and ordered Brequillo to deliver the tent and chairs to the So family plot.[38] The admissions contained in this sworn statement cannot obliterate respondent's fault since she was well-informed of petitioner MMPCI's policy on the matter. Despite her knowledge of the pertinent guideline, respondent still opted to disregard the same without offering a viable explanation therefor.

Petitioners implore us to sustain the dismissal of the respondent from employment based on the combination of infractions in her transactions with the Obice and the So families pursuant to our holding in the case of Mendoza v. National Labor Relations Commission,[39] to wit:

> Petitioner also assails the severity of the penalty imposed upon him alleging that he should have merited a suspension only considering his past performance.
>
> Unfortunately petitioner does not appear to be a first offender. Aside from the infractions he was found to have committed, it appears that petitioner falsified the truth when he made a false report about the incident to private respondent SMC to cover up for his misdeeds. Moreover on previous occasions, petitioner committed violations of company rules and regulations concerning pricing as a salesman of the company in a way that is detrimental to his employer. On one occasion, he failed to remit collections, so that in 1986 he was suspended for thirty days. Thus, the totality of the infractions that petitioner has committed justifies the penalty of dismissal.[40]

The above-cited jurisprudence finds no application in this case. In Mendoza, petitioner therein had violated company regulations over a span of years and had already been previously disciplined for his misdeeds. In the case under consideration, it appears, and petitioners did not deny, that respondent maintained an untarnished employment record for more than twelve years. More importantly, the infractions committed by respondent in this case pale in comparison with those perpetrated in the Mendoza case where the honesty and integrity of petitioner therein were squarely put in issue.

This Court had consistently adhered to the principle that the penalty to be imposed on an erring employee must be commensurate with the gravity of his offense. In the words of our esteemed brother, former Justice Florenz

Regalado -

> While an employer has its own interests to protect and, pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must not be abusively exercised. Such power should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position but his livelihood as well.[41]

Indeed, while an employer has the prerogative to discipline an erring employee, such right must not be arbitrarily exercised and must yield to the constitutional precept guaranteeing full protection to labor. Transgressions committed by an employee should merit only the corresponding sanction demanded by the situation.[42] Even where there exists an agreement between an employer and his employees regarding dismissal, the State is not precluded from inquiring on whether its strict application would work too harshly on an employee.[43]

WHEREFORE, the Petition for Review is DENIED. The Court of Appeals' Decision dated 30 March 2004 and Resolution dated 9 February 2005 are hereby AFFIRMED. Petitioners are hereby ORDERED to reinstate respondent to her former position or its equivalent without loss of seniority rights or privileges plus full backwages computed from the time her salaries were withheld until she is finally reinstated. With costs.

SO ORDERED.

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

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Perlita J. Tria-Tirona and Rosalinda Asuncion-Vicente concurring; Rollo, pp. 66-74.[2] Rollo, pp. 76-78.[3] Dated 18 June 2002 and 30 September 2002.[4] Rollo, p. 11.[5] Id. at 121.[6] Id. at 112.[7] Id. at 114.[8] Id. at 115.[9] Id. at 116.[10] Id. at 118.[11] Id. at 119.[12] Id. at 136-138.[13] LABOR CODE, Art. 282(c) reads:
ART. 282. TERMINATION BY EMPLOYER
An employer may terminate an employment for any of the following causes:
x x x
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; x x x. [14] Rollo, p. 138.[15] Id. at 152-159.[16] Id. at 158.[17] Id. at 73.[18] Id. at 76-78.[19] Id. at 19-20.[20] Eduardo Cuison v. Court of Appeals, 351 Phil. 1089, 1102 (1998).[21] Chua Huat v. The Honorable Court of Appeals, G.R. Nos. 53851 and 63863, 9 July 1991, 199 SCRA 1, 18.[22] 331 Phil. 278 (1996).[23] Rollo, pp. 152-158.[24] Id. at 28.[25] Id. at 268.[26] Id. at 138.[27] LABOR CODE, Art. 282(c).[28] Rollo, pp. 155-156.[29] Id. at 70.[30] Id. at 274-275.[31] Id. at 41.[32] Dela Cruz v. National Labor Relations Commission, 335 Phil. 932, 942-943 (1997).[33] Rollo, p. 274.[34] Dela Cruz v. National Labor Relations Commission, supra note 32 at 943; Wenifredo Farrol v. The Honorable Court of Appeals, 382 Phil. 212, 220 (2000).[35] Franklin Baker Company of the Philippines v. Hon. Cresencio B. Trajano, G.R. No. L-75039, 28 January 1988, 157 SCRA 416, 421.[36] Union Motor Corporation v. National Labor Relations Commission, G.R. No. 159738, 9 December 2004, 445 SCRA 683, 694-695.[37] Rollo, p. 113.[38] Id. at 71.[39] G.R. No. 94294, 22 March 1991, 195 SCRA 606.[40] Id. at 613.[41] Philippine Telegraph and Telephone Corporation v. National Labor Relations Commission, G.R. No. 80600, 21 March 1990, 183 SCRA 451, 456.[42] Wenifredo Farrol v. The Honorable Court of Appeals, supra note 34 at 220.[43] Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission, 316 Phil. 335, 343-344 (1995).

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