

M+W ZANDER PHILIPPINES, INC. AND ROLF WILTSCHKE, PETITIONERS, VS. TRINIDAD M. ENRIQUEZ, RESPONDENT.

G.R. No. 169173. June 05, 2009

Ponente: PUNO, C.J.

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PUNO, C.J.:

At bar is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the decision,[1] dated May 31, 2005, of the Court of Appeals in CA G.R. SP No. 87597, entitled "Trinidad M. Enriquez v. National Labor Relations Commission, M+W Zander Philippines, Inc. and Rolf Wiltschek." The decision of the Court of Appeals set aside the decision of the National Labor Relations Commission (NLRC) and ruled the dismissal of respondent Trinidad M. Enriquez (Enriquez) as illegal. The Court of Appeals also ordered petitioners M+W Zander Philippines, Inc. and Rolf Wiltschek to reinstate respondent to her former position without loss of seniority rights and privileges and awarded her moral damages and attorney's fees.

The facts are as follows.

On June 4, 2001, respondent Enriquez was hired on probationary basis as the Administration Manager and Executive Assistant to the General Manager of petitioner M+W Zander Philippines, Inc. (M+W Zander), a multi-national corporation engaged in construction and facilities management. She was confirmed as a permanent employee on December 4, 2001. As Administration Manager, respondent's responsibilities include taking charge of the management of administrative personnel assigned to the head office, as well as the security of the company staff and premises and the implementation of company rules. As Executive Assistant to the General Manager, respondent was in charge of scheduling, monitoring and tracking all the General Manager's appointments and personal finances and serving as the liaison among the General Manager, the Division Heads, the Administrative Staff and external contacts.

In January 2002, M+W Zander relieved its General Manager, Mr. Eric Van Stiegeren, and in his place appointed Mr. Rolf Wiltschek (Wiltschek). The appointment of Wiltschek as the Acting General Manager was announced in a meeting held on January 31, 2002. On the same day, a Letter of Appeal[2] was signed by 29 employees of M+W Zander, opposing the appointment of Wiltschek.

The letter states:

TO: MR. KLAUS GAERTNER

Managing Director

CC: MR. HELMUT KURZBOECK

CC: MISS KITTY LEE

DATE: January 31, 2002

LETTER OF APPEAL

We are writing you this Letter of Appeal in the hope of expressing our concern and sentiments on the appointment of Rolf Wiltschek as the new General Manager.

We are appealing for your kind attention and consideration on this matter as part of the m+w Zander family worldwide. We know that above anything else, the well-being of the company is the first priority of every employee from whom he derives his livelihood and that of his family. However, we believe that Rolf Wiltschek as the General Manager here in the Philippines will not in any way contribute to our goal of making m+w Zander better equipped to fight all the financial deficiencies that the company is facing today.

For how can we have a person represent the company when we cannot even respect him as a person. His human behavior and relationship, his manners and etiquette appear less than the accepted norms in a civilized society. His sarcasm and arrogance and seeming feeling of superiority as expressed by his verbal abuses on his contemporaries and subordinates is unacceptable even in a poor country like the Philippines. Most of us in m+w Zander have worked with all sorts of people with different nationalities, people with even higher positions in life but we have never seen such an obnoxious and demeaning attitude towards the Filipino workers. It has perhaps escaped Rolf Wiltschek, that we Filipinos take pride in our professions and in our Country humble as it is.

We wish to relay to you our extreme disappointment on the replacement of Mr. Eric Van Stijgeren with the sudden appointment of Rolf Wiltschek as the new General Manager. We wish to convey to you our apprehension on the fate that awaits m+w Zander here in the Philippines with Rolf Wiltschek as the General Manager. Lastly, we assure you of our commitment to give our best performance in any task given us for the welfare of our Company.

Please help us save m+w Zander (Phils.) Inc.

Respectfully yours,

M+W Zander- Manila Head Office STAFF

All of the Undersigned:

1. ABEC TAYAG (sgd.)
2. CARLITO GARCIA (sgd.)
3. MARK JOSEPH AMADOR (sgd.)
4. CHRISTINE SAN AGUSTIN (sgd.)
5. EMMANUEL PIELAGO, JR. (sgd.)
6. STANLEY MOSENDE (sgd.)
7. JOANNE A. MEDIARITO (sgd.)
8. MICHAEL M. ILAGAN (sgd.)
9. DIANE F. COMINTAN (sgd.)
10. ERIC V. NAPOLITAN (sgd.)
11. RAYMOND C. JOSE (sgd.)
12. CHE BONBON (sgd.)
13. POCHOLO G. RATON (sgd.)

14. JON-JON IBARRA (sgd.)
15. MICHELLE DE MESA (sgd.)
16. TRINIDAD M. ENRIQUEZ (sgd.)
17. VIRGILIO G. NATIVIDAD (sgd.)
18. CELSA L. BAG-AO (sgd.)
19. ALLAN RIVERA (sgd.)
20. RANDY TECSON (sgd.)
21. JOY P. ESGUERRA (sgd.)
22. LARRY N. MARASIGAN (sgd.)
23. ELMER M. ARANA (sgd.)
24. ALDRIN EVANGELISTA (sgd.)
25. EDWARD A. BORJA (sgd.)
26. ERNESTO M. ANTIQUIA (sgd.)
27. JESS DELA CRUZ (sgd.)
28. P.R. SIMPLICIANO (sgd.)
29. R.L. CRUZ (sgd.)

The same appeal from the employees at the site to follow.[3]

A day after the Letter of Appeal was released, a number of employees did not report to work.

Petitioners allege that after the announcement of Wiltschek as the new General Manager, respondent actively solicited signatures for a letter opposing the appointment of Wiltschek (Letter of Appeal). The petitioners claim that Enriquez used her influence and moral ascendancy to coerce several employees into signing the letter of appeal.[4] They referred to Affidavits of Mark Joseph M. Amador (Amador),[5] Randy R. Tecson (Tecson)[6] and Patrocinio R. Simpliciano,[7] M+W Zander's Accounting Assistant, Network Administrator and Contract Administrator, respectively, which state that respondent sought their signature for the Letter of Appeal. Amador stated in his affidavit[8] that on February 1, 2002 one Abelardo Tayag asked him not to go to work and Enriquez only called him to confirm that he did not report for work. In Tecson's affidavit,[9] it was stated that on February 1, 2002, he received a call from Enriquez in his mobile phone telling him not to report to work since other employees will not report to work and that he should just file for a sick leave since they were doing the same. Tecson said he was already on his way to the office and refused to follow Enriquez.

Upon discovering respondent Enriquez's participation in drafting and in circulating the Letter of Appeal, as well as in the alleged work stoppage that occurred a day after the release of the Letter, M+W Zander sent a Notice[10] to respondent Enriquez, requiring her to explain within 48 hours from receipt of the notice why no disciplinary action should be taken against her for willful breach of trust and using her authority and/or influence as Administration Manager of M+W Zander over her subordinates to stage a "no work day" on February 1, 2002. It was indicated that willful breach of trust has a corresponding penalty of dismissal. Meanwhile, respondent Enriquez was placed under preventive suspension for 15 working days.

Respondent Enriquez signed a statement,[11] dated February 5, 2002, denying that she used her authority and/or influence as Administration Manager and Executive Assistant to the General Manager to compel her co-employees to stage the illegal work stoppage. She also denied that she performed any act to disrupt the vital operations of the company. She said that when she arrived at work on February 2, 2002, she was given a notice of suspension for 15 days and was instructed to leave the premises without being given an explanation. Her personal belongings were inspected and she was escorted out of the premises like a criminal. Respondent stated in her affidavit that her colleagues were given an order that if she is seen in the premises of the company, the administration should be informed immediately and that in no case should respondent be allowed to enter the premises of the company except if she is with an authorized escort of the petitioner company.[12]

On February 14, 2002, an administrative investigation and an administrative hearing were conducted by the petitioner. During the administrative hearing, the respondent submitted several signed statements from her subordinates, such as Cecilia Benito,[13] the receptionist; Michelle De Mesa,[14] the Engineering Administrative Assistant; Joy Esguerra,[15] an Administrative Assistant, and Christine Roma San Agustin[16] all saying that they were never advised or prevailed upon by the respondent not to report to work.

Sales Engineer Allan Ordinario Rivera (Rivera) admitted before the investigating panel that he was the one who instigated the no work day on February 1, 2002, but he was not charged by the petitioners. We quote Rivera's statement:

14 FEBRUARY 2002

TO WHOM IT MAY CONCERN:

IN RELATION TO THE ALLEGATIONS MADE AGAINST MS. TRINIDAD ENRIQUEZ, I ALLAN O. RIVERA REQUEST TO BE ACKNOWLEDGED & RECOGNIZED THROUGH MY OWN INITIATIVE & NOT FORCED TO PRESENT THIS WRITTEN STATEMENT TO CLARIFY WHAT REALLY TRANSPIRED ON JANUARY 31, 2002.

IT WAS ME [sic] WHO GAVE INSTRUCTION TO THOSE PRESENT THAT EVENING OF JANUARY 31, 2002 NOT TO REPORT FOR WORK THE FOLLOWING DAY[,] FEBRUARY 01, 2002 (FRIDAY).

IT WAS ALSO I, WHO INVITED MS. TRINIDAD ENRIQUEZ TO JOIN US, WHO WAS THEN LATER ACCUSED OF INSTIGATING THE SAID "NO WORK DAY SHOW," WHEREAS, IT WAS I WHO INSTIGATED THE INCIDENT.

FURTHER MS. TRINIDAD ENRIQUEZ, ASIDE FROM COMING LATE EVENING, SHE ONLY STAYED FOR LESS THAN AN HOUR, THAT THE ACCUSATION BY SOME OF THE INDIVIDUALS IS NOT TRUE, SINCE SOME HAD ALREADY LEFT & MOST OF THE PARTICIPANTS DID NOT ARRIVED [sic] YET.

THIS IS TO ATTEST TO THE TRUTH OF THE ABOVE.

(Sgd.)

ALLAN ORDINARIO RIVERA
SALES ENGINEER[17]

Out of the eight subordinates who gave their statements during the administrative investigation, it was only Stanley Mosende (Mosende) who stated that he was influenced by respondent Enriquez not to report for work.[18] It appears, however, that Mosende was not absent from work based on the signed attendance sheet, which showed that he reported to the office at 5:00 p.m. and signed out at 7:00 p.m.[19] The accounts of Mosende are incongruous with the statement of Tecson, the Network Administrator. Tecson submitted a written statement

declaring that around 8:00 a.m. of February 1, 2002, he received a text message from Mosende and from Wally Borja asking him not to go to the office.[20] He did not mention the respondent. Later on, he contradicted his earlier statement when he submitted another affidavit that was attached to the Petition for Review of petitioner M+W Zander, this time stating that it was respondent Enriquez who called him up in his mobile phone to tell him not to report to work.

On March 1, 2002, a Notice of Termination[21] was received by respondent informing her that her services as Administration Manager and Executive Assistant to the General Manager of M+W Zander are terminated effective the same day. The respondent was found liable for "willful breach of trust and confidence in using [her] authority and/or influence as Administrative Manager of M+W Zander Philippines over [her] subordinate to stage a 'no work day' last February 1, 2002, which in turn disrupted vital operations in the Company." [22]

On the same day of her receipt of the Notice of Termination, respondent filed a Complaint for illegal dismissal with the Arbitration Office of the NLRC. Respondent Enriquez alleges that petitioners based her termination on mere speculation since there were a number of employees who reported to work despite signing the letter of appeal, and despite the absence of some of the employees, the company still continued its operations that day.

Labor Arbiter Edgar B. Bisana held that respondent Enriquez was illegally dismissed.[23] Both petitioners, M+W Zander and Wiltschek, were ordered to reinstate respondent without loss of seniority rights and privileges, and to pay respondent full backwages and benefits from the time compensation was withheld from her up to her actual reinstatement. The petitioners were further ordered to pay P100,000.00 as moral damages, P100,000.00 as exemplary damages, as well as attorney's fees.

The NLRC reversed the decision of the Labor Arbiter and found that respondent was not illegally dismissed because she committed serious misconduct which destroyed the trust and confidence of the management in her.[24]

The Court of Appeals reversed and set aside the decision of the NLRC and reinstated the decision of the Labor Arbiter, declaring that the dismissal of respondent was illegal.[25] The petitioners were ordered to reinstate respondent to her former position without loss of seniority rights and privileges. The Court of Appeals deleted the award of exemplary damages and reduced the award of moral damages to P25,000.00. The award of attorney's fees was also affirmed.

At issue in this petition[26] is whether respondent was illegally dismissed by petitioners. Consequently, it must also be determined whether moral damages and attorney's fees should be awarded, if respondent was illegally dismissed, and whether Wiltschek should be personally liable together with M+W Zander.

After a thorough review of the records, we affirm the decision of the Court of Appeals and find that respondent was illegally dismissed by petitioner M+W Zander.

The sole ground for respondent's termination by petitioners is "willful breach of trust and confidence in using [her] authority and/or influence as Administrative Manager of ZANDER over [her] subordinate to stage a 'no work day' last February 1, 2002." [27]

Article 282 (c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. [28] Certain guidelines must be observed for the employer to terminate an employee for loss of trust and confidence. We held in *General Bank and Trust Company v. Court of Appeals*, [29] viz.:

[L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad

faith.[30]

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence.

There are two classes of positions of trust: managerial employees and fiduciary rank-and-file employees.

Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions.[31] They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff.[32] Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.[33]

The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, etc., or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property.[34] These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

In the case at bar, respondent was employed as the Administration Manager and the Executive Assistant to the General Manager. The responsibilities of the Administration Manager include:

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To take charge of the management of Administrative personnel assigned to the head office in so far as administrative functions are concerned (Administrative Assistants assigned to the Division heads and other managerial positions except HRD);

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To take charge of the over-all security for the company staff, premises, and sensitive areas; to guard against unauthorized entry in sensitive areas (as determined by the management committee);

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To take charge of the implementation of company rules on housekeeping, cleanliness and security for all occupants of the Head Office in coordination with the company Division Heads and HRD;

-

To monitor attendance of all administrative personnel and enforce applicable company rules pertaining thereto;

-

To take charge of the maintenance, upkeep and inventory of all company property within the head office;

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To take charge of the timely provision of supplies and equipment covered by the proper requisition documents within the head office;

-

To take charge of traffic, tracking, and distribution of all incoming and outgoing correspondence, packages and facsimile messages;

- To take care of all official travel arrangements and documentation by company personnel;
- To ensure the proper allocation of company cars assigned to the Head Office; and
- To coordinate schedule and documentation of regular staff meetings and one-on-one meetings as required by EVS and the Division Heads.[35] (Emphasis supplied.)

The duties of the Executive Assistant to the General Manager are as follows:

- To take care of the scheduling, monitoring, and tracking of all the GM's appointments;
- To serve as liaison between the GM, the Division Heads, the Administrative Staff and external contacts;
- To take care of immigration concerns and corresponding documents for the GM and the company expatriates;
- To effectively handle, monitor, and document calls for the GM;
- To handle personal financials (Banking/Bills) for the GM and
- To perform any other tasks relative to the above functions which may be assigned from time to time by the GM.[36]

Though respondent's position is designated as the Administration Manager of M+W Zander, it does not automatically mean that she occupies a position of trust and confidence. It is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence.[37] Respondent's duties as the Administration Manager include management of the administrative assistants who are assigned to the division heads, in so far as their administrative functions are concerned. She also takes charge of the implementation of company rules on housekeeping and cleanliness, oversees the security of the premises and the sensitive areas of the company, monitors the inventory of company property, and ensures the timely provision of supplies and equipment. The position of an Administration Manager may thus be properly considered as a managerial position, being a head of administrative assistants of other divisions, and because of the performance of work directly related to management policies and company rules.

The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence.[38] To be a valid cause for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts.[39]

We find that it was not established that respondent used her authority to influence her subordinates to stage a "no work day"; and assuming that she performed this act as alleged by petitioners, it does not satisfy the

jurisprudential requirements for valid termination due to loss of trust and confidence.

Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act. In the case at bar, respondent did not commit any act which was dishonest or deceitful. She did not use her authority as the Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she influenced a single subordinate, without exerting any force or making any threats, not to report to work. This does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence.

We are convinced that respondent's dismissal cannot justifiably be sustained since the findings in this case and whatever investigations may have been made by petitioners miserably fail to establish culpability on respondent's part. While dishonesty or disloyalty of an employee is not to be condoned, neither should a condemnation on that ground be tolerated on the basis of suspicions spawned by speculative inferences.[40]

Petitioners anchored the termination of respondent on the statement made by a single subordinate, Mosende, which was made during the administrative investigation conducted by petitioners. Mosende stated that respondent, as his superior, told him not to report to work on February 1, 2002.[41] It was only Mosende who said that respondent forced him not to report to work on February 1, 2002. During the administrative investigation, the rest of respondent's subordinates did not identify respondent as the one who influenced them not to go to work on February 1, 2002.

The act of influencing a single subordinate not to report to work is insufficient to merit the harsh and grave penalty of dismissal. The records are bereft of any evidence to prove that respondent in fact coerced a considerable number of employees to stage the "no work day." Petitioners may not arbitrarily assert loss of trust and confidence in respondent based on the lone affidavit of Mosende, in the face of overwhelming evidence to the contrary, including affidavits from several subordinates of respondent and the categorical statement of Rivera that he was the one who influenced other employees to stage the "no work day."

We note that while 29 other employees signed the Letter of Appeal, and several employees joined the alleged work stoppage, it was only respondent who was singled out and dismissed. These protest activities bear out the general sentiment of discontent within the company and petitioners cannot pin the blame on respondent alone. Petitioners may not terminate respondent's employment on mere speculation and base her dismissal on unclear and nebulous reasons, especially where a less punitive penalty would suffice. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary authority of the employer.[42]

We thus find the dismissal to be illegal. Consequently, respondent is entitled to reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time of the withholding of the employee's compensation up to the time of actual reinstatement. If reinstatement is not possible due to the strained relations between the employer and the employee, separation pay should instead be paid the employee equivalent to one month salary for every year of service, computed from the time of engagement up to the finality of this decision.

Petitioners also raised as an issue the propriety of the award of moral damages and attorney's fees, arguing that there is no factual or legal basis to award such. Petitioners also pointed out that there was also no discussion in the body of the decision of the Court of Appeals which states the reasons for the award of damages.

We find that based on the facts of the case, there is sufficient basis to award moral damages and attorney's fees to

respondent. We have consistently ruled that in illegal dismissal cases, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[43] Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, i.e., that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom.[44]

In previous cases where moral damages and attorney's fees were awarded, the manner of termination was done in a humiliating and insulting manner, such as in the case of *Balayan Colleges v. National Labor Relations Commission*[45] where the employer posted copies of its letters of termination to the teachers inside the school campus and it also furnished copies to the town mayor and Parish Priest of their community for the purpose of maligning the teachers' reputation. So also in the case of *Chiang Kai Shek School v. Court of Appeals*,[46] this Court awarded moral damages to a teacher who was flatly, and without warning or a formal notice, told that she was dismissed.

In the case at bar, we see it fit to award moral damages to respondent because the manner in which respondent was treated upon petitioners' suspicion of her involvement in drafting and in circulating the letter of appeal and the alleged staging of the "no work day" is contrary to good morals because it caused unnecessary humiliation to respondent.

When respondent reported to work a day after the alleged "no work day," she was given a notice of preventive suspension, her personal belongings were inspected, and she was escorted outside of the premises, without any explanation. Furthermore, an order was given by the administration to her subordinates that in no case shall she be allowed inside the company premises without an authorized escort. Such measures were unwarranted because the charges against respondent have no connection to the breach of trust involving loss of money or company property, which could have called for securing company property from respondent. The crux is precisely that the charges against respondent are divorced from the essence of loss of trust and confidence—which is the commission of an act that is dishonest, deceitful or fraudulent. And despite this, based merely on mere suspicion, respondent was treated unfairly when she was not given an explanation why her personal belongings were inspected, why she was asked to leave the company building, why she had to be escorted by guards, why she was banned from the premises, and, most importantly, why it was necessary at all to issue an order to her subordinates that she is not allowed in the company premises unless she is escorted by authorized personnel. These measures are uncalled for, unfair and oppressive.

On the matter of attorney's fees, we have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer.[47] In the case at bar, respondent's unjustified and unwarranted dismissal prompted her to engage the professional services of a counsel and she is thus entitled to an award of attorney's fees.

Lastly, we come to the issue of whether Wiltschek, as the General Manager, should be personally liable together with M+W Zander. We agree with petitioners that he should not be made personally liable. The general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee's monetary claims arising from the dismissal unless he had acted maliciously or in bad faith in terminating the services of the employee.[48] The employer corporation has a separate and distinct personality from its officers who merely act as its agents.

It is well settled that:

[A] corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. [49]

The exception noted is where the official "had acted maliciously or in bad faith," in which event he may be made personally liable for his own act. That exception is not applicable in the case at bar, because it has not been proven that Wiltschek was impleaded in his capacity as General Manager of petitioner corporation and there appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of respondent. His act, therefore, was within the scope of his authority and was a corporate act for which he should not be held personally liable for.

IN VIEW WHEREOF, the petition is PARTIALLY GRANTED. The portion of the assailed decision ordering Rolf Wiltschek liable with M+W Zander is DELETED. All other aspects of the decision of the Court of Appeals are AFFIRMED.

SO ORDERED.

Carpio, Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, pp. 196-198.

[2] CA rollo, pp. 69-70.

[3] Id.

[4] Rollo, p. 268.

[5] Id. at pp. 43-44.

[6] Id. at p. 45.

[7] Id. at p. 46.

[8] Supra, note 5.

[9] Supra, note 6.

[10] Dated and received on February 4, 2002; rollo, p. 48.

[11] CA rollo, p. 80.

[12] Id.

[13] Id. at p. 73.

[14] Id. at p. 74.

[15] Id. at p. 75.

[16] Id. at p. 76.

[17] Id. at p. 77.

[18] Rollo, p. 328.

[19] Id. at p. 58.

[20] Id. at p. 329.

[21] Id. at p. 49.

[22] Id.

[23] The dispositive portion of the decision provides:

WHEREFORE, premises all considered, judgment is hereby rendered, as follows:

- Declaring the dismissal of complainant as illegal;
- Ordering respondent to reinstate complainant to her former position without loss of seniority rights and privileges, either physically or in the payroll, at the option of respondents;
- Ordering respondent to pay complainant her full backwages and other benefits from the time her compensation was withheld from her up to actual reinstatement, partially computed in the amount of P485,875.00; and
- Ordering respondents to pay complainant P100,000.00 as moral damages and another P100,000.00 as exemplary damages, and attorney's fees in an amount equivalent to 10% of complainant's monetary award. [Rollo, p. 65]

[24] The dispositive portion of the NLRC decision provides:

WHEREFORE, premises considered, the assailed decision is hereby reversed and set aside. Respondents are adjudged not guilty of illegal dismissal. The Order to reinstate complainant as well as the monetary awards are deleted from the decision. [Rollo, p. 97.]

[25] The dispositive portion of the Court of Appeals decision provides:

WHEREFORE, premises considered the decision of public respondent NLRC is REVERSED and SET ASIDE. The decision of the Labor Arbiter is hereby REINSTATED, declaring the dismissal of complainant as illegal, and ordering respondents to REINSTATE petitioner to her former position without loss of seniority rights and privileges, with the MODIFICATION that the exemplary damages are deleted, and the award of moral damages is reduced to TWENTY-FIVE THOUSAND PESOS (P25,000.00). The award of attorney's fees is likewise affirmed. [Rollo, p. 197.]

[26] Petitioners raised the following errors in the questioned decision in their Petition for Review:

- THE COURT OF APPEALS GAVE DUE COURSE TO THE PETITION FOR CERTIORARI DESPITE THE FACT THAT THERE WAS NO SHOWING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION.
- THE COURT OF APPEALS ERRONEOUSLY FOUND THAT A MANAGER'S ACT OF INFLUENCING A SUBORDINATE NOT TO REPORT FOR WORK IS INSUFFICIENT TO WARRANT THE PENALTY OF DISMISSAL.
- THE COURT OF APPEALS ERRONEOUSLY FOUND THAT RESPONDENT'S DISMISSAL WAS ANCHORED ON THE AFFIDAVIT OF ONE SUBORDINATE.
- THE COURT OF APPEALS ADOPTED RESPONDENT'S ARGUMENTS WITHOUT CONSIDERING OR

DISCUSSING THE POINTS RAISED BY PETITIONERS IN RESPONSE THERETO.

- THE COURT OF APPEALS ERRONEOUSLY DIRECTED RESPONDENT'S REINSTATEMENT DESPITE THE FACT THAT SHE HELD THE SUPREMELY SENSITIVE POSITION OF EXECUTIVE ASSISTANT TO THE GENERAL MANAGER EVEN WHILE SHE HAS PUBLICLY MANIFESTED HER CONTEMPT FOR THE INCUMBENT GENERAL MANAGER.

- THE COURT OF APPEALS ERRONEOUSLY AWARDED MORAL DAMAGES AND ATTORNEY'S FEES TO RESPONDENT DESPITE THE UTTER LACK OF BASIS FOR SUCH AWARD.

- THE COURT OF APPEALS ERRONEOUSLY MADE INDIVIDUAL RESPONDENT ROLF WILTSCHKEK SOLIDARILY LIABLE WITH THE COMPANY FOR RESPONDENT'S MONETARY AWARD. [Rollo, pp. 13-14.]

[27] Id. Rollo, p. 49.

[28] LABOR CODE, Art. 282.

Termination by employer. — An employer may terminate an employment for any of the following causes:

xxx xxx xxx

c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]

[29] G.R. No. L-42724, April 9, 1985, 135 SCRA 569.

[30] Id. at p. 578.

[31] Bristol Myers Squibb (Phils.), Inc. v. Richard Nixon A. Baban, G.R. No. 167449, December 17, 2008.

[32] LABOR CODE, Art. 82.

[33] Rules Implementing the Labor Code, Book III, Sec. 2 (c) (1) and (2).

[34] Mabeza v. National Labor Relations Commission, G.R. No. 118506, April 18, 1997, 271 SCRA 670; Bristol Myers Squibb (Phils.), Inc. v. Richard Nixon A. Baban, G.R. No. 167449, December 17, 2008.

[35] CA rollo, pp. 99-100.

[36] Id. at p. 100.

[37] Estiva v. National Labor Relations Commission, G.R. No. 95145, August 5, 1993, 225 SCRA 169.

[38] Equitable Banking Corporation v. National Labor Relations Commission, 339 Phil 541 (1997); Bristol Myers Squibb v. Richard Nixon A. Baban, G.R. No. 167449, December 17, 2008.

[39] Garcia v. National Labor Relations Commission, 351 Phil. 960 (1998).

[40] San Miguel Corporation v. National Labor Relations Commission, G.R. No. 72572, December 19, 1989, 180 SCRA 281.

[41] Rollo, p. 328.

[42] Radio Communications of the Philippines, Inc. v. National Labor Relations Commission, G.R. No. 102958, June 25, 1993, 223 SCRA 656.

[43] Ford Philippines, Inc. v. Court of Appeal, 335 Phil. 1 (1997).

[44] *Primero v. Intermediate Appellate Court*, L-72644, December 14, 1987, 156 SCRA 435, 444.

[45] 325 Phil. 245 (1996).

[46] G.R. No. 58028, April 18, 1989, 172 SCRA 389.

[47] *Pascua v. NLRC (Third Division)*, G.R. No. 123518, March 13, 1998, 287 SCRA 554, 580; see *Lopez v. National Labor Relations Commission*, G.R. No. 124548, October 8, 1998, 297 SCRA 508, 519.

[48] *EPG Construction Company, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 103372, June 22, 1992, 210 SCRA 235-236.

[49] *Lim v. National Labor Relations Commission*, G.R. No. 79907, March 16, 1989, 171 SCRA 328, 335, citing *Sunio v. NLRC*, 127 SCRA 390.

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