

SANDEN AIRCON PHILIPPINES AND ANTONIO ANG, PETITIONERS, VS. LORESSA P. ROSALES, RESPONDENT.

G.R. No. 169260. March 23, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

An employer has the discretion to dismiss an employee for loss of trust and confidence but the former may not use the same to cloak an illegal dismissal.

This Petition for Review on Certiorari[1] assails the Decision[2] dated May 24, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 85698, which granted the petition for certiorari and reversed and set aside the Resolution[3] dated November 28, 2003 of the National Labor Relations Commission (NLRC) in NLRC CASE No. RAB-IV-9-9330-97-L (NLRC NCR CA No. 016826-98) and reinstated the Resolution[4] dated November 29, 2000 of the NLRC.

Also assailed is the Resolution[5] dated August 1, 2005 denying the Motion for Reconsideration

Factual Antecedents

Sanden Aircon Philippines (Sanden) is a corporation engaged in the business of manufacturing, assembling, and fabricating automotive air-conditioning systems.

In August 1992, Sanden employed Loressa P. Rosales (Loressa) as Management Information System (MIS) Department Secretary. On December 26, 1996, she was promoted as Data Custodian and Coordinator. As such, Loressa had access to all computer programs and marketing computer data, including the Delivery Receipt Transaction files of Sanden. The Finance Department based its billing and collection activities on the marketing delivery receipt transactions. Loressa's functions and authority include opening, editing and copying files in Sanden's computers. She was also charged with the duty of creating back-up copies of all files under her custody. For this purpose, she can request all computer users at a particular time to log out or exit from the system.

On May 16, 1997, Sanden discovered that the marketing delivery receipt transactions computer files were missing. The Internal Auditing Department, through its Audit Officer, Ernesto M. Bayubay (Ernesto), immediately sent a memorandum[6] dated May 17, 1997 to Garrick L. Ang (Garrick), the MIS Manager, requesting that a technical investigation be conducted.

On May 19, 1997, Garrick issued a memorandum[7] enumerating the findings of the MIS Department, the pertinent portions of which read:

This is in response on [sic] your request for a technical investigation regarding the missing Marketing Delivery Receipt (DR) transactions filed inside our computer system. The incident happened at [sic] the 16 of May 1997 12:35 noon in which we discovered a data corruption in the Marketing DR transactions file wherein all the data were missing. We immediately conducted an investigation of the incident and found out the following:

- Before the incident, [the] Marketing Staff are still using the said file until 12:00 noon [when they] were instructed by the Data Custodian (Ms. Loressa Rosales) to log out from the system because a back-up was to be conducted. The back-up activities never took place for [unknown reasons];
- We don't have an updated back up on the mentioned file which was the responsibility of the Data Custodian, the last back up of the file was [conducted] on 10 of May 1997.
- The incident can only happen when only one user [was] using the file and after the incident we immediately look[ed] into the Server Manager, a security auditing tool of the system, and found out that Ms. Loressa Rosales was the only one log[ged] in on the system at 12:05 noon to 12:21 noon with 16 minutes of usage time as witness[ed] by many MIS personnel including one audit officer.
- The Data Custodian [has] all the rights of Add, Edit, Delete on all the files found in the system.
- So based on the facts that we have gathered it is highly probable that Ms. Loressa Rosales was the culprit in the said incident.

On June 26, 1997, Atty. Reynaldo B. Destura (Atty. Reynaldo), the Personnel and Administrative Services Manager sent a letter[8] to Loressa charging her with data sabotage and absences without leave (AWOL). She was given 24 hours to explain her side.

On July 2, 1997, Loressa submitted her letter[9] to Atty. Reynaldo where she vehemently denied the allegations of data sabotage. According to her, only a computer programmer equipped with the necessary expertise and not a mere data custodian like her would be capable of such an act. As to the charge of incurring absences without leave, she challenged Sanden to specify the dates and circumstances of her alleged AWOL.

In a memorandum[10] dated July 3, 1997, Atty. Reynaldo scheduled the administrative investigation on the charge of "data sabotage" in the afternoon of the next day. The investigation pushed through as scheduled.

On July 17, 1997, the husband of Loressa received a Notice[11] of Disciplinary Action from Sanden notifying Loressa that management is terminating Loressa's employment effective upon receipt of the said communication. The reason cited by Sanden was the loss of trust on her capability to continue as its Coordinator and Data Custodian. Sanden indicated in the said letter that based on all the documents and written testimonies gathered during the investigation, Loressa caused the deliberate sabotage of the marketing data involving the Delivery Receipts.

On September 9, 1997, Loressa filed a complaint[12] for illegal dismissal with a prayer for the payment of 13[th] month pay, attorney's fees and other benefits.

In her position paper,[13] Loressa alleged that no evidence was presented during the investigation conducted by Sanden to prove that she indeed committed "data sabotage." She claimed that she was singled out as the culprit based on mere suspicion unsupported by any testimonial or documentary evidence. The Delivery Receipts, which Sanden claims to have been deleted, were not presented during the investigation process. Moreover, there were no witnesses presented who pointed to Loressa as the one who actually committed the "data sabotage."

On the other hand, in Sanden's position paper,[14] it alleged that at around noon of May 16, 1997, Loressa requested the Marketing Staff to log out or exit from the computer system because she would create a backup of the Marketing Delivery Receipt Transaction files. At that time, some members of the Marketing Staff were still using and encoding additional data but as requested, all of them logged out from the network. The Server Manager showed that from 12:05 p.m. to 12:21 p.m., the only computer logged in was that of Loressa. This is precisely the period when the deletion of the Marketing Delivery Receipt Transaction files occurred.

Ruling of the Labor Arbiter

On May 28, 1998, Labor Arbiter Nieves De Castro rendered a Decision^[15] finding that Sanden is guilty of illegal dismissal. She ruled that there exists no justifiable basis for Sanden's act of terminating the services of Loressa. Nowhere in the records can be found evidence, documentary or otherwise (i) that will directly point to Loressa's having committed "data sabotage" or (ii) that she absented herself without leave. The Labor Arbiter also ruled that since animosity between Sanden and Loressa already exists, the award of separation pay in lieu of reinstatement is in order and in accord with industrial peace and harmony. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, declaring the dismissal of the complainant illegal and respondent Sanden Aircon Philippines, Inc. is ordered:

- To pay complainant backwages from the time of [her] dismissal up to the date of promulgation of this decision[;]
- To pay complainant separation pay of one (1) month for every year of service [from] the date of employment up to the date of promulgation of this decision[;]
- To pay attorney's fees of 10% of the total award[; and]
- [To have its] financial analyst x x x compute the monetary award[s which form] part of this decision.

All other claims are dismissed for lack of merit.

SO ORDERED.^[16]

Ruling of the National Labor Relations Commission

Sanden sought recourse to the NLRC by submitting its Notice^[17] of Appeal and Memorandum on Appeal on September 28, 1998.

On November 29, 2000, the NLRC issued a Resolution^[18] affirming the May 28, 1998 Decision of the Labor Arbiter with the modification that the computation of the amount of separation pay to be awarded be reckoned from December 26, 1996 which was the date when Loressa was hired by Sanden as Data Custodian and Coordinator. The NLRC found that Loressa was paid separation pay corresponding to the period beginning August 1992 (the date she was hired) up to December 26, 1996.

Sanden filed a Motion for Reconsideration^[19] of the NLRC Resolution.

On November 28, 2003, the NLRC issued another Resolution^[20] which reversed its November 29, 2000 Resolution and dismissed the complaint for lack of merit.

Ruling of the Court of Appeals

Aggrieved, Loressa filed with the CA a petition for certiorari.^[21] The CA through a Resolution^[22] dated August 19, 2004, directed her to submit within five days from receipt of said resolution copies of Sanden's appeal memorandum and motion for reconsideration of the November 29, 2000 resolution which were mentioned in her petition but were not attached thereto. On September 8, 2004, Loressa submitted the documents as directed by the CA.^[23] On September 27, 2004, the CA issued its Resolution^[24] noting the compliance of Loressa and also directing Sanden to file its comment.

On October 18, 2004, Sanden filed a Motion for Extension of Time to File Comment.^[25] This was granted by the CA through its Resolution^[26] dated November 3, 2004. On November 5, 2004, Sanden filed its comment.^[27]

On May 24, 2005, the CA granted the petition and reversed and set aside the November 28, 2003 Resolution of the NLRC and reinstated the latter's November 29, 2000 Resolution.

Petitioners moved for reconsideration,[28] but to no avail. Hence, this appeal anchored on the following grounds:

Issues

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER SANDEN FAILED TO SUBSTANTIATE RESPONDENT ROSALES'S DISMISSAL, CONSIDERING THAT:

- THE ASSERTION MADE BY THE COURT OF APPEALS AS TO THE POSSIBLE EXISTENCE OF A PARALLEL SET OF DOCUMENTS CORRESPONDING TO THE DELETED FILES, AS WELL AS THE POSSIBILITY OF A GLITCH IN THE COMPUTER SYSTEM WHICH CAUSED THE DELETION OF THE SUBJECT FILES, ARE HIGHLY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.

- SIMILARLY, THE CLAIM THAT THE DELETION OF THE SUBJECT FILES COULD HAVE OCCURRED AT ANY POINT IN TIME IS PURELY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.

- LIKewise, THE CLAIM THAT ANOTHER PERSON COULD HAVE CAUSED THE DELETION OF THE SUBJECT FILES CONSIDERING THAT RESPONDENT ROSALES COULD NOT POSSIBLY HAVE BEEN THE SOLE PERSON WITH ACCESS THERETO IS PURELY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.

- HENCE, THERE IS MORE THAN SUFFICIENT SUBSTANTIAL EVIDENCE WARRANTING THE VALID DISMISSAL OF RESPONDENT ROSALES.[29]

These matters boil down to a single issue of whether Sanden legally terminated Loressa's employment on the ground of willful breach of trust and confidence as Coordinator and Data Custodian.

Petitioners' Arguments

Petitioners contend that Loressa was vested with the delicate position of safekeeping the records of Sanden. She was charged with the duty of creating back up files so that Sanden may be fully protected in any eventuality. Loressa's act, therefore, of maliciously deleting the Marketing Delivery Receipt Transaction files is a valid ground to dismiss her from her employment on the ground of loss of trust. It is betrayal of the highest order when the very custodian of the records deleted the same.

According to petitioners, it was clearly shown by evidence that before the deletion of said files, the Marketing Staff were still using the files until noon when they were instructed by Loressa to log out from the system because a back up was to be conducted. The back up activities never took place and worse the data were deleted from the system. Petitioners emphasized that as Data Custodian, Loressa has capability to add, edit, or delete all the files in the system of Sanden.

Petitioners also aver that from the time the data sabotage occurred on May 16, 1997 to May 30, 1997, Loressa went on AWOL for at least five times.

Respondent's Arguments

Loressa insists that Sanden failed to provide sufficient evidence which would clearly point to her as the one who erased the files. For loss of trust and confidence to be a valid ground for dismissal of an employee, it must be founded on clearly established facts.

In this case, the fact that Loressa's computer was the only one logged on during the period that the alleged deletion of data occurred does not mean that she was the one who deleted the missing files. Loressa maintains that Sanden failed to substantially prove her direct involvement in the alleged deletion of the files except for a mere suspicion that it was she who deleted the data in question.

As to the charge of her absences without leave, Loressa claims that they were not substantiated by any documentary evidence or testimony of a witness. As such, her dismissal from employment is without any legal ground.

Our Ruling

The petition is bereft of merit.

Article 282 of the Labor Code states:

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.

Article 282(c) of the Labor Code prescribes two separate and distinct grounds for termination of employment, namely: (1) fraud or (2) willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

Settled is the rule that under Article 282(c), the breach of trust must be willful. Ordinary breach will not suffice. "A breach is willful if it is done intentionally and knowingly without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently." [30]

"As firmly entrenched in our jurisprudence, loss of trust and confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected." [31] "The betrayal of this trust is the essence of the offense for which an employee is penalized." [32]

Sanden has the burden of proof to prove its allegations.

"Unlike in other cases where the complainant has the burden of proof to [prove] its allegations, the burden of establishing facts as bases for an employer's loss of confidence in an employee - facts which reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his participation therein is such as to render him unworthy of trust and confidence demanded of his position - is on the employer." [33]

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must, however, have some basis. Proof beyond reasonable doubt is not required. It is sufficient that

there must only be some basis for such loss of confidence or that there is reasonable ground to believe if not to entertain the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.[34]

Sanden failed to discharge the burden of proof that the dismissal of Loressa is for a just cause.

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

In this case, we agree that Loressa, who had immediate access to Sanden's confidential files, papers and documents, held a position of trust and confidence as Coordinator and Data Custodian of the MIS Department.

"The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary."[35]

Sanden's evidence against Loressa fails to meet this standard.

Worth noting are the pertinent portions of the Resolution of the NLRC

dated November 29, 2000 before it reversed itself, to wit:

As correctly found by the Labor Arbiter, nowhere in the records can be found evidence that directly point to complainant as having committed acts of sabotage. Also, during the administrative investigation, the guilt of complainant-appellee was based on mere allegations not supported by documentary evidence nor any factual basis. Even appellants cannot directly pinpoint appellee as the culprit. They were only thinking of her as the one probably responsible thereto, considering that when she used the computer, she told the other users to log out and thereafter, used the computer for 16 minutes, with only 1 minute as usage time. But these allegations would not suffice (sic) termination of employment of appellee. Note that security of tenure is protected by constitutional mandate.

The same holds true with AWOL. Appellant failed to prove that complainant-appellee went on absence without official leave. The appellant should have at least presented the daily time record of appellee to prove that the latter was absent. Mere allegations again would not suffice.[36]

During the Administrative Investigation conducted by Sanden, there was no evidence presented to prove that Loressa indeed committed "data sabotage." The Minutes[37] of the Discussion with respect to the May 16, 1997 data only made mention that "Bobot's theory is that it was zapped, meaning permanently deleted." It is therefore a mere theory with no apparent factual basis, testimonial or documentary evidence, that would establish the guilt of Loressa for the charges of "data sabotage."

On the other hand, Loressa was able to provide documentary evidence to show that Sanden's computer system was experiencing some problems even before May 16, 1997. The March 22, 1996 Report[38] of the System Administrator, stated, viz:

Marketing could not use their system due to error encountered such as an abnormal program termination (problem in pairing). Warehouse A is affected by this. o.e. in updating marketing inventory qty. (DR Transaction)[39]

x x x x

Furthermore, in the entry dated March 27, 1996, it was indicated:

Restored Marketing Data from March 23 back-up.

Files restored:

1. DR - HEAD
2. DR - ITEM

Reindexed both.

[*]lacking data shall be reentered 3/25/95 & 3/26/95 transactions[40]

The following entries as reported by the System Administrator clearly show that the problem of missing data already existed as early as 1995, when Loressa was still an MIS Secretary and was not yet tasked to back up the Marketing Delivery Receipt Transaction files.

We also fully agree with the CA when it ruled that:

On the contrary, we find the records bereft of any substantial evidence to show that the petitioner was indeed directly responsible for the deletion of the subject files or the alleged data sabotage. It is not difficult to see that the imputed guilt of the petitioner was based on mere allegations and theories held by private respondents as possible causes for the deletion of the subject files. In the first place, if the subject delivery receipt files were as crucial to the operations of the company as what the private respondents claimed them to be, then sound business judgment would dictate that it keep a record or paper trail of all its delivery transactions which could still be made available to the Finance Department for its billing and collection activities. It is common knowledge that no computer system is absolutely "crash proof" or "bug-free" and that a total obliteration of a particular computer file could be attributed to so many other causes other than the deliberate deletion of the same. In the second place, the deletion of the subject files could have occurred at any one point or time and not necessarily during the time at which the petitioner was the only registered user in the system. In this case, the private respondents failed to determine with absolute certainty and to show proof of the exact date or time when it occurred. Third and last, while it may be true that the petitioner had access to the subject files as well as the code to delete the same, it is hardly believable that she would be the sole person in the company who could access the same. It is noted that the petitioner worked under the supervision of an MIS Manager as well as other company officers, who in all probability also had access to the same files and codes available to the petitioner. x x x[41]

Having shown that Sanden failed in discharging the burden of proof that the dismissal of Loressa is for a just cause, we have no other recourse but to declare that she was illegally dismissed based on the ground of loss of trust and confidence. This is in consonance with the constitutional guarantee of security of tenure.

WHEREFORE, the instant petition for review on certiorari is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 85698 dated May 24, 2005 and its Resolution dated August 1, 2005 are AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] Rollo, pp. 15-57.

[2] CA rollo, pp. 514-528; penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr.

- [3] Id. at 96-99.
- [4] Id. at 87-95.
- [5] Rollo, p. 75.
- [6] CA rollo, p. 308.
- [7] Id. at 309.
- [8] Id. at 311.
- [9] Id. at 312-313.
- [10] Id. at 314.
- [11] Id. at 319-332.
- [12] Id. at 21.
- [13] Rollo, pp. 179-183.
- [14] CA rollo, pp. 43-78.
- [15] Id. at 79-84.
- [16] Id. at 84.
- [17] Id. at 116-191.
- [18] Id. at 87-95.
- [19] Id. at 441-452.
- [20] Id. at 96-99.
- [21] Id. at 2-19.
- [22] Id. at 101.
- [23] Id. at 102-103.
- [24] Id. at 193.
- [25] Id. at 197-200.
- [26] Id. at 205.
- [27] Id. at 210-241.
- [28] Id. at 532-553.
- [29] Rollo, pp. 33-34.
- [30] *Philippine National Construction Corporation v. Matias*, 497 Phil. 476, 486 (2005).
- [31] *Caingat v. National Labor Relations Commission*, 493 Phil. 299, 308 (2005).
- [32] *Santos v. San Miguel Corporation*, 447 Phil. 264, 277 (2003).
- [33] *Felix v. National Labor Relations Commission*, 485 Phil. 140, 153 (2004).

[34]Central Pangasinan Electric Cooperative v. Macaraeg, 443 Phil. 866, 874-875 (2003).

[35] Abel v. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694.

[36] CA rollo, p. 93.

[37]Id. at 35.

[38] Rollo, pp. 196-198.

[39] Id. at 197.

[40] Id. at 196.

[41] CA rollo, pp. 525-526.

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