EASTERN TELECOMMUNICATIONS PHILS., INC., PETITIONER, VS. MARIA CHARINA DIAMSE, RESPONDENT.

G.R. NO. 169299. June 16, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the May 31, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 87125, which reversed and set aside the July 24, 2003 Decision[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 033100-02, and the August 10, 2005 Resolution[3] denying petitioner's motion for reconsideration.

The facts as culled from the records are as follows:

On January 3, 2001, respondent Ma. Charina Diamse, in her capacity as Head of Building Services of Eastern Telecommunications Philippines, Inc. (ETPI), requested a cash advance in the amount of P150,000.00 to defray the expenses for the renewal of ETPI's business permits. In accordance with ETPI's policy on cash advances, the requesting employee must liquidate the amount advanced within 15 days from the completion of the project or activity otherwise it would be automatically deducted from the employee's salary, benefits or any receivable. In addition, the requesting employee would be subjected to administrative penalties under ETPI's Code of Conduct.

Thereafter, the amount of P150,000.00 was credited to the Automated Teller Machine (ATM) payroll account of Diamse who made several payments for the renewal of the company's business permits. The records show that a total of P97,151.00 was paid and that the last payment was made on February 26, 2001.[4] However, Diamse failed to liquidate the cash advance within 15 days from said date.

On July 13, 2001, ETPI's Finance Department advised Diamse to liquidate the cash advance. On August 13, 2001, she submitted a liquidation report[5] duly approved by her Immediate Supervising Executive (ISE), Godofredo Santos, but was refused by Glaire Alferez of petitioner's Finance Department for being late. Alferez informed Diamse that the entire amount of the cash advance will be automatically deducted from her monthly salary starting September 2001. The phrase "start salary deduction sept. 2001"[6] was annotated in Diamse's unaccepted liquidation report. At the same time, Alferez advised Diamse to file a request for reimbursement in the amount of P97,151.00 corresponding to the amount defrayed for the renewal of ETPI's business permits.

Subsequently, the Finance Department proceeded to make deductions and as of December 2001, a total of P23,000.00 was deducted from Diamse's monthly salary.

For her part, Diamse submitted a request for reimbursement[7] on December 14, 2001 which was duly reviewed by her immediate supervisor and approved by the Vice President for Human Resources and Administration and by the Finance Department. On January 3, 2002, the amount of P97,151.00 was credited to Diamse's ATM payroll account.

It appears however that the Internal Audit Department (IAD) was not aware of the steps taken by the Finance

Department because on January 2, 2002, the IAD conducted a spot audit on Diamse's ATM payroll account which showed a balance of P86,000.00. IAD required Diamse to withdraw P52,533.00 which is equivalent to the cash advance less payments made, and remit the same to ETPI.

On January 3, 2002, the IAD conducted another spot audit on Diamse's ATM payroll account from which it required Diamse to withdraw P74,462.82 which is the difference between the amount credited to Diamse's account (i.e., P97,151.00) and the amounts previously deducted from her monthly payroll as of December 2001 (i.e., P23,000.00). Like before, Diamse remitted the said amount to ETPI and was issued an official receipt.[8]

The next day or on January 4, 2002, ETPI required Diamse to explain why she should not be disciplined for unauthorized diversion or application of company funds, and for acts of dishonesty, fraud, deceit and willful breach of trust. In her explanation,[9] Diamse claimed that she submitted her liquidation report on August 13, 2001 but was refused by Alferez who informed her that starting September 2001, a certain amount would be deducted from her monthly salary to pay off the advances. She further claimed that she submitted a request for reimbursement on December 14, 2001 upon the advice of the Finance Department.

Finding her explanation unsatisfactory, ETPI dismissed Diamse from employment effective February 5, 2002. It found the delay in the liquidation of the cash advance for almost a year tantamount to unauthorized diversion or application of company funds, dishonesty, fraud, deceit and willful breach of trust.

On August 30, 2002, Labor Arbiter Geobel A. Bartolabac rendered a Decision[10] finding ETPI liable for illegal dismissal. However, it was reversed on appeal by the NLRC which found Diamse's termination lawful and valid. On petition for certiorari, the Court of Appeals reversed the decision of NLRC, thus:

> WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED. The Decision of the National Labor Relations Commission dated July 24, 2003 is SET ASIDE.
>
> The decision of the Labor Arbiter dated August 30, 2002 is REINSTATED and AFFIRMED subject to the MODIFICATION that petitioner be awarded separation pay equivalent to one month salary for every year of service in lieu of reinstatement and with full backwages based on her last stated salary, to be computed from the date of dismissal from the service up to the date of finality of this decision.
>
> SO ORDERED.[11]

Hence, this petition where ETPI assigns the following errors:

> A.
>
> THE COURT OF APPEALS ERRED IN FAILING TO EXPLAIN THE REASONS FOR ITS DECISION THAT RESPONDENT DIAMSE ACTED IN GOOD FAITH AND THAT HER INFRACTION DOES NOT WARRANT HER DISMISSAL.
>
> B.
>
> THE COURT OF APPEALS ERRED IN RULING THAT DIAMSE WAS ILLEGALLY DISMISSED. THE FACTS OF THE CASE AND RELEVANT JURISPRUDENCE JUSTIFY HER DISMISSAL BASED ON LOSS OF TRUST AND CONFIDENCE.[12]

As a general rule, a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions,[13] such as in this case where the findings of facts of the Labor Arbiter and the Court of Appeals vary from the NLRC's findings. After a review of the entire records of the case, we uphold the findings of the Court of Appeals that Diamse was illegally dismissed.

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Time honored is the rule that in dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for a valid and just cause. In the case at bar, ETPI dismissed Diamse based on loss of trust and confidence. However, to be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach and founded on clearly established facts.[14] 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. Loss of trust and confidence 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.[15] The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee may be made to rest.[16]

In the instant case, it is not disputed that Diamse occupied a position of trust and confidence because she was responsible for ETPI's inventory and supplies, including the renewal of its business permits, which necessarily meant that the property and money of ETPI was entrusted to her for proper care and disposition. It is, likewise, not disputed that Diamse made a cash advance in the amount of P150,000.00 on January 3, 2001 and that it was liquidated only on January 2, 2002. The pivotal issue, therefore, is whether under the circumstances, ETPI clearly and convincingly established the facts upon which loss of confidence in Diamse were made to rest.

ETPI principally asserts that the delay in the liquidation of the cash advance is sufficient basis for it to lose trust and confidence in Diamse. It claims that despite several reminders, Diamse failed to liquidate the cash advance within the prescribed period. ETPI posits that the delay in the liquidation of the cash advance was deliberate and malicious in order to conceal the misappropriation in the meantime.

ETPI's assertion lacks merit.

The mere delay in the liquidation of the cash advance cannot sustain a finding of loss of trust and confidence. ETPI merely suspected, without supporting proof, that Diamse misappropriated the funds. This certainly does not meet the requirement that loss of trust and confidence must be based on a willful breach and founded on clearly established facts. By itself, the delay in the liquidation of the cash advance does not clearly and convincingly establish that it was sought "intentionally, knowingly and purposely, without justifiable excuse" in order to provide a reasonable basis with which to conclude that the balance of the cash advance was misappropriated.

On the contrary, there are undisputed allegations by Diamse where she attributed the delay in the liquidation of the cash advance to her promotion as Head of Building Services. Her department was also relocated to another floor of ETPI's building sometime in March 2001 so that the documents were in disarray.[17] Her duties were expanded as she was designated to head the Stores and Inventory Section which required her to again physically transfer from her office in the eighth floor to the upper basement of the building.[18]

Undoubtedly, it cannot be presumed that Diamse misappropriated the funds because to do so would do violence to her right to security of tenure and the well-settled rule that the burden of proof is on the employer to establish the ground for dismissal. Suspicion has never been a valid ground for dismissal and the employee's fate cannot, in justice, be hinged upon conjectures and surmises.[19]

The evidence on record shows that Diamse was able to liquidate the cash advance and that the ensuing delay in its liquidation was attributable to ETPI.

Moreover, Diamse submitted her liquidation report which was refused by the Finance Department for being late. Instead, she was advised that the entire cash advance will be automatically deducted from her monthly salary. Diamse also filed a request for reimbursement on December 14, 2001 as suggested by the Finance Department. The request for reimbursement was duly reviewed by her supervisor and approved by the Vice President for

Human Resources and Administration.

We find Diamse's version of the events credible for the following reasons. First, the authenticity of the liquidation report has not been successfully rebutted by ETPI when it filed its reply[20] and rejoinder[21] before the Labor Arbiter. The first time that ETPI addressed the issue of the liquidation report was on appeal with the NLRC when it alleged in its memorandum of appeal[22] dated September 30, 2002 that the subject liquidation report was not substantial evidence to prove the illegal dismissal of Diamse and that its authenticity and reliability was not proven.[23] However, it failed to provide any specific basis for its generalized claims. Verily, upon presentation of the liquidation report[24] in Diamse's position paper[25] before the Labor Arbiter, ETPI should have immediately contested its authenticity if it really had grounds to do so by presenting rebuttal evidence. Furthermore, in its comment[26] dated October 7, 2003 to Diamse's motion for reconsideration before the NLRC, ETPI no longer contested the authenticity of the said liquidation report but claimed instead that the same would not exculpate Diamse because it showed that she was delayed in the liquidation of the cash advance.[27]

Second, as correctly found by the Labor Arbiter, the refusal of Alferez to accept the liquidation report as well as her subsequent advice to Diamse that the entire amount of the cash advance would be automatically deducted from her monthly salary were never denied by Alferez. In fact, ETPI, in its Internal Audit Report[28] dated January 2, 2002 admitted that the Finance Department deducted P23,000.00 from the monthly salary of Diamse as of December 2001. This strengthens the conclusion that the aforesaid advice was given because it was, in fact, carried out.

Last, the authenticity of the request for reimbursement has not been contested by ETPI. On the contrary, it was silent as to why Diamse would submit this request for reimbursement instead of the liquidation report it allegedly badgered her to submit. This lends credence to the explanation of Diamse that the request for reimbursement was necessary to remedy the forthcoming monthly salary deductions. It is obvious that ETPI intentionally concealed the fact that it required Diamse to submit a request for reimbursement through its Finance Department.

In view of the foregoing, it would be unfair and unjust to blame Diamse for the delay in the liquidation of the cash advance and use the same to justify her dismissal based on loss of trust and confidence.

ETPI next contends that the P86,000.00 found in the ATM payroll account of Diamse during the spot audit was part of the P97,150.45 which was allegedly erroneously credited to her ATM payroll account on December 27, 2001 pursuant to the request for reimbursement she filed with the Finance Department. ETPI argues that Diamse would not have been able to account for the balance of the cash advance during the January 2, 2002 spot audit were it not for the P97,150.45 credited to her ATM payroll account on December 27, 2001.

The contention lacks merit.

It appears that the sole basis for the above suspicion by ETPI is the aforementioned Internal Audit Report which states in part:

> On Jan 2, 2002, IA [Internal Audit] attempted to perform a cash count for the unspent amount of P53k [i.e., the balance of the cash advance equivalent to the cash advance less the amount paid for the renewal of ETPI's business permits]. She showed a BPI ATM statement in the amount of P86k. IA, however, believes that the amount in the ATM is part of the P97k that was erroneously credited to her account on Dec. 27, 2001 x x x.[29] (Underscoring supplied)

Again, ETPI is relying on mere suspicion. It failed to present any documentary evidence to support its claim such as the bank documents showing the date when the P97,150.45 was credited to the ATM payroll account of Diamse.

Even assuming for the sake of argument that the P97,150.45 was credited to Diamse's ATM payroll account on December 27, 2001 and that the P86,000.00 balance in her ATM account was part of this previously credited amount so that she would have been unable to account for the balance of the cash advance during the January 2, 2002 spot audit, still there would be no basis to claim that she was liable for willful breach of trust or misappropriation of company funds. Note that as early as August 2001, the Finance Department already advised Diamse that the entire P150,000.00 cash advance would be automatically deducted from her monthly salary starting September 2001. Thus, from the time the Finance Department advised Diamse of such deduction, she was no longer under obligation to remit the balance of the cash advance to ETPI since it would now be deducted from her monthly salary. In fine, there is no more reason for IAD to conduct a spot audit on January 2, 2002 after the Finance Department had decided to recover the entire cash advance through automatic monthly salary deductions.

Finally, ETPI's reliance on our ruling in San Miguel Corporation v. National Labor Relations Commission[30] to justify the dismissal of Diamse based on loss of trust and confidence is misplaced. In that case, the employee, a salesman, failed to return the cash bond put up by his employer on his behalf due to a criminal case filed against the employee who figured in a vehicular accident while driving the employer's delivery truck. After the dismissal of the criminal case, the employee withdrew the cash bond from the trial court and merged it with his family's funds. When the employer discovered that the cash bond remained unaccounted for, it required the employee to immediately return the same. Although the employee promptly returned the amount covering the cash bond, he was still dismissed from employment for dishonesty and willful breach of trust.

In the ensuing labor case, the employee argued that the cash bond was a loan to him by his employer. He admitted that he retained and merged the cash bond with his family's funds but claimed that he did not touch the money. He further argued that he was not guilty of any wrongdoing since he was able to immediately return the amount of the cash bond upon the employer's demand.

We ruled therein that the cash bond was not a loan to the employee and that he had an affirmative duty to return it to the employer upon the termination of the criminal case. The fact that he withdrew the cash bond after the dismissal of the criminal case, and retained and merged it with his family's funds for one year and three months without justifiable reason constituted a willful breach of the trust reposed in him.

In the instant case, the cash advance was purposely given to Diamse for the renewal of the company's business permits unlike in the SMC case where the employee was not authorized to use the cash bond for the benefit of the employer. Second, no evidence was presented to show that there was reasonable ground to believe that Diamse misappropriated the cash advance except for the delay in the liquidation thereof. On the contrary, in the SMC case, the employee deliberately withdrew and retained the cash bond which did not belong to him. Third, after the first follow-up by ETPI on the liquidation of the cash advance on July 13, 2001, Diamse endeavored to liquidate the cash advance but was prevented from doing so by ETPI. Last, even if the balance of the cash advance remained in the ATM payroll account of Diamse prior to its liquidation during the spot audit on January 2, 2002, there was justifiable cause or reason for this, specifically, the advise of the Finance Department which prevented her from liquidating the same much earlier. Significantly, Diamse has established that the delay in the liquidation of the cash advance was attributable to ETPI. In contrast, the employee in the SMC case did not offer any justifiable excuse for withdrawing the cash bond, and retaining and merging it with his family's funds. His claim that the cash bond was a loan was clearly an afterthought in the hope of negating his liability for willful breach of trust.

An employee who is illegally dismissed 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 the employee's compensation was withheld up to the time of the employee's actual

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reinstatement.[31] However, the filing of this labor case and the attendant litigation has caused strained relations between Diamse and ETPI. The latter should, thus, not be compelled to reinstate Diamse who is tasked to handle delicate matters concerning the property and money of ETPI. Besides, Diamse has impliedly agreed to the payment of separation pay in lieu of reinstatement when she did not take issue with the ruling of the Court of Appeals that this case has caused strained relations between the parties. In fact, she moved for the execution of the Decision of the Court of Appeals dated May 31, 2005.

In view of the foregoing, Diamse is entitled to the payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent,[32] computed from the date of her dismissal on February 5, 2002 up to the finality of this decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service,[33] computed from the time of her engagement by ETPI on February 16, 1998 up to the finality of the decision.

The records of this case are, however, incomplete for purposes of computing the exact monetary award due to Diamse. Thus, it is necessary to remand this case to the Labor Arbiter for the sole purpose of computing the proper monetary award due to Diamse.

WHEREFORE, the petition is DENIED. The May 31, 2005 Decision and the August 10, 2005 Resolution of the Court Appeals in CA-G.R. SP No. 87125 are AFFIRMED with the MODIFICATION that this case be REMANDED to the Labor Arbiter for the sole purpose of computing Diamse's full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of her dismissal on February 5, 2002 up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of her engagement on February 16, 1998 up to the finality of this decision, less the wages, inclusive of allowances, and other benefits that she received during the time that she was reinstated in ETPI's Tuguegarao Office pending the appeal of this case to the NLRC.

Costs against petitioner.

SO ORDERED.

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

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[1] Rollo, pp. 38-46. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Eliezer R. Delos Santos and Arturo D. Brion.

[2] Id. at 118-127. Penned by Commissioner Vicente S.E. Veloso and concurred in by Commissioners Roy V. Señeres and Romeo L. Go.

[3] Id. at 48-49.

[4] Id. at 106.

[5] Id. at 157.

[6] Id.

[7] Id. at 70.

[8] Id. at 160.

[9] Id. at 80.

[10] Id. at 109-117.

[11] Id. at 45-46.

[12] Id. at 14.

[13] Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries, G.R. No. 153664, July 18, 2003, 406 SCRA 688, 707.

[14] Surigao del Norte Electric Cooperative v. National Labor Relations Commission, 368 Phil. 537, 553 (1999).

[15] Id.

[16] Pilipinas Bank v. National Labor Relations Commission, G.R. No. 101372, November 13, 1992, 215 SCRA 750, 757.

[17] Records, p. 128.

[18] Id. at 129.

[19] Pilipinas Bank v. National Labor Relations Commission, supra note 17.

[20] Records, pp. 153-156.

[21] Id. at 175-179.

[22] Id. at 208-241.

[23] Id. at 216.

[24] Id. at 143.

[25] Id. at 126-152.

[26] Id. at 366-370.

[27] Id. at 367.

[28] Id. at 88-89.

[29] Id. at 89.

[30] 211 Phil. 145 (1983).

[31] LABOR CODE, Article 279, as amended by Republic Act No. 6715.

[32] Bustamante v. National Labor Relations Commission, 332 Phil. 833, 842-843 (1996).

[33] Gaco v. National Labor Relations Commission, G.R. No. 104690, February 23, 1994, 230 SCRA 260, 268.

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