

AMES BEN L. JERUSALEM PETITIONER, VS. KEPPEL MONTE BANK, HOE ENG HOCK, SUNNY YAP AND JOSEFINA PICART, RESPONDENTS.

G.R. No. 169564. April 06, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

For breach of trust and confidence to become a valid ground for the dismissal of an employee, the cause of loss of trust and confidence must be related to the performance of the employee's duties.

This Petition for Review on Certiorari[1] assails the Decision[2] dated June 22, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 86988, which granted the petition for certiorari and reversed and set aside the Decision[3] dated June 25, 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 029793-01 (NCR-00-10-05292-00). Also assailed is the CA Resolution[4] dated August 31, 2005 denying the Motion for Reconsideration thereto.

Factual Antecedents

James Ben L. Jerusalem (James) was employed by Keppel Monte Bank (Keppel) on May 25, 1998 as Assistant Vice-President. On June 1, 1998, he was assigned as Head of the newly created VISA Credit Card Department. The bank subsequently re-organized the VISA Credit Card Department and reduced it to a mere unit. On April 5, 1999, carrying the same rank, James was reassigned as Head of the Marketing and Operations of the Jewelry Department. The VISA Credit Card Unit was then headed by Senior Vice President Roberto Borromeo (Roberto) and supported by Marciana C. Gerena (Marciana), Rosario R. Ronquillo (Rosario), and Aileen Alcantara as Unit Head, Processor and Bookkeeper, respectively.

In or about May 1999, James received from Jorge Javier (Jorge) a sealed envelope said to be containing VISA Card application forms. Jorge is a Keppel Visa Card Holder since December 1998. James immediately handed over the envelope with accomplished application forms to the VISA Credit Card Unit. All in all, the VISA credit card applications referred by Jorge which James forwarded to the VISA Credit Card Unit numbered 67, all of which were subsequently approved. As it turned out, all the accounts under these approved applications became past due.

On July 20, 2000, Marciana sent a letter[5] to Jorge asking the latter to assist the bank in the collection of his referred VISA accounts which have already an accumulated principal balance of P6,281,443.90 excluding interest and service fees in the amount of P1,157,490.08. On the same date, James upon knowing the status of the accounts referred by Jorge, sent a Memorandum[6] to Roberto recommending the filing of a criminal case for estafa against Jorge. He further recommended that a coordination with the other banks where Jorge has deposits should be made promptly so that they can ask said banks to freeze Jorge's accounts. James even warned Keppel that immediate action should be taken while Jorge is still in the country.

On July 31, 2000, Jorge arranged a meeting with bank officials. The said meeting was attended by James and

Marciana.

On August 9, 2000, James sent a Memorandum[7] to Napoleon Jamer (Napoleon), Vice-President of Audit Department, and to Atty. Rowena Wilwayco, Senior Manager of Legal Department. He summarized in the said Memorandum the events that transpired during the July 31, 2000 meeting with Jorge and reiterated his suggestion for Keppel to file a case against Jorge. He further suggested that Keppel look into the inside job angle of the approval of the VISA cards and that all key officers and staff should be probed for possible involvement.

On August 14, 2000, Napoleon issued a Memorandum[8] in reply to the August 9, 2000 Memorandum of James, advising the latter to coordinate with Roberto and not with him. Furthermore, James was requested not to interfere with the audit process being undertaken by the Audit Department.

On August 18, 2000, James received a Notice to Explain[9] from Keppel's Vice President for Operations, Sunny Yap (Sunny), why no disciplinary action should be taken against him for referring/endorsing fictitious VISA card applicants. The said referrals resulted in substantial financial losses to Keppel.

On August 23, 2000, James submitted his written explanation[10] to Sunny. He pointed out that he had no participation in the processing of the VISA card applications since he was no longer connected with the VISA Credit Card Unit at the time of such transactions. He explained that he can only endorse the applications referred by Jorge to the VISA Credit Card Unit because he was already transferred to Jewelry Department, as Head.

On September 26, 2000, the Manager for Human Resources Department, Josefina Picart, handed to James a Notice of Termination[11] informing the latter that he was found guilty of breach of trust and confidence for knowingly and maliciously referring, endorsing and vouching for VISA card applicants who later turned out to be impostors resulting in financial loss to Keppel. This prompted James to file before the Labor Arbiter a complaint for illegal dismissal, illegal confiscation of car with prayer for the payment of vacation/sick leaves, 13[th] month pay, damages, attorney's fees and full backwages against Keppel on October 9, 2000.

Ruling of the Labor Arbiter

On August 15, 2001, Labor Arbiter Daisy G. Cauton-Barcelona rendered a Decision[12] finding Keppel guilty of illegal dismissal.

The dispositive portion of the Labor Arbiter's Decision reads:

VIEWED IN THE LIGHT OF THE FOREGOING, the dismissal being illegal, the complainant should be paid his backwages from the time of his illegal termination up to the date of this decision in the amount of P584,204.54; in lieu of reinstatement, the complainant is further ordered paid his separation pay equivalent to one (1) month pay for every year of service, in the amount of P150,000.00; the amounts of P100,000.00 and P50,000.00 pesos as payment for moral and exemplary damages respectively; and ten (10%) percent of the total monetary award as and for attorney's fees, or the aggregate amount of P957,624.99.

Respondents are further ordered to deliver to complainant his car, Toyota Corona with plate number THE 735 without prejudice to the payment of the remaining balance thereon.

SO ORDERED.[13]

Ruling of the National Labor Relations Commission

Keppel sought recourse to the NLRC which issued a Decision[14] dated June 25, 2004 affirming the Decision of the Labor Arbiter with the modification that the award of moral and exemplary damages be deleted and that the attorney's fees be based on the 13[th] month pay and service incentive leave pay.

Keppel filed a Motion for Reconsideration[15] which was denied by the NLRC in a Resolution[16] dated July 30, 2004.

Aggrieved, Keppel filed with the CA a Petition for Certiorari.[17]

Ruling of the Court of Appeals

The CA found merit in the petition and granted the same through a Decision[18] dated June 22, 2005, the dispositive portion of which reads:

WHEREFORE, the petition is GRANTED. The assailed decision and resolution of the public respondent are hereby SET ASIDE, and a new judgment is entered DISMISSING the private respondent's complaint for lack of merit.

SO ORDERED.[19]

Petitioner moved for reconsideration[20] but to no avail.[21] Hence, this appeal raising the following issues:

Issues

- THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVERSED THE CONCURRING FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION THAT RESPONDENTS' DISMISSAL OF PETITIONER BASED ON ALLEGED LOSS OF TRUST AND CONFIDENCE HAS NO BASIS AT ALL AND THEREBY DECLARING THE DISMISSAL OF PETITIONER AS JUSTIFIED.
- THE COURT OF APPEALS GRAVELY ERRED IN DECLARING PETITIONER'S DISMISSAL AS LEGAL AND EFFECTIVELY DELETING THE MONETARY AWARDS BY THE LABOR ARBITER AND NLRC.
- THE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE DECISION OF THE LABOR ARBITER AND X X X [THE] RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION BY USING A SUPREME COURT RULING WHICH IS NOT APPLICABLE TO THE INSTANT CASE.[22]

The above issues can be summed up to the sole issue of whether Keppel legally terminated James's employment on the ground of willful breach of trust and confidence.

Petitioner's Arguments

Petitioner believes that the Labor Arbiter and the NLRC, who are deemed to have acquired expertise in matters within their respective jurisdictions, correctly held that there was no basis to justify the alleged loss of trust and confidence of respondents on petitioner.

He avers that a dismissal based on loss of trust and confidence should be proven by substantial evidence and founded on clearly established facts. As culled from the records and as correctly cited by the lower tribunals, respondents have not been able to show any concrete proof that petitioner had participated in the

approval of the subject credit cards and that his only participation was his act of forwarding the applications to the VISA Credit Card Unit of which he is no longer the head.

Furthermore, the loss of trust and confidence in addition to being willful and without justifiable excuse must also be work-related rendering the employee concerned unfit to continue working. In this case, petitioner points out that he was not anymore connected with the VISA Credit Card Unit when the alleged credit card scam happened and claims that he had nothing to do with the approval of the said card applications. Hence, he should not be made answerable for the erroneous judgment of the officers of the VISA Credit Card Unit.

Respondents' Arguments

Loss of trust and confidence is a valid ground for dismissing an employee, provided that same arises from proven facts. Termination of employment on this ground does not require proof beyond reasonable doubt of the employee's conduct. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded of his position.

In this case, respondents believe that the testimonies of Marciana and Rosario who were former subordinates of James in the VISA Credit Card Unit deserve full faith and credence in the absence of any evidence that they were impelled by improper motives. The two corroborated each other in saying that no credit investigation and residence checking were conducted on the applications endorsed by Jorge because there was a specific instruction from James for them not to conduct the said investigations and validation as he was personally vouching for the existence and validity of the said accounts.

The dismissal of James is therefore valid in view of the overwhelming and unrebutted evidence presented against him. It is the prerogative of management to dismiss petitioner, who is a managerial employee, for loss of trust and confidence.

Our Ruling

The petition is impressed with 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.

"Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence." [23] As provided for in Article 282, an employer may terminate an employee's employment for fraud or willful breach of trust reposed in him. "But, in order to constitute a just cause for dismissal, the act complained of must be 'work-related' such as would show the employee concerned to be unfit to continue working for the employer." [24]

Keppel has the burden of proof to discharge its allegations.

"Unlike in other cases where the complainant has the burden of proof to discharge 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." [25]

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. [26]

Keppel failed in discharging the burden of proof that the dismissal of James 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, there is no doubt that James held a position of trust and confidence as Assistant Vice-President of the Jewelry 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." [27] Keppel's evidence against James fails to meet this standard.

Worthy to note is the pertinent portion of the Decision of Labor Arbiter Daisy G. Cauton-Barcelona, to wit:

Looking closely at the circumstances obtaining herein, we note that respondent bank has not been able to show any concrete proof that indeed complainant had participated in the approval of the questioned VISA CARD accounts. The records [are] bereft of any concrete showing that complainant directed Ms. Gerena to approve the applications without passing through the process. The alleged marginal notations in the applications were admittedly scribbled by Ms. Gerena. Even assuming that there are such notations on the applications i.e., "c/o James Jerusalem", still, such notations to us can not be construed as a directive coming from complainant to specifically do away with existing policy on the approval of applications for VISA Card.

Of course, we concede to the fact that respondent had sustained losses on account of the so-called "credit card scam" in the amount of P7,961,619.82 all coming from the accounts referred to by Mr. Jorge Javier, but no amount of mind boggling can we infer that the mere act of handing the already accomplished forms for VISA CREDIT Card could be interpreted as "Favorable endorsement" with instructions not to conduct the usual credit investigation/verification of applicants. To lay the blame upon the complainant would be at the height of injustice considering that at that time, he no longer has the authority to pass upon such applications. To attribute such huge financial losses to one who is no longer connected with the VISA Card department would be stretching too far, the import of the term "some basis." We simply could not see our way through how respondent bank could have inferred that complainant made such instruction upon Ms. Gerena to forego the usual process and have the applications approved without any direct evidence showing to be so. [28]

Also significant is the findings of the NLRC that petitioner had not committed any acts inimical to the interest of Keppel. The NLRC stated, viz:

The lines having been drawn between the VISA Card Unit and the Jewelry Department, the complainant who is assigned with the latter as Vice-President can not be made responsible for the misdeeds of those in the

former. Moreover, the act of betrayal of trust if any, must have been committed by the employee in connection with the performance of his function or position. Verily, in this case, complainant who has nothing to do with the approval of VISA Cards, should not be made answerable to the imprudence and indiscretion of Ms. Gerena and Ms. Ronquillo.[29]

"Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer." [30]

From the findings of both the Labor Arbiter and the NLRC it is clear that James did nothing wrong when he handed over to Marciana the envelope containing the applications of persons under the referred accounts of Jorge who were later found to be fictitious. As the records now stand, James was no longer connected with the VISA Credit Card Unit when the 67 applications for VISA card were approved. At such time, he was already the Head of the Marketing and Operations of the Jewelry Department. His act therefore of forwarding the already accomplished applications to the VISA Credit Card Unit is proper as he is not in any position to act on them. The processing and verification of the identities of the applicants would have been done by the proper department, which is the VISA Credit Card Unit. Therefore, it is incumbent upon Marciana as Unit Head to have performed her duties. As correctly observed by the Labor Arbiter, Keppel had gone too far in blaming James for the shortcomings and imprudence of Marciana. The invocation of Keppel of the loss of trust and confidence as ground for James's termination has therefore no basis at all.

Having shown that Keppel failed to discharge its burden of proving that James's dismissal is for a just cause, we have no other recourse but to declare that such dismissal based on the ground of loss of trust and confidence was illegal. This is in consonance with the constitutional guarantee of security of tenure.

WHEREFORE, the instant Petition for Review on Certiorari is GRANTED. The Decision dated June 22, 2005 and the Resolution dated August 31, 2005 of the Court of Appeals in CA-G.R. SP No. 86988 are REVERSED and SET ASIDE and the Decision dated June 25, 2004 and Resolution dated July 30, 2004 of the National Labor Relations Commission are REINSTATED.

SO ORDERED.

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

[1] Rollo, pp. 17-47.

[2] CA rollo, pp. 444-456; 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 27-35.

[4] Id. at 497; penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Arturo D. Brion (now Member of this Court) and Jose C. Reyes, Jr.

[5] Id. at 75.

[6] Id. at 76.

[7] Id. at 77-78.

- [8] Id. at 79-80.
- [9] Id. at 112.
- [10] Id. at 116-120.
- [11] Id. at 157-159.
- [12] Id. at 254-269.
- [13] Id. at 268-269.
- [14] Id. at 27-35.
- [15] Id. at 298-329.
- [16] Id. at 497.
- [17] Id. at 2-25.
- [18] Id. at 444-456.
- [19] Id. at 13.
- [20] See petitioner's Motion for Reconsideration, id. at 461-473.
- [21] See Resolution dated August 31, 2005, id. at 49.
- [22] Rollo, p. 30.
- [23] Etcuban, Jr. v. Sulpicio Lines, Inc., 489 Phil. 483, 496 (2005).
- [24] Id.
- [25] Felix v. National Labor Relations Commission, 485 Phil. 140, 153 (2004).
- [26] Central Pangasinan Electric Cooperative, Inc. v. Macaraeg, 443 Phil. 866, 874-875 (2003).
- [27] Abel v. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694.
- [28] CA rollo, pp. 264-265.
- [29] Id. at 31.
- [30] Sulpicio Lines, Inc. v. Gulde, 427 Phil. 805, 810 (2002).

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