

**EATS-CETERA FOOD SERVICES OUTLET AND/OR SERAFIN RAMIREZ,
PETITIONERS, VS. MYRNA B. LETRAN AND MARY GRACE ESPADERO,
RESPONDENTS.***G.R. No. 179507. October 02, 2009*

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-179507/>**NACHURA, J.:**

Before us is a petition for review on certiorari assailing the December 13, 2006 Decision[1] of the Court of Appeals (CA), as well as its August 30, 2007 Resolution,[2] denying the motion for partial reconsideration filed by petitioners in CA-G.R. SP No. 92551. The appellate court, in its assailed decision and resolution, affirmed the July 18, 2005 Resolution[3] of the National Labor Relations Commission (NLRC) with respect to Myrna B. Letran's complaint but modified it with respect to Mary Grace Espadero's (Espadero) complaint declaring petitioners liable for her illegal dismissal. Petitioners are now assailing the CA's decision only with respect to its ruling on Espadero's case.

The factual antecedents follow.

Espadero had been employed by Eats-cetera Food Services Outlet since June 30, 2001 as cashier. On November 20, 2002, when she reported for duty, Espadero discovered that her time card was already punched in. After asking around, she found out that a certain Joselito Cahayagan was the one who punched in her time card. Espadero, however, failed to report the incident to her supervisor, Clarissa Reduca (Reduca). This prompted Reduca to report the incident to the personnel manager, Greta dela Hostria. Espadero contended that she was dismissed outright without being given ample opportunity to explain her side. She claimed that on November 21, 2002, petitioners called her and asked her to make a letter of admission as a condition for her reemployment. Espadero, thus, wrote:

Dear Sir/Madam,

Ako po ay humihingi ng paumanhin sa aking nagawang pagkakamali. Hindi ko po alam na pina in po ng aking kasama sa trabaho ang aking time card. Di ko agad nasabi sa supervisor. Nagpapasalamat din po ako kay Januarylyn Paq (some text missing) at Nida Tendenilla sa kanilang ginawa dahil dito maituwid po ang aking pagkakamali. Sana po ako ay inyong maunawaan.

Gumagalang,

Mary Grace Espadero[4]

After writing the letter, Espadero was told to wait for an assignment. The following day, on November 22, 2002, the company issued a Memorandum[5] terminating her for violation of Rule 24 of the company rules and regulations.[6] Because of this, Espadero decided to file a complaint for illegal dismissal before the NLRC.

Petitioners, however, maintained that the company rules and regulations, as well as the corresponding penalties in case of violation thereof, were made known to Espadero before and upon her actual employment as cashier. They

also argued that contrary to her claim, petitioners gave Espadero ample opportunity to explain her side. To prove their contention, petitioners presented the affidavit of supervisor Reduca stating thus:

On November 20, 2002, someone else punched in the respective time cards of the said Mary Grace Espadero and Fritzie Eviota, but the said employees deliberately failed to inform her (sic) about it, [which is] a gross violation of Rule # 24 of the company's Rules and Regulations. The matter was immediately reported to our Personnel Manager, Ms. GRETA V. DELA HOSTRIA. She then issued separate memorandum each for Mary Grace Espadero and Fritzie Eviota "to explain in writing, within 72 hours, why no disciplinary action should be taken["] against them.

She personally handed over to Mary Grace Espadero and Fritzie Eviota their individual memoranda for their acknowledgement, but they requested a little time more before returning the duly acknowledged cop[ies] as, allegedly, they would be going over the same first. While they were able to submit their respective written explanations anent the aforesaid incident, they never returned the duly acknowledged cop[ies] of my (sic) memoranda to me.[7]

Petitioners also claimed that they conducted an impartial investigation of the incident and found substantial evidence that Espadero was in cahoots with a co-worker in punching in her time card.[8] For this reason, petitioners decided to terminate her.

On January 31, 2005, Labor Arbiter Luis D. Flores rendered a Decision[9] declaring petitioners liable for illegally terminating Espadero. The Labor Arbiter faulted petitioners for their failure to prove that Espadero deliberately caused another person to punch in her time card on her behalf, and said that no hearing or investigation was conducted to prove that Espadero was in cahoots with somebody in the alleged dishonest act prior to her dismissal.[10] Petitioners were ordered to reinstate Espadero and to pay her full backwages from the date of dismissal up to actual reinstatement.

Upon appeal, the NLRC reversed the Labor Arbiter's findings. It ratiocinated that Espadero was duly afforded her right to due process as can be gleaned from Reduca's affidavit, the contents of which were never denied nor rebutted by Espadero.[11]

Aggrieved, respondents filed a petition for certiorari before the CA. On December 13, 2006, the CA rendered a ruling affirming the Labor Arbiter's pronouncement that Espadero was not afforded due process. The appellate court also observed that the punishment of dismissal was too harsh and unjustified.[12]

Petitioners now come before this Court via this Rule 45 petition. It is their contention that Espadero's infraction constitutes serious misconduct, considering that Espadero's job requires a higher degree of honesty.

There are essentially two issues to be resolved: first, whether Espadero was afforded her right to due process prior to being dismissed from her job; and second, whether Espadero's infraction was serious enough to warrant the penalty of dismissal.

The petition is impressed with merit.

Article 282 of the Labor Code includes serious misconduct, fraud and willful breach of trust among the just causes for termination.[13] But prior to termination on such grounds, the employer must satisfy both substantive and procedural due process. Not only must the employee be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense, but the dismissal must be for a just or authorized cause as provided by law.[14]

The procedural requirements are set forth in Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, to wit:

SEC. 2. Security of Tenure. x x x.

x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

Reduca's affidavit avers that Espadero was notified by the personnel manager and was asked to explain her side within 72 hours. As there was no duplicate copy, the only copy of the notice to explain remained with Espadero. While it may be highly suspicious for a personnel manager not to keep a copy of such an important document, Reduca's averment that the only copy of the notice to explain was handed to Espadero herself was never denied nor controverted by the latter. Wittingly or not, the averment is deemed to have been admitted by Espadero. This being so, petitioners may be said to have sufficiently complied with the first notice requirement, i.e., that the employee must first be given a notice to explain her side.

Petitioners likewise complied with the second notice requirement. On November 22, 2002, Greta dela Hostria, as personnel manager, issued a Memorandum stating with clarity the reason for Espadero's dismissal. It reads:

MEMORANDUM

TO : Mary Grace Espadero - CB Manila

FROM : Personnel Department

RE : As stated

DATE : November 22, 2002

We received your explanation regarding [you] not reporting to your immediate supervisor that somebody have (sic) punched in your Time Card last November 20, 2002. After a thorough investigation of the incident, we found that you violated Rule # 24 which states:

"Punching/Signing of timecards for other employees or requesting another employee to punch/sign his Time Card Record, which is punishable by DISMISSAL."

Because of this we regret that we are terminating your services effective November 22, 2002 as provided by [the] company[s] Rules and Regulations.

(Sgd.) GRETA V. DELA HOSTRIA

Personnel Manager

NOTED:

(Sgd.) SERAFIN T. RAMIREZ

Vice-President[15]

Substantively, we also sustain petitioners' reasoning that Espadero's position as a cashier is one that requires a

high degree of trust and confidence, and that her infraction reasonably taints such trust and confidence reposed upon her by her employer.

A position of trust and confidence has been defined as one where a person is entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property[16] and/or funds.[17] One such position is that of a cashier. A cashier is a highly sensitive position which requires absolute trust and honesty on the part of the employee.[18] It is for this reason that the Court has sustained the dismissal of cashiers who have been found to have breached the trust and confidence of their employers. In one case, the Court upheld the validity of the dismissal of a school cashier despite her 19 years of service after evidence showed that there was a discrepancy in the amount she was entrusted to deposit with a bank.[19]

In *Metro Drug Corporation v. National Labor Relations Commission*,[20] we explained:

Loss of confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. It is enough that there be "some basis" for such loss of confidence or that "the employer has reasonable grounds to believe, if not to entertain the moral conviction[,] that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.[21]

The rule, therefore, is that if there is sufficient evidence to show that the employee occupying a position of trust and confidence is guilty of a breach of trust, or that his employer has ample reason to distrust him, the labor tribunal cannot justly deny the employer the authority to dismiss such employee.[22]

In the instant case, petitioners cannot be faulted for losing their trust in Espadero. As an employee occupying a job which requires utmost fidelity to her employers, she failed to report to her immediate supervisor the tampering of her time card. Whether her failure was deliberate or due to sheer negligence, and whether Espadero was or was not in cahoots with a co-worker, the fact remains that the tampering was not promptly reported and could, very likely, not have been known by petitioners, or, at least, could have been discovered at a much later period, if it had not been reported by Espadero's supervisor to the personnel manager. Petitioners, therefore, cannot be blamed for losing their trust in Espadero.

Moreover, the peculiar nature of Espadero's position aggravates her misconduct. Misconduct has been defined as improper or wrong conduct; the transgression of some established or definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious, must be of such a grave character and not merely trivial or unimportant. To constitute just cause for termination, it must be in connection with the employee's work.[23] With the degree of trust expected of Espadero, such infraction can hardly be classified as one that is trivial or unimportant. Her failure to promptly report the incident reflects a cavalier regard for the responsibility required of her in the discharge of the duties of her position.

WHEREFORE, premises considered, the petition is GRANTED. The December 13, 2006 Decision of the Court of Appeals, as well as its August 30, 2007 Resolution with respect to Mary Grace Espadero's case, is REVERSED and SET ASIDE. Accordingly, the National Labor Relations Commission's Resolution dated July 18, 2005 is REINSTATED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (now a member of this Court), concurring; rollo, pp. 52-66.

[2] Id. at 67-69.

[3] Rollo, pp. 128-143.

[4] Id. at 56.

[5] CA rollo, p. 46.

[6] Rule 24 of the company rules and regulations provides:

Punching, signing of time cards for other employees, or requesting another employee to punch in or sign his time card records, which is punishable by DISMISSAL. (Rollo, p. 98.)

[7] CA rollo, p. 88. (Emphasis removed.)

[8] Rollo, p. 86.

[9] Id. at 95-104.

[10] Id. at 101-102.

[11] Id. at 138-140.

[12] Id. at 62.

[13] Article 282 of the Labor Code provides in full:

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.

[14] *Gonzales v. National Labor Relations Commission*, G.R. No. 131653, March 26, 2001, 355 SCRA 195, 204.

[15] *Supra* note 5.

[16] *Panday v. National Labor Relations Commission*, G.R. No. 67664, May 20, 1992, 209 SCRA 122, 125.

[17] *Gonzales v. National Labor Relations Commission*, *supra* note 14, at 208.

[18] *Garcia v. NLRC*, 327 Phil. 648, 651 (1996).

[19] Id. at 650.

[20] 227 Phil. 121 (1986).

[21] Id. at 126, citing *Dole Philippines, Inc. v. National Labor Relations Commission*, 123 SCRA 673. (Emphasis supplied.)

[22] Id. at 127.

[23] *Philippine Long Distance Company v. The Late Romeo F. Bolso*, G.R. No. 159701, August 17, 2007, 530 SCRA 550, 560.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.