

BLUER THAN BLUE JOINT VENTURES COMPANY/MARY ANN DELA VEGA, PETITIONERS, VS. GLYZA ESTEBAN, RESPONDENT.

G.R. No. 192582. April 07, 2014

Ponente: REYES, J.

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REYES, J.:

“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.”[1] In this case, while respondent’s position was denominated as Sales Clerk, the nature of her work included inventory and cashiering, a function that clearly falls within the sphere of rank-and-file positions imbued with trust and confidence.

Facts of the Case

Respondent Glyza Esteban (Esteban) was employed in January 2004 as Sales Clerk, and assigned at Bluer Than Blue Joint Ventures Company’s (petitioner) EGG boutique in SM City Marilao, Bulacan, beginning the year 2006. Part of her primary tasks were attending to all customer needs, ensuring efficient inventory, coordinating orders from clients, cashiering and reporting to the accounting department.

In November 2006, the petitioner received a report that several employees have access to its point-of-sale (POS) system through a universal password given by Elmer Flores (Flores). Upon investigation, it was discovered that it was Esteban who gave Flores the password. The petitioner sent a letter memorandum to Esteban on November 8, 2006, asking her to explain in writing why she should not be disciplinary dealt with for tampering with the company’s POS system through the use of an unauthorized password. Esteban was also placed under preventive suspension for ten days.

In her explanation, Esteban admitted that she used the universal password three times on the same day in December 2005, after she learned of it from two other employees who she saw browsing through the petitioner’s sales inquiry. She inquired how the employees were able to open the system and she was told that they used the “123456” password.

On November 13, 2006, Esteban’s preventive suspension was lifted, but at the same time, a notice of termination was sent to her, finding her explanation unsatisfactory and terminating her employment immediately on the ground of loss of trust and confidence. Esteban was given her final pay, including benefits and bonuses, less inventory variances incurred by the store amounting to P8,304.93. Esteban signed a quitclaim and release in favor of the petitioner.

On December 6, 2006, Esteban filed a complaint for illegal dismissal, illegal suspension, holiday pay, rest day and separation pay.

In a Decision[2] dated September 28, 2007, the Labor Arbiter (LA) ruled in favor of Esteban and found that she was illegally dismissed. The LA also awarded separation pay, backwages, unpaid salary during her preventive suspension and attorney’s fees. The dispositive portion of the LA decision provides:

WHEREFORE, a Decision is hereby rendered declaring [Esteban] to have been illegally dismissed. Corollarily, she is entitled for the payment of separation pay as prayed for at one month salary for every year of service, plus backwages from November 13, 2006 when she was dismissed up to the rendition of this Decision.

Further, as [Esteban] was illegally suspended she is entitled to salaries during her suspension from November 9-13, 2006.

In addition, an attorney's fees equivalent to ten (10%) percent of the total award is hereby granted, computed as follows:

a)

Backwages

11/13/06 - 9/28/07

=

10.50 mos.

[P]350 x 26 x 10.50

=

[P]95,550.00

13th Month Pay

1/12 of [P]95,550.00

=

7,962.50

SILP

[P]350 x 5/12 x 10.50

=

1,531.25

[P]105,043.75

b)

Separation Pay

11/25/03 - 12/6/06

=

3 yrs.

[P]350 x 26 x 3

27,300.00

c)

Unpaid Salaries

11/9 - 13/06

=

5 days

[P]350 x 5

=

1,750.00

[P]134,093.75

Ten (10%) Percent Attorney's Fees

13,409.37

TOTAL

[P]147,503.12

SO ORDERED.[3]

The petitioner filed an appeal with the National Labor Relations Commission (NLRC), and in its Decision[4] dated September 23, 2008, the NLRC reversed the decision of the LA and dismissed the case for illegal dismissal. The dispositive portion of the NLRC decision reads:

WHEREFORE, the decision appealed from is hereby reversed and set aside and in its stead a new one is rendered dismissing this case for lack of merit.

[Petitioners] however are ordered to refund to [Esteban] the amount of [P]8,304.93 which was illegally deducted from her salary.

SO ORDERED.[5]

Thus, Esteban went to the Court of Appeals (CA) on certiorari. In the assailed Decision[6] dated November 25, 2009, the CA granted Esteban's petition and reinstated the LA decision, to wit:

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed Decision dated September 23, 2008 and Resolution dated November 27, 2008 of public respondent National Labor Relations Commission are ANNULLED and SET ASIDE[.] Accordingly, the Decision of the Labor Arbiter dated September 28, 2007 is REINSTATED with MODIFICATION, that the award of separation pay is computed from January 2, 2004, and not from November 25, 2003.

SO ORDERED.[7]

Hence, this petition with the following assignment of errors:

- THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT RANK-AND-FILE EMPLOYEES CANNOT BE DISMISSED ON GROUND OF LOSS OF TRUST AND CONFIDENCE.
- THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN APPLYING THE PRINCIPLE OF REASONABLE PROPORTIONALITY ON THE WRONGFUL ACTS OF RESPONDENT ESTEBAN.

- THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE PREVENTIVE SUSPENSION OF RESPONDENT ESTEBAN WAS UNWARRANTED.

- THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE WAGE DEDUCTION FOR THE NEGATIVE VARIANCE AMOUNTING TO [P]8,304.93 IS UNFOUNDED.[8]

The petitioner argues that it had just cause to terminate the employment of Esteban, that is, loss of trust and confidence. Esteban, the petitioner believes, is a rank-and-file employee whose nature of work is reposed with trust and confidence. Her unauthorized access to the POS system of the company and her dissemination of the unauthorized password, which Esteban admitted, is a breach of trust and confidence, and justifies her dismissal.[9]

The petitioner also contends that the CA failed to appreciate the significance of Esteban's infraction when it ruled that suspension would have sufficed to discipline her. Esteban's length of service should also not have been considered to mitigate the penalty imposed, as her acts show a lack of concern for her employer. As regards her preventive suspension, the petitioner maintains that it was justified in imposing the same despite that the acts were committed almost a year before the investigation since it did not have any prior knowledge of the infraction.[10]

Finally, the petitioner contends that the deduction on Esteban's wages of the negative variances in the sales is allowed by the Labor Code, and such practice has been widely recognized in the retail industry.[11]

Esteban, on the other hand, avers that the competency clause she signed with the petitioner merely states the following functions: (1) attend to and assist the customer in all their needs; (2) conduct physical inventory; (3) clean and tidy up the merchandise and store; and (4) coordinate with the stockroom for orders. As regards the cashiering function, it merely states "to follow." [12] As such, her main task is that of a sales clerk.

Esteban also avers, albeit belatedly, that the notice to explain given to her did not identify the acts or omissions allegedly committed by her. She also contends that it was the company's fault in not creating a strong password, and that she was forced into signing the quitclaim and waiver, among others.[13]

Ruling of the Court

The LA and the CA were one in ruling that Esteban was illegally dismissed by the petitioner. It was their finding that the position occupied by Esteban was that of a rank-and-file employee and she is neither a supervisor, manager nor a cashier; thus, she does not hold a position of trust and confidence.[14] The CA also affirmed the ruling of the LA that Esteban's preventive suspension was not warranted.[15] The CA also upheld the finding of the NLRC that the deduction of P8,304.93, representing the store's negative variance, from Esteban's salary violates Article 113 of the Labor Code, which prohibits wage deduction.[16]

The NLRC, on the other hand, found that Esteban was dismissed for cause. According to the NLRC, Esteban admitted that she violated the petitioner when she made an unauthorized access to the POS system, and even shared the password to another employee. The NLRC also rejected Esteban's assertion that her job as sales clerk does not occupy a position of trust, and that her preventive suspension was not warranted. With regard to her waiver and quitclaim, the NLRC upheld its validity as Esteban signed the same with full awareness that she committed a wrong.[17]

Loss of trust and confidence as a
valid ground for dismissal from employment

The antecedent facts that gave rise to Esteban's dismissal from employment are not disputed in this case. The

issue is whether Esteban's acts constitute just cause to terminate her employment with the company on the ground of loss of trust and confidence.

Loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds.[18] "[W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient." [19]

Esteban is, no doubt, a rank-and-file employee. The question now is whether she occupies a position of trust and confidence.

Among the fiduciary rank-and-file employees are cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property.[20] 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.[21]

In this case, Esteban was a sales clerk. Her duties, however, were more than that of a sales clerk. Aside from attending to customers and tending to the shop, Esteban also assumed cashiering duties. This, she does not deny; instead, she insists that the competency clause provided that her tasks were that of a sales clerk and the cashiering function was labelled "to follow." [22] A perusal of the competency clause, however, shows that it is merely an attestation on her part that she is competent to "meet the basic requirements needed for the position [she] is applying for x x x". It does not define her actual duties. As consistently ruled by the Court, 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.[23] In *Philippine Plaza Holdings, Inc. v. Episcopo*, [24] the Court ruled that a service attendant, who was tasked to attend to dining guests, handle their bills and receive payments for transmittal to the cashier and was therefore involved in the handling of company funds, is considered an employee occupying a position of trust and confidence. Similarly in Esteban's case, given that she had in her care and custody the store's property and funds, she is considered as a rank-and-file employee occupying a position of trust and confidence.

Proceeding from the above conclusion, the pivotal question that must be answered is whether Esteban's acts constitute just cause to terminate her employment.

Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a wilful breach of trust and founded on clearly established facts.[25] Such breach is wilful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[26] The loss of trust and confidence must spring from the voluntary or wilful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[27]

In this case, the Court finds that the acts committed by Esteban do not amount to a wilful breach of trust. She admitted that she accessed the POS system [28] with the use of the unauthorized "123456" password. She did so, however, out of curiosity and without any obvious intention of defrauding the petitioner. As professed by Esteban, "she was acting in good faith in verifying what her co-staff told her about the opening of the computer by the use of the "123456" password, x x x. She even told her co-staff not to open again said computer, and that was the first and last time she opened said computer." [29] Moreover, the petitioner even admitted that Esteban has her own password to the POS system. If it was her intention to manipulate the store's inventory and funds, she could have done so long before she had knowledge of the unauthorized password. But the facts on hand show that she did

not. The petitioner also failed to establish a substantial connection between Esteban's use of the "123456" password and any loss suffered by the petitioner. Indeed, it may be true that, as posited by the petitioner, it is the fact that she used the password that gives cause to the loss of trust and confidence on Esteban. However, as ruled above, such breach must have been done intentionally, knowingly, and purposely, and without any justifiable excuse, and not simply something done carelessly, thoughtlessly, heedlessly or inadvertently. To the Court's mind, Esteban's lapse is, at best, a careless act that does not merit the imposition of the penalty of dismissal.

The Court is not saying that Esteban is innocent of any breach of company policy. That she relayed the password to another employee is likewise demonstrative of her mindless appreciation of her duties as a sales clerk in the petitioner's employ. But absent any showing that her acts were done with "moral perverseness" that would justify the claimed loss of trust and confidence attendant to her job,[30] the Court must sustain the conclusion that Esteban was illegally dismissed. As stated by the CA, "[s]uspension would have sufficed as punishment, considering that the petitioner had already been with the company for more than 2 years, and the petitioner apologized and readily admitted her mistake in her written explanation, and considering that no clear and convincing evidence of loss or prejudice, which was suffered by the [petitioner] from [Esteban's] supposed infraction." [31]

Preventive suspension during investigation

Preventive suspension is a measure allowed by law and afforded to the employer if an employee's continued employment poses a serious and imminent threat to the employer's life or property or of his co-workers.[32] It may be legally imposed against an employee whose alleged violation is the subject of an investigation.[33]

In this case, the petitioner was acting well within its rights when it imposed a 10-day preventive suspension on Esteban. While it may be that the acts complained of were committed by Esteban almost a year before the investigation was conducted, still, it should be pointed out that Esteban was performing functions that involve handling of the petitioner's property and funds, and the petitioner had every right to protect its assets and operations pending Esteban's investigation.[34]

Sales negative variances as wage deductions

The petitioner deducted the amount of P8,304.93 from Esteban's last salary. According to the petitioner, this represents the store's negative variance for the year 2005 to 2006. The petitioner justifies the deduction on the basis of alleged trade practice and that it is allowed by the Labor Code.

Article 113 of the Labor Code provides that no employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except in cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment, among others. The Omnibus Rules Implementing the Labor Code, meanwhile, provides:

SECTION 14. Deduction for loss or damage. – Where the employer is engaged in a trade, occupation or business where the practice of making deductions or requiring deposits is recognized to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, the employer may make wage deductions or require the employees to make deposits from which deductions shall be made, subject to the following conditions:

- (a) That the employee concerned is clearly shown to be responsible for the loss or damage;
 - (b) That the employee is given reasonable opportunity to show cause why deduction should not be made;
 - (c) That the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage;
- and

(d) That the deduction from the wages of the employee does not exceed 20 percent of the employee's wages in a week.

In this case, the petitioner failed to sufficiently establish that Esteban was responsible for the negative variance it had in its sales for the year 2005 to 2006 and that Esteban was given the opportunity to show cause the deduction from her last salary should not be made. The Court cannot accept the petitioner's statement that it is the practice in the retail industry to deduct variances from an employee's salary, without more. In *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo*,^[35] the Court ruled that:

[T]he petitioners should first establish that the making of deductions from the salaries is authorized by law, or regulations issued by the Secretary of Labor. Further, the posting of cash bonds should be proven as a recognized practice in the jewelry manufacturing business, or alternatively, the petitioners should seek for the determination by the Secretary of Labor through the issuance of appropriate rules and regulations that the policy the former seeks to implement is necessary or desirable in the conduct of business. The petitioners failed in this respect. It bears stressing that without proofs that requiring deposits and effecting deductions are recognized practices, or without securing the Secretary of Labor's determination of the necessity or desirability of the same, the imposition of new policies relative to deductions and deposits can be made subject to abuse by the employers. This is not what the law intends.^[36]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated November 25, 2009 and Resolution dated June 10, 2010 of the Court of Appeals in CA-G.R. SP No. 107573 insofar as it reinstated with modification the Decision of the Labor Arbiter dated September 28, 2007 are **AFFIRMED**. Insofar as it affirmed respondent Glyza Esteban's preventive suspension, the same are hereby **REVERSED**.

The Labor Arbiter is hereby **ORDERED** to re-compute the monetary award in favor of Glyza Esteban and to exclude the award of backwages during such period of preventive suspension, if any.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] *M+W Zander Phils. Inc., et al. v. Enriquez*, 606 Phil. 591, 609 (2009).

[2] Issued by Labor Arbiter Lilia S. Savari; rollo, pp. 145-157.

[3] *Id.* at 157.

[4] *Id.* at 185-201.

[5] *Id.* at 200-201.

[6] Penned by Juan Q. Enriquez, Jr., with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring; *id.* at 41-52.

[7] *Id.* at 51.

[8] *Id.* at 22.

[9] *Id.* at 22-28.

[10] *Id.* at 28-33.

[11] *Id.* at 33-34.

[12] Id. at 401-402.

[13] Id. at 405-410.

[14] Id. at 49, 155.

[15] Id. at 50.

[16] Id.

[17] Id. at 198-200.

[18] Caltex (Philippines), Inc. v. Agad, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 214.

[19] Zenaida D. Mendoza v. HMS Credit Corporation, G.R. No. 187232, April 17, 2013, citing Etcuban v. Sulpicio Lines, 489 SCRA 483, 496-497.

[20] Eric Alvarez v. Golden Tri Bloc, Inc. and Enrique Lee, G.R. No. 202158, September 25, 2013.

[21] Id.

[22] Rollo, pp. 413-415.

[23] Abel v. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694; M+W Zander Phils., Inc., et al. v. Enriquez, supra note 1; Bristol Myers Squibb (Phils.) Inc. v. Baban, 594 Phil. 620, 629 (2008).

[24] G.R. No. 192826, February 27, 2013, 692 SCRA 227.

[25] Eric Alvarez v. Golden Tri Bloc, Inc. and Enrique Lee, supra note 20; Rexie Hormillosa v. Coca-Cola Bottlers, Inc., G.R. No. 198699, October 9, 2013, citing Bristol Myers Squibb (Phils.) Inc. v. Baban, supra note 23, at 628.

[26] The Coca-Cola Export Corporation v. Gacayan, G.R. No. 149433, June 22, 2011, 652 SCRA 463, 471.

[27] Id. at 471-472.

[28] A point-of-sale (POS) terminal is a computerized replacement for a cash register. A POS system can include the ability to record and track customer orders, process credit and debit cards, connect to other systems in a network, and manage inventory. Generally, a POS terminal has as its core a personal computer, which is provided with application-specific programs and I/O devices for the particular environment in which it will serve. POS terminals are used in most industries that have a point of sale such as a service desk, including restaurants, lodging, entertainment, and museums. (<http://www.bir.gov.ph/reginfo/regcrm.htm>, viewed on March 25, 2014)

[29] Rollo, pp. 257-258.

[30] Lima Land, Inc. v. Cuevas, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 50.

[31] Rollo, p. 49.

[32] Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997, Book V, Rule XXIII, Section 8.

[33] Mandapat v. Add Force Personnel Services, Inc., G.R. No. 180285, July 6, 2010, 624 SCRA 155, 162.

[34] Id. at 163.

[35] G.R. No. 188169, November 28, 2011, 661 SCRA 416.

[36] Id. at 436-437.

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