

SONIA F. MARIANO, PETITIONER, VS. MARTINEZ MEMORIAL COLLEGES, INC., AND/OR FERDINAND A. MARTINEZ/ DR. ELIZABETH M. DEL RIO, RESPONDENTS.*G.R. No. 194119. April 13, 2016*

Ponente: REYES, J.

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This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by Sonia F. Mariano (petitioner) seeking to annul and set aside the Decision[2] dated July 19, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110663. The CA affirmed the Decision[3] dated June 30, 2009 and Resolution[4] dated August 18, 2009 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-003867-08, which reversed the Decision[5] dated September 8, 2008 of the Labor Arbiter (LA) in NLRC NCR Case No. 04-06111-08, declaring the petitioner's dismissal from employment as illegal.

Facts of the Case

Martinez Memorial Colleges, Inc. (MMC) is a private educational institution located in Caloocan City, with Ferdinand A. Martinez (Martinez) as the College incumbent President and Dr. Elizabeth M. Del Rio (Del Rio) as the College Executive Vice-President (respondents).[6] On the other hand, the petitioner was MMC's Assistant Cashier since April 15, 1976 and had been in service for 32 years. Part of her job was to accept payments and issue receipts and deposit slips to MMC students.[7]

On March 12, 2008, the petitioner went on a one month authorized leave of absence, as she and her husband Dario Mariano (Dario), Director for Finance of MMC, would be vacationing in the United States.[8] When the petitioner reported back to work on April 14, 2008, she received a Memorandum[9] dated April 8, 2008 signed by the respondents, stating that in line with the streamlining activities of MMC, the petitioner would be transferred from the Cashier's Office to the Office of the Vice-President (OVP) for Finance, her husband's office, effective April 15, 2008. Eugene Bitancur was assigned to handle all the collections of MMC. The petitioner alleged that the copies of the said memorandum had already been distributed to all concerned immediately after the respondents signed it while she and her husband were still on vacation.[10]

On the same day, Dario was invited to attend a special meeting of the Board of Directors of MMC[11] where he had the opportunity to request for the petitioner's reinstatement to the Cashier's Office, in deference to her long period of service to MMC. MMC, however, denied his request. Dario then advised the petitioner to file an extended leave of absence until April 21, 2008, which was granted.[12]

On April 22, 2008, the petitioner went to MMC to file another application for leave as she was not feeling well but this was denied by the Human Resources. When her leave form was returned, there was a note from Del Rio, which reads: "Extension disapproved until further notice due to on-going audit." [13] In the afternoon of the same day, she consulted Dr. Arthur Torio, the resident physician on duty at Martinez Memorial Hospital, who recommended her confinement.[14] She was hospitalized until April 24, 2008.[15]

In the meantime, the Special Assistant to the President, Evelyn Muallil (Muallil), who was tasked to conduct an audit review of MMC's Finance Department, concluded her review which covered the period from 2004 to summer of 2008. Evelyn submitted her report and findings dated April 23, 2008 to Martinez, and the report showed the petitioner's improper handling of cash accounts of MMC. A separate account called "non-essential accounts" in which some collections of MMC were deposited and diverted from MMC's general fund was likewise discovered. The non-essential accounts contained the total amount of P40,490,619.26.[16]

On April 28, 2008, the petitioner filed with the NLRC a Complaint[17] for constructive dismissal against MMC and the respondents. The day after, or on April 29, 2008, Dario received a letter[18] dated April 28, 2008 from Martinez, through MMC's counsel, addressed to the petitioner, where the latter was asked to explain in writing, within five days, her possible involvement in the diversion of MMC's funds. Aside from the petitioner, her husband Dario, Roberto Martinez (Roberto), Daisy Martinez (Daisy) and Eloida Cordero (Cordero), received similar letters.[19]

In their letter-answer[20] dated May 6, 2008, they explained that the MMC Board of Directors sanctioned the non-essential account. Thinking that said letter-answer was sufficient, the petitioner did not submit any separate reply.[21]

On May 14, 2008, the petitioner received a letter[22] dated May 7, 2008 from Martinez, informing her that her employment has been terminated on the ground of serious or gross dishonesty in relation to the discovered misappropriation and diversion of funds of MMC, and aggravated by her continuous absence from office without leave or any explanation.

Thereafter, the petitioner amended her complaint[23] with the NLRC to one of illegal dismissal.

In response to the complaint, the respondents contended that before the end of the last quarter of 2007, Martinez, in his capacity as President and Chief Executive of MMC, came to know of the irregularities perpetuated in MMC related to the collections and disbursements of the funds in which, the petitioner, in her capacity as Assistant Cashier, was directly involved. In an effort to improve the operations of MMC and to correct the improper and inappropriate handling of duties, Martinez initiated its reorganization and streamlining of activities. Among those affected by the streamlining was the petitioner, who was temporarily transferred to the OVP for Finance. The last time she went to work was on April 14, 2008.[24]

On September 8, 2008, the LA rendered its Decision,[25] the dispositive portion of which reads:

WHEREFORE, Judgment is hereby rendered declaring the dismissal of the [petitioner] as illegal. Respondent [MMC] is [h]ereby ordered to pay [the petitioner] her backwages from date of dismissal to date of decision in the amount of P100,000.00; separation pay in the amount of P800,000.00, and attorney's fees equivalent to 10% of the total award.

The backwages shall stop only upon payment of separation pay.

SO ORDERED.[26]

The LA found the petitioner's dismissal as illegal for failure of the respondents to prove lawful or just cause for the termination of her employment and for their failure to accord her due process.[27]

On appeal, the NLRC vacated and set aside the LA's decision. The dispositive portion of NLRC's Decision[28] dated June 30, 2009 provides:

WHEREFORE, premises considered, the appeal of respondents is hereby GRANTED. The decision of the [LA] dated 8 September 2008 is hereby VACATED and SET ASIDE.

The [petitioner] is DISMISSED for lack of merit.

SO ORDERED.[29]

The petitioner filed a Motion for Reconsideration[30] on August 3, 2009, which was denied by the NLRC in its Resolution[31] dated August 18, 2009.

The petitioner then went to the CA,[32] which denied her petition for lack of merit.[33] The CA agreed with the NLRC and found that the System Review Report prepared by Muallil provided sufficient grounds for MMC to terminate the petitioner from employment for serious or gross dishonesty. The CA said that the petitioner was the Assistant Cashier who performs the duties of a cashier, position that requires a high degree of trust and confidence, and her infraction reasonably taints the trust and confidence reposed upon her by her employer.[34]

Unsatisfied, the petitioner instituted the present petition predicated on the ground that —

THE HONORABLE CA COMMITTED GRAVE AND SERIOUS ERROR IN UPHOLDING THE DECISION OF THE NLRC THAT THE DISMISSAL OF THE PETITIONER IS LEGAL DESPITE THE EXISTENCE OF SUBSTANTIAL AND CONVINCING EVIDENCE OF BAD FAITH IN THE ILLEGAL DISMISSAL OF THE PETITIONER.[35]

The petitioner contends that she was illegally dismissed; that the respondents were not able to comply with the twin requirements of notice and hearing as mandated by law; that her transfer rests merely on Martinez's arbitrariness, whims, caprices or suspicion; and that the loss of trust and confidence cannot be used against her as there exist no solid and substantial grounds against her but merely suspicion.

Ruling of the Court

The Court has consistently adhered to the principle that the standard of review of a CA decision in a labor case, brought to the Court via Rule 45 of the Rules of Court, is limited to a review of errors of law.[36] The Court has to examine the CA decision from the perspective of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision on the merits of the case was correct.[37]

The issue to be resolved, therefore, is whether the CA committed a reversible error in ruling that the NLRC did not commit any grave abuse of discretion in upholding the petitioner's dismissal from MMC.[38]

Firstly, the petitioner argues that her transfer from the Cashier's Office to the OVP for Finance placed her in a situation that was inconvenient, unreasonable and prejudicial to her, and which provoked her to file a case for constructive dismissal. She said that the transfer was allegedly in line with the ongoing streamlining activities of MMC and based on a valid sound business policy, but husband and wife in the same department especially in the Finance Department is not a healthy business practice as this has an adverse effect on the check and balance principle. The petitioner also contends that there was bad faith in her transfer because the memorandum did not state any corresponding work assignments.[39]

The Court, however, finds that the CA correctly ruled that MMC's act of transferring the petitioner from the Cashier's Office to the OVP for Finance is a valid exercise of management prerogative.[40] The Court has often declined to interfere in legitimate business decisions of employers,[41] as long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements.[42] In this case, the MMC's exercise of its management prerogative was done for the advancement of its interest and not for the purpose of defeating the lawful rights of the petitioner.[43] It was within MMC's discretion to allow husband and wife to be in one department and there is no express prohibition on this matter. The Board of Directors' decision to transfer the petitioner to her husband's

department did not cause any conflict at all and the same was on an interim basis only. Moreover, the petitioner's transfer was akin to a reassignment pending an investigation, which, as ruled in *Endico v. Quantum Foods Distribution Center*,^[44] is a valid exercise of management prerogative to discipline its employees. The Court stated:

Reassignments made by management pending investigation of violations of company policies and procedures allegedly committed by an employee fall within the ambit of management prerogative. The decision of Quantum Foods to transfer Endico pending investigation was a valid exercise of management prerogative to discipline its employees. The transfer, while incidental to the charges against Endico, was not meant as a penalty, but rather as a preventive measure to avoid further loss of sales and the destruction of Quantum Foods' image and goodwill. It was not designed to be the culmination of the then on-going administrative investigation against Endico.^[45] (Citation omitted)

As regards the petitioner's dismissal from employment, the Court also affirms the CA ruling that the NLRC did not commit any grave abuse of discretion in declaring its validity.

Article 296(c) (formerly Article 282[c]) of the Labor Code enumerates the just and valid causes for the dismissal of an employee, viz.: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with her work; (b) gross and habitual neglect by the employee of her duties; (c) fraud or willful breach by the employee of the trust reposed in her by her employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of her employer or any immediate member of her family or her duly authorized representatives; and (e) other causes analogous to the foregoing.

In this case, MMC's ground for terminating the petitioner's employment was "serious or gross dishonesty and for having committed an offense against [MMC],"^[46] which was based on the findings in the System Review Report submitted by Muallil. Another basis was the alleged diversion of MMC's funds wherein non-essential accounts or accounts payable to and for MMC were deposited to "private accounts" in the names of Roberto and Cordero, and Cordero and Daisy. In upholding the validity of the petitioner's dismissal on these grounds, the NLRC ruled:

As shown in the System Review (Report for short) of [MMCJ, x x x, it was the finding that [the petitioner] have been actually doing the work of a cashier, like collecting, signing and issuing official receipts and issuing student assessment. She is the one actually receiving payment and preparing the daily cashier's report. It was further reported and we quote: "When she was subjected to a spot cash count, she asked an accounting staff to print a Cashier's Report, opened her cabinet drawer and counted money and gave the exact amount stated in the cashier's report and handed them to the undersigned. When asked what the other cash in the drawer are for, she immediately said that the examiner should not touch them as they are from private business. When questioned why they are co-mingled with the [MMC's] collection, she [the petitioner] said "syempre, ako ang nagma-manage nuon!" x x x. The Report further said and we quote: "The exercise of the cash count showed that custodian of collections was not aware of the standard auditing and accounting practices of cashiering that is, company cash and monies, held on trust with such custodian shall be clearly and fully accounted for, at anytime and not mixed up with personal and other employee's business transactional proceeds." x x x. More so, it was likewise admitted by [the petitioner] that the collection in her possession on that day is actually from the previous day's collection but was not able to turn over the same to Mr. Cordero as they run out of time. The Audit was done at 2:00 p.m. x x x. The above findings were never rebutted nor denied by [the petitioner] hence, it is considered true and would be prejudicial to the claim of [the petitioner] that she was being accused of baseless wrong doings. In fact she was caught red handed on the spot that she was remiss in the performance of her duties, x x x.^[47]

The CA agreed with the NLRC that the System Review Report prepared by Muallil provided sufficient grounds for MMC to terminate the petitioner from employment of serious or gross dishonesty,^[48] and the Court finds no

reversible error on the part of the CA in doing so.

A review of the records shows that the petitioner failed to rebut the findings in the System Review Report and insisted that she did not have the opportunity to contest these because she was not furnished a copy. She also denied any knowledge whatsoever regarding the alleged opening of said non-essential accounts, which, according to her, were actually sanctioned by the MMC Board of Directors.[49] The System Review Report, however, clearly showed that there was an improper handling of MMC's cash accounts and that there was a separate account called non-essential accounts in which some of the collections of MMC were deposited and diverted from the general fund.[50] Being the Assistant Cashier, it is doubtful that she had no knowledge of the alleged opening of the "non-essential accounts" because her tasks include acceptance of payments and the issuance of receipts and bank deposit slips to MMC's students.[51] In fact, records show that she even issued bank deposit slips to students for deposit of certain payments to these "non-essential accounts." By and large, the petitioner's acts constituted dishonesty that ultimately led to a breach of the trust reposed in her by MMC. As held in *Gargoles v. Del Rosario*,[52] an act of dishonesty by an employee who has been put in charge of the employer's money and property amounts to breach of the trust reposed by the employer, and normally leads to loss of confidence in her, and such dishonesty comes within the just and valid causes for the termination of employment under the Labor Code. In the same vein, the Court has ruled that in dismissing a cashier on the ground of loss of confidence, it is sufficient that there is some basis for the same or that the employer has a reasonable ground to believe that the employee is responsible for the misconduct, thus making him unworthy of the trust and confidence reposed in him. Courts cannot justly deny the employer the authority to dismiss him for employers are allowed wider latitude in dismissing an employee for loss of trust and confidence.[53]

Finally, the petitioner contends that she had no opportunity to defend herself from the charges as MMC deliberately failed to provide her a copy of the System Review Report.[54]

In *Sang-an v. Equator Knights Detective and Security Agency, Inc.*,[55] the Court held:

[T]he guarantee of due process, requiring the employer to furnish the employee with two written notices before termination of employment can be effected: a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.[56]

Records show that Martinez, through MMC's counsel, sent a letter to the petitioner ordering her to explain in writing her possible involvement in the diversion of MMC's funds. The letter reads:

It has been disclosed through the audit report rendered by [Muallil], Special Assistant to the President, MMC, that the non-essential accounts (NE) which are account payable to and for the college are ordered to be deposited to "private accounts" in the bank which are in the names of [Roberto] and [Cordero] for Account No. 3801- 022-09, and of [Cordero] and [Daisy] for Account No. 3801-0058-44. This is a clear act of diversion of funds of the college constituting misappropriation or estafa for which you, as assistant cashier, and as the one who issues the deposit slips to the students can be held liable with other persons who are either directly or indirectly involved in said criminal act.[37]

The foregoing notice complies with the first written notice requirement as it specified the ground for termination and gave the petitioner an opportunity to explain her side. The due process mandate does not require that the entire report from which the termination is based should be attached to the notice. What is essential is that the particular acts or omissions for which her dismissal is sought are indicated in the letter.

The petitioner also argues that while it may be that her termination comes within the purview of a management prerogative, Martinez should have called for a meeting or conference with the other affected officials.[58] Her position, however, is untenable considering that a letter was already sent to them where they were ordered to explain within five days their possible involvement in the alleged diversion of funds, and they were able to explain their side in a joint letter-answer[59] dated May 6, 2008. A hearing does not strictly mean a personal or face-to-face confrontation. It is sufficient that an employee has the meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.[60]

Accordingly, the CA's denial of the petitioner's petition must be upheld.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Velasco, Jr., (Chairperson), Perez, Reyes, and Jardeleza, JJ., concur.
Peralta, J., on official leave.

June 15, 2016

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____April 13, 2016____ a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on June 15, 2016 at 10:55 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 10-30.

[2] Penned by Associate Justice Isaias Dicdican, with Associate Justices Stephen C. Cruz and Danton Q. Bueser concurring; id. at 35-48.

[3] Rendered by Presiding Commissioner Alex A. Lopez, with Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr. concurring; CA rollo, pp. 277-290.

[4] Id. at 33 1-332.

[5] Issued by Labor Arbiter Eduardo G. Magno; rollo, pp. 87-94.

[6] Id. at 96.

[7] Id. at 36.

[8] Id., CA rollo, p. 84.

[9] CA rollo, p. 85.

[10] Rollo, p. 36.

- [11] CA rollo, p. 86.
- [12] Id. at 87.
- [13] Id. at 88.
- [14] Rollo, p. 37.
- [15] Id. at 36-37.
- [16] Id. at 39.
- [17] CA rollo, pp. 49-51
- [18] Id. at 92. Rollo, pp. 37-38.
- [19] Rollo, pp. 37-38.
- [20] CA rollo, pp. 93-94.
- [21] Rollo, p. 38.
- [22] CA rollo, p. 105.
- [23] Id. at 52-54.
- [24] Rollo, pp. 38-39.
- [25] Id. at 87-94.
- [26] Id. at 94.
- [27] Id. at 93.
- [28] CA rollo, pp. 277-290.
- [29] Id. at 290.
- [30] Id. at 291-308.
- [31] Id. at 331-332.
- [32] Id. at 11-48.
- [33] Rollo, p. 47.
- [34] Id. at 44.
- [35] Id. at 19.
- [36] Bani Rural Bank, Inc., et al. v. De Guzman, et al., 721 Phil. 84, 98 (2013).
- [37] Id., citing *Monloya v. Trammed Manila Corp./Mr. Ellena, et al.*, 613 Phil. 696, 707 (2009)
- [38] Rollo, p. 19.
- [39] Id. at 19-20.
- [40] Id. at 45.
- [41] *Tinio v. CA*, 551 Phil. 972, 981 (2007).

[42] *Union Carbide Labor Union v. Union Carbide Phils., Inc.*, G.R. No. 41314 November 13 1992 215 SCRA 554, 557.

[43] *Pantoja v. SCA Hygiene Products Corp.*, 633 Phil. 235, 236 (20 10).

[44] 597 Phil. 295 (2009).

[45] *Id.* at 306-307.

[45] CA rollo, p. 105.

[47] *Id.* at 283-284.

[48] Rollo, p. 44.

[49] *Id.* at 23.

[50] *Id.* at 39.

[51] CA rollo, p. 283.

[52] G.R. No. 158583, September 10, 2014, 734 SCRA 558.

[53] *P.J. Lhuillier, Inc. and Mario Ramon Ludena v. Flordeliz Velayo*, G.R No 198620 November 12,2014.

[54] Rollo, p. 24.

[55] 703 Phil. 492(2013).

[56] *Id.* at 502.

[57] CA rollo, p. 92.

[58] Rollo, pp. 19-20.

[59] CA rollo, pp. 93-94.

[60] *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445-446 (2010), citing, *Perez, et al. v. Philippine Telegraph and Telephone Co., et al.*, 602 Phil. 522, 538 (2009).

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