

**SPOUSES FLORENTINO R. MAYNES, SR. AND SHIRLEY M. MAYNES,
SUBSTITUTING SHEILA M. MONTE, PETITIONERS, VS. MARIVIN
OREIRO, DOING BUSINESS UNDER THE NAME OF OREIRO'S
BOUTIQUE AND ME...**

G.R. No. 206109. November 25, 2020

Ponente: HERNANDO, J.

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HERNANDO, J.:

This Petition for Review on Certiorari[1] assails the October 22, 2012 Decision[2] and March 6, 2013 Resolution[3] of the Court of Appeals (CA) in CA-GR. S.P. No. 121428.

The CA reversed and set aside the April 25, 2011 Decision[4] and June 30, 2011 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-001707-10 which affirmed the Executive Labor Arbiter's (ELA) June 15, 2009 Decision[6] declaring Sheila M. Monte (Monte) to have been illegally dismissed from employment.

The Antecedents:

Monte was a Sales Clerk at respondent Marivin Oreiro's (Oreiro) Boutique and Merchandise (Boutique) outlet in Bangar, La Union.[7] She claimed that on February 6, 2007, she was summarily dismissed from employment without just cause and due process. Hence, she filed a Complaint[8] for illegal dismissal, underpayment of wages, non-payment of overtime pay, 13th month pay and separation pay, as well as damages and attorney's fees.[9]

Conversely, Oreiro denied illegally dismissing Monte. She contended that despite Monte's infractions amounting to breach of trust and confidence, the latter was never terminated from the service as in fact, Monte abandoned her work.[10]

Ruling of the Executive Labor Arbiter:

The ELA declared that Monte was illegally dismissed and did not abandon her work since she even reported for work on February 6, 2007 despite the fact that her notice of termination was already posted in the premises of the store. She was not accorded procedural due process; no notice or investigation was conducted; neither was she allowed to explain her side.[11]

The ELA awarded her damages and attorney's fees, in addition to backwages, separation pay, 13th month pay and salary differential.[12]

Ruling of the National Labor Relations Commission:

In her Memorandum[13] filed before the NLRC, Oreiro provided more details regarding Monte's infractions. Oreiro narrated that Monte did not issue receipts for payments made by the clients of the boutique. Certain customers were also listed to have uncollected payments when they had in fact already settled their

accountabilities. Monte also borrowed money from the store's clients and would offset her loan against the store's receivables from said client.

Moreover, a total of 3,945 items amounting to P396,728.00 delivered to the Bangar outlet were not reflected in the store's inventory. Monte also did not remit the cash paid by customers totalling P62,875.00.[14] Some items amounting to P224,699.00 were found to be missing and/or sold to fictitious persons. When confronted with said findings, Monte did not offer any explanation; instead, she left the key to the outlet and never came back.[15] Oreiro thus initiated a complaint with the local police of Bangar wherein Monte was invited to explain. Monte appeared but failed to identify the customers whom she reported to have availed of items on credit.[16]

Oreiro contended that there was no illegal dismissal to speak of. On the contrary, there was sufficient evidence that Monte committed serious misconduct resulting in loss of trust and confidence. According to Oreiro, the ELA failed to appreciate the Promissory Note executed by Monte herself in favor of Oreiro as well as the affidavits of customers, and company documents such as the inventory ledgers duly signed by Monte, which all established her serious misconduct warranting her dismissal from employment. Oreiro posited that these were enough bases to dismiss Monte on the ground of loss of trust and confidence.[17]

In its April 25, 2011 Decision,[18] the NLRC denied Oreiro's appeal for lack of merit. It pointed out that it cannot entertain Oreiro's allegations that Monte committed acts of serious misconduct since Oreiro is not allowed to change her theory on appeal, i.e., from abandonment of work to a valid dismissal.[19] The labor tribunal noted that no inventory ledgers allegedly signed by Monte were presented for the ELA's consideration. In any case, it was not shown that Monte was responsible for the missing stocks.[20]

The NLRC also noted discrepancies between the alleged amount lost as presented by Oreiro before the prosecutor and with the labor tribunal. It even adverted to a Resolution[21] dated September 25, 2007 wherein the prosecutor found that Monte was on leave during the period when Oreiro supposedly incurred losses, which cast doubt on the veracity of the audit report.[22] In addition, the NLRC noticed that the copies of order receipts[23] allegedly issued by Monte to fictitious persons did not bear her signature while some bore only her printed name. It likewise disregarded the itemized list of lost stocks[24] with the first page bearing Monte's signature because it was belatedly submitted only in Oreiro's motion for reconsideration.[25]

Oreiro's motion for reconsideration[26] was denied by the NLRC in a Resolution[27] dated June 30, 2011.

Ruling of the Court of Appeals:

Dismayed, Oreiro filed a Petition for Certiorari and Prohibition[28] before the CA. Oreiro mainly argued that she submitted on appeal "documents bearing the signature of Shiela Monte admitting her act of misappropriating daily cash sales amounting to P6,025.00 and an initial list of missing stocks prepared during a spot audit amounting to P26,930.00 which she acknowledged responsibility by affixing her own signature aside from the stocks belonging to old accounts which [were] likewise missing amounting to P88,423.00 which Shiela Monte admitted with her own signature. Also submitted were unauthorized receipts which Shiela Monte issued to fictitious person[s] prepared in her own handwriting." [29]

Monte, on the other hand, opined that Oreiro cannot change her theory on appeal from abandonment to dismissal based on a just cause.[30] Likewise, she pointed out that Oreiro's belated submission of documents was not reasonably explained, especially when these were available even before the inception of the present case.[31]

In its assailed October 22, 2012 Decision,[32] the CA ruled that Oreiro did not change her theory on appeal and that the allegation of "loss of trust and confidence" as a ground for Monte's termination was raised as an issue before the ELA. In Oreiro's Position Paper,[33] the theory of "loss of trust and confidence" was alluded to when

Oreiro presented the inventory conducted by the bookkeeper showing that various stocks were missing under Monte's custody. Oreiro did not confine her arguments to "abandonment" and emphasized that Monte violated the store's policies.

Moreover, the CA held that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. Thus, even if the evidence was not submitted before the ELA, due introduction of evidence before the NLRC should merit its admission in keeping with fairness and equity.[34]

In view of the foregoing, the appellate court ruled that there was just cause for Monte's dismissal, i.e., loss of trust and confidence. The CA noted that Oreiro established by substantial evidence that Monte committed the following infractions: 1) appropriated for her personal use daily sales amounting to P6,025.00; 2) lost various stocks under her care; and, 3) issued items to fictitious customers.[35]

It explained that as a Sales Clerk, Monte occupied a position of trust and confidence since she is tasked to handle the stocks/inventory and funds of the business.[36]

Nonetheless, the CA found that Oreiro failed to observe the twin requirements of notice and hearing in terminating Monte. Oreiro failed to notify Monte of her infractions and to give her a chance to explain. No conference or hearing was held between the parties. Oreiro's failure to observe procedural due process entitles Monte to the award of nominal damages in the amount of P30,000.00.[37]

Incidentally, Monte died during the pendency of the case and was substituted by her parents, petitioners Florentino R. Maynes, Sr. and Shirley M. Maynes (Spouses Maynes).[38]

The dispositive portion of the CA's assailed October 22, 2012 Decision provides:

WHEREFORE, the instant Petition is GRANTED. The challenged National Labor Relations Commission's April 25, 2011 Decision and June 30, 2011 Resolution in NLRC LAC No. 08-001707-10 (NLRC-RAB 1-08-1148-07) are ANNULLED AND SET ASIDE and a new one entered ordering the herein petitioner [Oreiro] to pay the herein private respondent [Monte] nominal damages in the amount of P30,000.00.

SO ORDERED.[39]

The Spouses Maynes filed a Motion for Reconsideration[40] which was subsequently denied in the CA's March 6, 2013 Resolution.[41]

Hence, this Petition for Review on Certiorari.

Issue:

Whether or not Monte was illegally dismissed.

Our Ruling

The Petition is unmeritorious.

Evidence may be presented on appeal before the labor tribunal.

Key in resolving whether Monte's dismissal was valid or not is the determination of whether Oreiro's evidence submitted before the NLRC should be considered. We rule in the affirmative. Technical rules of procedure do not strictly apply in labor proceedings. "[P]etitioners could present evidence for the first time on appeal to the NLRC. It is well settled that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases." [42] Thus, Oreiro was not precluded from presenting evidence during the proceedings before the labor tribunal. Monte is likewise allowed to present

controverting evidence but did not do so. To elucidate,

[t]he settled rule is that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. In fact, labor officials are mandated by the Labor Code to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. Thus, in *Lawin Security Services v. NLRC*, and *Bristol Laboratories Employees' Association-DFA v. NLRC*, we held that even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to the NLRC is enough basis for the latter to be more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal. Certainly, the first cause of action would be more consistent with equity and the basic notions of fairness.[43]

Oreiro's pieces of documentary evidence submitted before the labor tribunal are material to establish her contention that Monte committed infractions which led to the loss of trust and confidence reposed upon her. The documents showing Monte's signatures or handwritten notations were also relevant as they rebutted Monte's denial of having affixed or wrote them. In fine, justice and equity call for the admission and appreciation of such evidence.

Oreiro did not change her theory on appeal.

We agree with the CA's pronouncement that Oreiro did not change her theory on appeal. In Oreiro's Position Paper, she already put forth the argument that breach of trust is a ground for dismissal. She also attached affidavits and copies of the inventory in order to substantiate her claim of loss of trust and confidence. Although Oreiro did not adequately discuss the reasons for the loss of trust and confidence, the fact remains that she made such argument before the ELA. On appeal with the NLRC, she further elaborated on this argument by appending additional relevant documents.

Monte's dismissal was for a just cause.

It is a settled rule that "[t]wo requisites must concur to constitute a valid dismissal from employment: (1) the dismissal must be for any of the causes expressed in Article 282 (now Article 297) of the Labor Code;[44] and (2) the employee must be given an opportunity to be heard and to defend himself." [45]

Article 297 (c), which refers to "fraud or willful breach by the employee of the trust reposed in [him/her] by [his/her] employer" or simply termed as "loss of trust and confidence," is a just cause for dismissal. "The requisites for dismissal on the ground of loss of trust and confidence are: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. In addition to these, such loss of trust relates to the employee's performance of duties." [46]

Monte's position is clearly imbued with trust and confidence. She was tasked "to perform overall supervision and control of the x x x outlet [including] receiving of different items from the main office in Bacnotan; safekeeping and remittance of daily sales; preparation of [inventory]; recording of items released on credit and issuance of receipts for payments made; and giving items on account or credit to recognized local dealers. [She] also exercises discretion on the quantity and manner of payment of items released on credit to local dealers or retailers." [47]

Oreiro submitted a Stocks Lost List [48] which indicated that certain stocks were lost while Monte was the Sales Clerk managing the Bangar branch. She also presented a list of old accounts [49] in which lost payments or products cannot be located or explained by Monte (totalling P88,423.00). Significantly, Monte herself signed and acknowledged said list. In addition, Oreiro also submitted a list of lost stocks [50] bearing Monte's signature indicating Monte's admission of her infractions. Even the inventory/ledgers, as well as the order slips with fictitious or non-existent persons [51] would show that there were anomalies in the sales.

We note that Monte did not even offer any justification for the uncovered anomalies. She also did not deny the authenticity of her signature in the Promissory Note wherein she acknowledged her misappropriation of cash sales and that "due to unavoidable circumstances, [she] took & obtain[ed] the amount of Six Thousand & Twenty Five Pesos (P6,025) daily sales on February 3, 2001." [52] She likewise wrote that it was discovered during the spot audit that stocks were lost. Thus, these infractions caused Oreiro to lose trust and confidence in Monte.

"[A]rticle 282 (now Article 297) of the Labor Code lists loss of trust and confidence in an employee, who is entrusted with fiducial matters, or with the custody, handling, or care and protection of the employer's property, as a just cause for an employee's dismissal. [53] x x x We have recognized the employer's authority to sever the relationship with an employee. [54] The right to terminate employment based on just and authorized causes stems from a similarly protected constitutional guarantee to employers of reasonable return on investments." [55] Withal, based on the attendant circumstances, the Court has reason to rule that Oreiro dismissed Monte with just cause.

Monte was denied of her right to procedural due process.

Although there was just cause for her dismissal, Monte was denied procedural due process. "In *Distribution & Control Products, Inc. v. Santos*, [56] the Court has explained that procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first appraises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted." [57]

In the landmark case of *Agabon v. National Labor Relations Commission*, [58] We held that –

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of 'dismiss now, pay later,' which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. [59]

In the case at bench, the just cause for the dismissal of Monte from the service was duly established, i.e., loss of trust and confidence considering the several infractions that she committed. At the same time, it was likewise established that Monte was not accorded her right to procedural due process. She was not given any notice to explain or the opportunity to be heard before her dismissal. She only learned about her dismissal from service when notices were posted in the premises of the outlet stating that she is already terminated from her work. Thus, as correctly held by the CA, she is entitled to an award of nominal damages in the amount of P30,000.00 in accordance with recent jurisprudence. [60]

WHEREFORE, the instant Petition is DENIED. The assailed October 22, 2012 Decision and March 6, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 121428 are AFFIRMED.

SO ORDERED.

Leonen (Chairperson), Inting, and Rosario, JJ., concur.
Delos Santos, J., on official leave.

[1] Rollo, pp. 10-31.

[2] Id. at 33-50; penned by Associate Justice Franchito K. Diamante and concurred in by Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz.

[3] Id. at 633-634.

[4] Id. at 97-109; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

[5] Id. at 91-95.

[6] Id. at 492-498; penned by Executive Labor Arbiter Vito C. Bose.

[7] Id. at. 454.

[8] The Complaint was not attached.

[9] Rollo, p. 492.

[10] Id. at 35-36.

[11] Id. at 493-495.

[12] Id. at 497-498.

[13] Memorandum of Appeal and the Motion to Reduce Appeal Bond with Motion to Admit Attached Cash Bond.

[14] Rollo, p. 457.

[15] Id. at 458.

[16] Id. at 459.

[17] Id. at 460-463.

[18] Id. at 97-109.

[19] Id. at 103.

[20] Id. at 505-506.

[21] Id. at 529-531.

[22] Id. at 105-106.

[23] Id. at 143-150.

[24] Id. at 131-136.

[25] Id. at 107-108.

[26] Id. at 157-181.

[27] Id. at 91-95.

[28] Id. at 81-87.

[29] Id. at 66.

[30] Id. at 546.

[31] Id. at 548.

[32] Id. at 33-50.

[33] Id. at 499-502.

[34] Id. at 39-40.

[35] Id. at 43.

[36] Id. at 46.

[37] Id. at 47-49.

[38] Id. at 49.

[39] Id. at 49-50.

[40] Id. at 624-631.

[41] Id. at 633-634.

[42] *Clarion Printing House Inc. v. National Labor Relations Commission*, 500 Phil. 61, 76 (2005)

[43] Id. at 76-77. Citation omitted.

[44] Art. 282 (now Art. 297). 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 representatives; and

(e)

Other causes analogous to the foregoing.

- [45] Del Rosario v. CW Marketing & Development Corp., G.R. No. 211105, February 20, 2019 citing Sections 2 and 5, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code.
- [46] Cadavas v. Court of Appeals, G.R. No. 228765, March 20, 2019 citing Central Azucarera De Bais v. Heirs of Zuela Apostol, G.R. No. 215314, March 14, 2018.
- [47] Rollo, p. 455.
- [48] Id. at 505-506.
- [49] Id. at 540-541.
- [50] Id. at 131-136.
- [51] See letter responses of the barangays involved as well as the local COMELEC office; rollo, pp. 137-141.
- [52] Rollo, p. 117.
- [53] Del Rosario v. CW Marketing & Development Corp., G.R. No. 211105, February 20, 2019 citing Condo Suite Club Travel, Inc. v. National Labor Relations Commission, 380 Phil. 660 (2000).
- [54] Id., citing Moya v. First Solid Rubber Industries, Inc., 718 Phil. 77 (2013).
- [55] Id., citing 1987 CONSTITUTION, Art. XIII, § 3, par. 4.
- [56] Id., citing Distribution & Control Products, Inc. v. Santos, 813 Phil. 423 (2017).
- [57] Id.
- [58] 58 485 Phil. 248, (2004).
- [59] Id. at 287-288.
- [60] Slord Development Corp. v. Noya, G.R. No. 232687, February 4, 2019 citing Ortiz v. DHL Philippines Corporation, 807 Phil. 626 (2017).

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