

## INTER-CAPITOL MARKETING CORPORATION AND WALTER EUYANG, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND REMEDIOS B. CARREON, RESPONDENTS.

*G.R. No. 90745. October 10, 1991*

Ponente: MEDIALDEA, J.

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### **MEDIALDEA, J.:**

This is a petition for certiorari, with prayer for the issuance of a temporary restraining order, seeking reversal of the decision of public respondent National Labor Relations Commission dated September 29, 1989, which ordered petitioners Inter-Capitol Marketing Corporation and Walter Euyang, jointly and severally, to pay private respondent Remedios B. Carreon backwages and separation pay.

The antecedent facts are, as follows:

Private respondent Remedios B. Carreon was from 1976 to 1987 an employee of petitioner Inter-Capitol Marketing Corporation, a firm engaged in the marketing of garments, as administrative officer initially, later as treasurer-in-charge, and finally as Chief Accountant.

On June 10, 1987, at the instance of petitioner Walter Euyang, president of the company, a surprise audit was conducted by his consultant, Roger Kong, on the P25,000.00 revolving provincial fund in the care and custody of Carreon. This is the fund set up by the company to answer for expenses incurred by personnel who make official trips to the provinces. The audit allegedly showed that: 1) majority of the disbursements made by Carreon did not have the approval of Mr. J. Lee, vice-president of the company, which was in direct contravention of existing company policy; 2) while the fund was intended solely for use of the employees in connection with expenses incurred during their provincial trips, Carreon lent part of the fund for personal use of some employees; and 3) Carreon misappropriated for her own use and benefit the amount of P6,500.00 belonging to the fund and fraudulently covered it as cash advances of other employees of the company. On the same date, Carreon submitted financial reports on said fund to the Treasury Department (pp. 4-5, Records) after which, she was given a clearance by Mrs. Daisy Peralta (p. 6, Records).

In Euyang's letter to Carreon dated July 4, 1987, she was placed under preventive suspension effective immediately. In the same letter, she was invited to appear before management for an investigation which was scheduled on July 9, 1987. She did not appear at said investigation. In Euyang's second letter dated July 14, 1987, she was formally dismissed from employment for loss of trust and confidence.

Carreon contested the validity of her dismissal by filing before the Labor Arbiter on July 9, 1987, a complaint for illegal dismissal and unfair labor practice with prayer for an award of separation pay and moral damages against petitioners. She claimed that because of the desire of Euyang to oust her, he harassed her by ordering: 1) a surprise audit of the revolving provincial fund in her custody; 2) the turn-over to another official, Daisy Peralta, of the company cars' registration and insurance policies as well as the authority to receive and sign requisition slips and to order the preparation of unnumbered check vouchers officially belonging to her; and 3) the search of her

bags and belongings by the security guard on her way out of the office.

Petitioners denied the charges. They alleged that Carreon was separated from employment because of the irregularities discovered during the surprise audit of the revolving provincial fund entrusted to her namely, unauthorized disbursements of funds and misappropriation of funds, which resulted in the loss of trust and confidence on her by management. Furthermore, Carreon admitted culpability when confronted with the findings of Kong and volunteered to resign to avoid embarrassment but later reneged and instead, charged them with harassment which was purely imaginary. The transfer of some of her duties to another official was made to implement a reorganizational set up of separating treasury functions from accounting functions. The search of her belongings was a reasonable measure to protect them against the possibility of further damage.

On January 23, 1989, the Labor Arbiter sustained the legality of Carreon's dismissal from employment and dismissed her complaint for lack of merit (p. 40, Rollo). On appeal, public respondent National Labor Relations Commission set aside the Labor Arbiter's ruling in its decision dated September 29, 1989, the dispositive portion of which, reads (pp. 56-57, Rollo):

"WHEREFORE, premises considered, the Decision appealed from is hereby SET ASIDE, and a new judgment rendered, hereby ordering the respondents jointly and severally to pay the complainant:

"1. Backwages from the time she was dismissed on 14 July 1987 up to the date of promulgation of this Decision, which shall in no case exceed the period of three (3) years; and

"2. Separation pay equivalent to one-half month for every year of service, a fraction of at least six (6) months being considered as one whole year.

"The complaint for unfair labor practice and moral damages is hereby dismissed for lack of merit.

"SO ORDERED."

Hence, the present petition.

On January 8, 1990, We issued a temporary restraining order enjoining respondents from enforcing the questioned decision of the NLRC (pp. 106-107, Rollo).

In this petition, petitioners impute grave abuse of discretion on the part of the NLRC when: 1) despite uncontroverted proof that Carreon's appeal was filed out of time, it ignored the same in contravention of the explicit provision of the Labor Code and jurisprudence; 2) despite uncontroverted evidence of Carreon's breach of trust and confidence reposed on her by petitioners, it reversed the Labor Arbiter's conclusion that the dismissal was legal; and 3) instead of affirming the Labor Arbiter's decision in toto, it ordered petitioners to pay Carreon backwages and separation pay.

In support thereof, petitioners allege that in Carreon's Memorandum of Appeal, it was stated that she received a copy of the Labor Arbiter's decision dated January 23, 1989 on February 4, 1989. The records, however, clearly show that Carreon received a copy of said decision on February 2, 1989. Carreon only had ten (10) days from February 2, 1989, or until February 12, 1989, within which to file her appeal before the NLRC. Carreon's Memorandum of Appeal was filed only on February 13, 1989, or beyond the ten (10) day period prescribed for filing an appeal. Therefore, the decision of the Labor Arbiter had become final and executory, citing the cases of *Narag v. NLRC, et al.*, G.R. No. 69628, October 28, 1987, 155 SCRA 199 and *Rizal Empire Insurance Group, et al. v. NLRC, et al.*, G.R. No. 73140, May 29, 1987, 150 SCRA 565, which held that perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal as required by the Rules has the effect of rendering the judgment final and executory. On the merits, the

following facts indubitably show compliance with the jurisprudential requirement that there should be some basis for loss of trust and confidence: 1) findings of the surprise audit and the subsequent investigation showing that Carreon, among other things, misappropriated for her own personal use and benefit the amount of P6,500.00 belonging to the fund and fraudulently covered said misappropriation as cash advances of other employees of the company; 2) majority of the disbursements made by Carreon up to the time of the audit did not have the approval of the vice-president, which was in direct contravention of existing company policy; 3) Carreon lent money from the fund for the personal use of some employees although the fund was intended solely for use by employees in connection with expenses incurred during provincial trips; 4) Carreon's abnormal liquidation of the cash advance of P6,500.00, i.e., by returning the whole amount of P6,500.00 instead of the normal liquidation procedure in the form of stating the expenses incurred during provincial trips and submitting liquidation documents; and 5) testimony of another employee, Elizabeth Calayag, who is Carreon's relative by affinity, confirming the findings of the surprise audit and that Carreon confided to her the misappropriation of funds. Viewed as a whole, these circumstances clearly establish that Carreon miserably failed to fulfill the strict standards incident to her position as Chief Accountant, in whose hands the control and custody of petitioners' property were reposed. Also, the award of backwages and separation pay is not proper because of the serious misconduct committed by her.

The Solicitor General upholds the questioned decision of the NLRC.

As regards the alleged late filing of Carreon's Memorandum of Appeal before the NLRC, petitioners must have overlooked the fact that February 12, 1989 (last day to file said memorandum) was a Sunday. Therefore, the appeal was filed timely on the next working day, February 13, 1989. This rule has been discussed extensively in the case of *SM Agri & General Machineries v. NLRC*, G.R. No. 74806, January 9, 1989, 169 SCRA 20 and reiterated in the recent case of *Imperial Victory Shipping Agency v. NLRC, et al.*, G.R. No. 84672, August 5, 1991.

We shall resolve now the merits of the case.

In ruling against Carreon, the Labor Arbiter was of the view that the infractions committed by her constituted strong bases for petitioners' loss of trust and confidence. There was no denial of due process because Carreon was given an opportunity to defend herself in petitioners' letter dated July 4, 1987, advising her to appear for an investigation to explain her side of the case or to prove the falsity of the infractions charged against her. In any event, the proceedings before the Labor Arbiter where Carreon was at liberty to prove her innocence cured whatever defect, if any, that attended her termination from employment.

The NLRC arrived at an opposite opinion. According to it, petitioners failed to prove that Carreon misappropriated or spent for her personal use a part of the fund (pp. 51-56, Rollo):

"To begin with, the complainant, a chief accountant, was preventively suspended on 4 July and eventually dismissed from the service on 14 July 1987, on the ground that a surprise audit by the company auditor of the salesman's revolving provincial fund entrusted to her care and custody showed that she misappropriated or spent for her personal use a part of the funds thereof (Annexes 'B' & 'C').

"Respondents contend, that while an actual count of the fund (cash on hand and cash advances, including the amount of P4,700.00 attributed to Ms. Monet Alvero) on 10 June 1987 revealed a total of P25,382.00 (which even reflected an excess of P382.00 over the total fund of P25,000.00 sought to be accounted for), since Ms. Alvero denied receiving the amount of P4,700.00, the Auditor concluded:

'Well, it is very apparent and it is very clear. In fact, if it was not Ms. Monet Alvero who took the money then it should have been the hand (sic) custodian who used this money maybe for personal reasons. (Emphasis supplied, tsn, 17 March 1988, p. 26, 160 Records)'

"This conclusion, the auditor ratiocinated, finds support from the fact that liquidation or payment of the amount of P4,700.00 was made only on 11 June 1987 or a day after the audit, and effected not by Ms. Alvero but by the complainant herself.

"We disagree.

"The offense of misappropriation so vehemently imputed to the complainant under the foregoing narrative circumstances would be more realistic and worthy of credit if there was proof that the sum of P4,700.00 which ought to go to Ms. Alvero by way of cash advance was used or spent by the complainant herself. For it would be too presumptuous to conclude, as the auditor and the respondents did, that the complainant made use of the disputed amount in the absence of a categorical statement coming from Ms. Alvero herself that she never received the amount of P4,700.00. For except the unconfirmed statement of the auditor that Ms. Alvero confided to him that she never received the amount, the respondents dismally failed to present Ms. Alvero as (a) witness to bridge the gap or supply the missing link between the complainant and the offense charged.

"This was admitted by no less than the counsel for the respondents who said:

'x x x I prepared the affidavit of Monet Alvero because I intend to present her. However, without first consulting her about it because then I was under pressure to submit her affidavit. However, after consulting her, she informed us that she was not willing to sign the affidavit and she was not willing to participate whatsoever in any manner in the proceedings here and for that reason, we did not press for her signing the affidavit. x x x' (tsn, 17 March 1988, pp. 68-69, pp. 201--202, Records)

"In fact, as per minutes of the inquiry relative to the audit report of the auditor, Roger Kong, dated 9 July 1987, Ms. Monet Alvero was reported to have been present and interviewed. During the interview, Ms. Alvero was briefed or informed by a certain Mr. Guillen Tumangan of the following:

'a. That on June 11, 1987 the former fund custodian, Mrs. Remedios Carreon, liquidated the P4,700.0 (sic) cash advance in the name of Monet Alvero through a cash payment to the new cashier Bess Calayag. x x x.

'b. That on June 17, 1987, Mr. Roger Kong the person who conducted the audit and supervised the transfer of custodial function over the fund informed her (Ms. Monet Alvero) in the presence of Daisy Peralta and Bess Calayag, of which she (Ms. Monet Alvero) intimated that of the P4,700 cash advance she requested on June 8, 1987 only P1,500 was received by her through Jackie Aquino, Ms. Monet Alvero reaffirmed to the body her previous admission to Mr. Roger Kong that she did not on or before June 10, 1987 receive the P4,700 cash advance.'

"It is quite evident from the foregoing minutes of the inquiry, that Ms. Monet Alvero, in the presence of the auditor Roger Kong and some officials of the respondent company, was asked by the inquiry body to affirm her alleged previous statement to the auditor that she never received the cash advance of P4,700.00 attributed (to) her.

"Contrary, however, to the minutes that she reaffirmed her previous admission or statement to the body, Ms. Alvero did not make such reaffirmation. For an examination of the minutes (pp. 79-80, Records) would indeed show that all those present attested to the veracity of the contents of the minutes by signing the same, except Ms. Alvero who did not. Which means that the previous statement attributed to her by the auditor was not true.

"It does not appear nor was it intimated that Ms. Alvero was somehow beholden to the complainant so as to refuse giving any adverse testimony against the latter. On the other hand, by refusing to sign the affidavit prepared by the respondents' counsel and the minutes of the inquiry, Ms. Alvero who is still in the employ of the company could have incurred the ire of the respondents to the point of losing her employment. If she did so notwithstanding the risk, it must be because she could not allow one who is innocent to suffer at her expense. It must be because

she really received the amount.

"If Ms. Alvero received the amount, as we believe, she did, then no charge of misappropriation will lie against the complainant. Consequently, her dismissal predicated on the hypothesis that she misappropriated, technically that is, the revolving fund entrusted to her care and custody would necessarily become illegal, calling for a relief no less than a reinstatement."

We cannot sustain the questioned decision of the NLRC. The failure of Alvero to testify did not necessarily mean that the charge of misappropriation of funds (p. 65, Records) against Carreon was unfounded because the other evidence presented by petitioners belies the allegation of illegal dismissal (see *Veterans Philippine Scout Security Agency v. NLRC, et al.*, G.R. No. 78062, June 28, 1989, 174 SCRA 347), which the NLRC failed to consider. The audit report of Kong contained, inter alia, the following finding (p. 94, Records):

X X X X X X X X

"b. Unauthorized Advances P4,700.

"1. Comments

"Per information from the new cashier, Bess Calayag, the cash advance of Ms. Monet Alvero amounting to P4,700 together with the cash advance of Obet Constantino amounting to P1,800 were liquidated by the former fund custodian (Remy Carreon) a day after the count date or June 11, 1987. Upon inquiry with Ms. Alvero on June 17, 1987, Ms. Alvero alleged that she never received said cash advance from Mrs. Carreon and that the cash advance slip with Mrs. Carreon represents a request for cash advance slip.

"The almost immediate liquidation of the cash advance of Ms. Alvero by the former fund custodian Mrs. Remy Carreon is a circumstantial fact which inclines me to believe the allegations of Ms. Monet Alvero.

X X X X X X X X.

On the same subject matter, he testified that Carreon's liquidation of the cash advance of Alvero did not conform with normal company procedure (pp. 161-167, Records):

"X X X X X X X X.

**ATTY. RODRIGUEZ:**

**Q**

Meaning, after the money is disbursed to the employees. How does the employee account for the disbursement made to that employee?

**WITNESS:**

**A**

Because you see, these advances are supposedly for provincial trips and they are to be spent, say for transportation, hotel bills, per diem, etc. So, everytime an employee draws from this provincial fund by approval of Mr. Lee, when they come back from the provincial trip, they would have to account in what we say liquidation for their advances. Usually, the liquidation form states how much he or she has spent during her trip and the remaining balance or if he has spent more than he has drawn, then, it's either you pay him additional or the employee additionally pay (sic) because he (will) return the money, the balance. That is the normal procedure.

**ATTY. RODRIQUEZ:**

**Q**

Now, my question is, taking in mind that procedure for the liquidation of the disbursements made out of those provincial funds, what can you say about the fact that Mrs. Carreon, the day after the counting, paid to the new cashier in the amount of P4,700.00 reflected as the advances made to Monet Alvero?

**WITNESS:**

**A**

Well, actually, that really was the matter which made my mind very inquisitive because if these were regular advances, these should have been liquidated through a normal course which is by submission of the liquidation documents but in addition to that, it having been paid also in cash the next day immediately after the counting. So, there are two (2) things which made my mind very inquisitive about these things: (1) it appears that it was not in the normal course of business transaction because supposedly these are advances for which you liquidate in the form of stating whether how much your transportation expenses for such program was, how much your per diem and everything; the second thing that made me curious as that again, the thing that she paid this immediately the day after the count, so that made my audit mind very curious.

**ATTY. RODRIGUEZ:**

**Q**

Why? What if you pay the day after?

**WITNESS:**

**A**

Because something appears irregular on that thing.

**ATTY. RODRIGUEZ:**

**Q**

What is irregular about that?

**WITNESS:**

**A**

It is not normal that a person who takes an advance will return the advances because under this normal procedure, what you actually do as an employee if you liquidate your advances by submitting your liquidation sheet which is detailing your expenses not by returning the money, so that made my mind curious about it.

x x x x x x x x."

Elizabeth Calayag, the company's cashier and relative of Carreon by affinity, executed an affidavit wherein she stated that (p. 272, Records):

"x x x x x x x x.

"4. Thereafter, and just before I was leaving (sic) complainant's room with Mr. Kong ahead of me, I was called back by complainant who then whispered and disclosed to me that she had appropriated for her own use part of the Fund in her custody and covered this up by recording the misappropriation as the cash advances of two other employees in the persons of Ms. Monet Alvero and Mr. Obet Constantino.

"x x x x x x x x."

These pieces of evidence were not sufficiently rebutted by Carreon. Rather, she concentrated her arguments on the alleged humiliating acts committed by Euyang on her and the clearance issued by Peralta.

The rule is settled that if there is sufficient evidence to show that the employee has been guilty of breach of trust or that his employer has ample reason to distrust him, the labor tribunal cannot justly deny to the employer the authority to dismiss such employee (Reynolds v. Eslava, G.R. No. L-48814, June 27, 1985, 137 SCRA 259). More so in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies

termination (*Reynolds v. Eslava*, *ibid*; *Lamsan Trading v. Leogardo*, G.R. No. 73245, September 30, 1986, 144 SCRA 571; *New Frontier v. NLRC*, G.R. No. 51578, May 29, 1984, 129 SCRA 502; *Associated Citizens Bank v. Hon. Blas F. Ople, et al.*, G.R. No. L-48896, February 24, 1981, 103 SCRA 130). The mere existence of basis for believing that the employee has breached the trust of the employer is sufficient and does not require proof beyond reasonable doubt (*Sea Land Service v. NLRC*, G.R. No. 68212, May 24, 1985, 136 SCRA 544; *DOLE v. NLRC*, G.R. No. 55413, July 25, 1983, 123 SCRA 673; *Kwikway Engineering Works v. NLRC*, G.R. No. 85014, March 22, 1991; *Philippine Airlines, Inc., et al. v. NLRC, et al.*, G.R. No. 87353, July 3, 1991). Carreon's position involves a high degree of responsibility requiring trust and confidence, as it relates closely to the financial interests of the company. Her non-observance of normal company procedures with respect to the fund in her control and custody constitutes breach of trust and confidence.

The allegation of petitioners that the so-called clearance signed by Peralta dated June 16, 1987, is nothing but a receipt that Carreon had transferred her custodial function over the fund to Peralta and not a clearance from responsibility, worthy of credit because subsequent investigations were still conducted, the findings of which are reflected in the audit report of Kong dated June 18, 1987. Besides, Peralta had no authority to issue any clearance for the purpose of absolving Carreon of responsibility as regards the fund. Only Euyang can give such clearance after an evaluation of the audit report.

However, there is one circumstance in this case which We take against petitioners. The Court considers that there is at least a partial deprivation of Carreon's right to procedural due process (*Gold City Integrated Port Services, Inc. (INPORT) v. NLRC, et al.*, G.R. No. 86000, September 21, 1990, 189 SCRA 811). Although Kong conducted an investigation prior to the imposition of preventive suspension, such investigation alone is not sufficient compliance with the due process requirement because Carreon was not given an opportunity to defend herself (see *Kwikway Engineering Works v. NLRC, et al.*, *supra*). Likewise, it bears emphasis that the ground relied upon for her preventive suspension was "among others, unauthorized cash advances" (p. 64, Records). Thus, Carreon was not properly informed of all the infractions of company regulations which subsequently became the justification for her dismissal (*Gold City Integrated Port Services, Inc. (INPORT) v. NLRC, et al.*, *ibid*). For petitioners' failure to comply with the requirements of due process in terminating Carreon's service, they shall be liable to indemnify her in the sum of P1,000.00 as damages (*Seahorse Maritime Corporation v. NLRC*, G.R. No. 84712, May 15, 1989, 173 SCRA 390; *Wenphil Corporation v. NLRC*, G.R. No. 80587, February 8, 1989, 170 SCRA 69; *Kwikway Engineering Works v. NLRC, et al.*, *supra*).

With the conclusions thus reached, We find it unnecessary to resolve the third issue raised by petitioners.

ACCORDINGLY, the petition is hereby GRANTED. The decision of the National Labor Relations Commission dated September 29, 1989, is SET ASIDE. The decision of the Labor Arbiter dated January 23, 1989 is REINSTATED, but with the MODIFICATION that petitioners are ordered, solidarily, to indemnify private respondent in the amount of P1,000.00. The temporary restraining order issued on January 8, 1990 is made PERMANENT.

### **SO ORDERED.**

Narvasa, (Chairman), Cruz, and Grino-Aquino, JJ., concur.

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