



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

VENUS B. CASTILLO,
LEAH J. EVANGELISTA,
DITAS M. DOLENDO,
DAWN KAREN S. SY and
PRUDENTIAL PLANS, INC.
EMPLOYEES UNION - FEDERATION
OF FREE WORKERS (PPEU-FFW)

Petitioners,

- versus -

PRUDENTIALIFE PLANS, INC.,
and/or JOSE ALBERTO T. ALBA,
ATTY. CEFERINO A. PATIÑO, JR.,
and ROSEMARIE DE LEMOS,
Respondents.

G.R. No. 196142

Present:

CARPIO, *Chairperson*,
BRION,
DEL CASTILLO,
PEREZ, and
REYES, * JJ.

Promulgated:
MAR 26 2014

X ----- X

DECISION

DEL CASTILLO, J.:

In a labor case, the written statements of co-employees admitting their participation in a scheme to defraud the employer are admissible in evidence. The argument by an employee that the said statements constitute hearsay because the authors thereof were not presented for their cross-examination does not persuade, because the rules of evidence are not strictly observed in proceedings before the National Labor Relations Commission (NLRC), which are summary in nature and decisions may be made on the basis of position papers.

This Petition for Review on *Certiorari*¹ assails the January 14, 2011 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 111981 which reversed and set aside the dispositions of the NLRC, as well as the CA's March

* Per Special Order No. 1650 dated March 13, 2014.

¹ *Rollo*, pp. 8-55.

² Id. at 572-586; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

16, 2011 Resolution³ denying reconsideration thereof.

Factual Antecedents

Individual petitioners Venus B. Castillo (Castillo), Leah J. Evangelista (Evangelista), Ditas M. Dolendo (Dolendo), and Dawn Karen S. Sy (Sy) were regular employees of respondent Prudentialife Plans, Inc. (Prudentialife), to wit:

<u>Employee Name</u>	<u>Position</u>	<u>Date Employed</u>
Venus B. Castillo	CFP Clerk	November 27, 1995
Leah J. Evangelista	Data Encoder	October 16, 2000
Ditas M. Dolendo	Data Control Clerk	February 2002
Dawn Karen S. Sy	Data Control Clerk	October 1999

Prudential Plans Employees Union – FFW (PPEU-FFW), on the other hand, is a local chapter of the Federation of Free Workers and is the authorized bargaining agent of Prudentialife's rank-and-file employees. The individual petitioners are members of PPEU-FFW.

Respondent Prudentialife is an insurance company, while respondents Jose Alberto T. Alba (Alba), Atty. Ceferino A. Patiño, Jr. (Patiño) and Rosemarie de Lemos (de Lemos) are its President, First Vice-President for Corporate Services Group, and Assistant Vice-President for Human Resources, respectively.

Under Section 4, Article X of the parties' Collective Bargaining Agreement (CBA), Prudentialife employees were granted an optical benefit allowance of ₱2,500.00 to subsidize prescription eyeglasses for those who have developed vision problems in the course of employment. The pertinent CBA provision states:

Section 4. Optical benefit. – The Company shall provide an amount not to exceed ₱2,500.00 inclusive of VAT to any covered employee to defray the cost of eyeglasses that may be prescribed by the accredited HMO physician or employee's personal optometrist. The benefit can be availed of only once every two (2) years.⁴

Many Prudentialife employees – petitioners included – availed thereof and Prudentialife was flooded with requests for reimbursement for eyeglasses the employees supposedly purchased from a single outfit/supplier, Alavera Optical. Suspecting fraud, Prudentialife began an investigation into the matter, and on February 22, 2006, it sent individual written Notices to Explain⁵ to petitioners and

³ Id. at 612-613.

⁴ Id. at 14, 330, 574, 625.

⁵ Id. at 253-256.

other employees who availed of the benefit. The notices revealed its initial findings – that the given address and telephone number of Alavera Optical were fictitious; that the official receipts and prescriptions issued by Alavera Optical appear to have been forged; that the eyeglasses were grossly overpriced; and that Prudentialife was being required to pay for the eyeglasses even though they have not been released as yet. The notices required the recipients thereof to submit their written explanation relative to acts of dishonesty and fraud which they may have committed in connivance with Alavera Optical.

Petitioners and the other availing employees submitted their respective written explanations. Prudentialife brought the subject eyeglasses to reputable optical shops – particularly Sure Vision and Sarabia Optical – for comparative examination as to quality and price. The eyeglasses of Evangelista and Dolendo were brought to Sure Vision Optical, Star Mall branch, Mandaluyong City, and Sy's were brought to Sarabia Optical, Greenbelt I branch, Makati City. The two optical shops found that Dolendo and Sy's eyeglasses had no grade, while the grade on Evangelista's eyeglasses did not match the prescription issued to her. It was likewise discovered that the cost of petitioners' eyeglasses, as declared in their respective official receipts and reimbursement requests, was excessive compared to similar frames and lenses being sold by Sure Vision and Sarabia Optical.⁶

In her written explanation, Castillo claimed that she acted in good faith in availing of the optical benefit allowance; that she did not conspire with Alavera Optical in the overpricing of her eyeglasses; that she was made to believe that her transaction with Alavera Optical – whereby the latter would issue an official receipt for the eyeglasses even without actual payment thereof, which Castillo would then claim from Prudentialife – was regular; that she was unaware that Alavera Optical was using a fictitious address and telephone number; and that she had no intention to defraud Prudentialife.⁷

Evangelista wrote that on January 27, 2006, a certain Dr. Simeona Alavera of Alavera Optical offered to prepare her eyeglasses which she could pay later, or after the release of her optical benefit allowance to which she agreed; that on January 30, 2006, her eyeglasses, together with the prescription and official receipt, were delivered to her, and she submitted the same to Prudentialife to claim reimbursement; that on February 1, 2006, she obtained a ₱2,500.00 reimbursement for her eyeglasses, which she used to pay Dr. Simeona Alavera; and that she acted in good faith and pursuant to company policy.⁸

For her part, Dolendo stated that she met Dr. Simeona Alavera through her colleague at work; that she heard that the doctor was conducting eye examinations

⁶ Id. at 213-214.

⁷ Id. at 16, 259.

⁸ Id. at 16-17, 260.

at the third floor of their building, thus she had her eyes examined as well; that on January 30, 2006, she received the official receipt for her eyeglasses in the amount of ₱2,500.00 and the doctor's prescription therefor, which she forwarded to Prudentialife; and that she had no knowledge of any dishonesty or overpricing of the eyeglasses relative to the optical benefit allowance.⁹

Petitioner Sy explained that Dr. Simeona Alavera arrived at the Prudentialife office on January 27, 2006, complete with eye examination equipment and charts; that she subjected herself to examination; that thereafter, Dr. Simeona Alavera offered to give her the official receipt and prescription for eyeglasses even before actual payment thereof; that she did not bother to investigate the authenticity, qualifications or integrity of Dr. Simeona Alavera or Alavera Optical, but was confident of her diagnosis; that she was not aware of the market value of the eyeglasses but was satisfied of the price at which she bought them; and that she believed that the refraction grade of her eyeglasses was the same as that written on the prescription issued by Alavera Optical.¹⁰

Other Prudentialife employees admitted that the eyeglasses they obtained cost only so much, yet were overpriced for purposes of reimbursement. Thus, employees Roselle Marquez, Edgardo Cayanan, Jennifer Garcia, Nerissa Rivera, Orlando Labicane, Michael Arceo, Jennifer Fronda and Leopoldo Padlan acknowledged that the true cost of their respective eyeglasses ranged from only ₱1,200.00 – ₱1,800.00, and yet Alavera Optical issued official receipts for a greater amount ranging from ₱2,500.00 – ₱2,600.00 with their full knowledge and consent, which latter amounts were actually reimbursed to them by Prudentialife even before the eyeglasses were released or paid for; that the fraudulent scheme was spearheaded by a certain "Elvie of Head Office"; and that Elvie and Dr. Simeona Alavera told them that the scheme was being carried out in other departments/offices within Prudentialife.¹¹

Prudentialife discovered that the employees who availed of the optical benefit allowance obtained their eyeglasses from Alavera Optical, based on the employees' reimbursement requests/petty cash vouchers and the official receipts¹² that the prescriptions¹³ for the eyeglasses were issued by a certain Dr. Alan Alavera, yet the address, telephone number and Tax Identification Number of Alavera Optical were fictitious; that it was Prudentialife employee Elvie Villaviaje who arranged with Alavera Optical for the conduct of eye examinations within company premises; that to entice the employees, Alavera Optical offered to release the eyeglasses and issue the prescriptions and official receipts even before actual payment is made; and that the reimbursements sought for the eyeglasses

⁹ Id. at 18-19, 261.

¹⁰ Id. at 17-18, 262.

¹¹ Id. at 211-213, 242-252.

¹² Id. at 230-235.

¹³ Id. at 236-239.

were more or less the same, or averaged at ₱2,500.00, yet they cost much less. Likewise, Prudentialife found that some of the eyeglass purchases were fictitious; that some of the eyeglasses purchased had no lens or grade; and that Alavera Optical issued prescriptions, released the eyeglasses, and issued the official receipts therefor even though they have not been paid for.

Thus, Prudentialife concluded that petitioners and other employees knowingly availed of the optical benefit allowance to obtain a refund of the maximum ₱2,500.00 benefit even though they did not have vision problems, or that their eyeglasses were worth less than ₱2,500.00.

On April 10, 2006, Prudentialife issued individual Notices of Termination¹⁴ to petitioners and other employees. The notices, signed by respondent Patiño, stated in part that –

In sum, we find that your explanation consisted mainly of bare denials and professions of innocence. We regret to inform you that we find your explanation to be not acceptable on the following grounds:

1. Based on the statements made by the other employees involved in this case, our investigation reveals that you are aware of the scheme by which the attending optometrist, Mrs. Simeona Alavera, would issue to you an Official Receipt for an amount grossly in excess of the real cost of your eyeglasses to enable you to collect the excess amount for your personal use.
2. You and the other employees were examined by Mrs. Alavera in the presence of one another and you were apprised of the scheme during the examination/checkup.
3. During the investigation, we confirmed that there was never any actual delivery of the eyeglasses to you, yet you submitted a reimbursement request. You therefore submitted an O.R. for an item which you have not actually received.
4. Your failure and refusal to divulge the whole truth shows your lack of any effort to come clean and help in the investigation of the case. In fact, it displays an attempt on your part to mislead the investigation and further confirms our findings of your dishonesty.

After careful and thorough evaluation, we find you culpable of DISHONESTY which, under Section 2.6 (i) of the Personnel Manual is punishable by Dismissal, to wit:

2.6 DISHONESTY

The disciplinary actions for offenses on Dishonesty shall be the following but not limited to:

¹⁴ Id. at 265-272.

x x x x

- (i) Padding receipt for reimbursement or liquidation of advances or expenses

1st Offense – Dismissal

Hence, you are terminated effective immediately upon receipt hereof and your separation benefits under the Company's Optional Retirement Program are hereby forfeited.

Furthermore, please be informed that your termination is without prejudice to whatever legal action which the Company may pursue to protect its interests.¹⁵

Ruling of the Labor Arbiter

On May 5, 2006, petitioners filed a Complaint for illegal dismissal, money claims and damages (illegal dismissal case) against respondents, docketed as NLRC-NCR Case No. 00-05-03815-06.¹⁶ Another case was filed for unfair labor practice, docketed as NLRC-NCR Case No. 00-07-05882-06, which was later on consolidated with the illegal dismissal case.

In their Position Paper,¹⁷ petitioners mainly contended that they were illegally dismissed based on a charge of dishonesty that was not proved, but was mainly founded on suspicion, conjecture and suppositions. They claimed that they did not commit any padding of the cost of the eyeglasses they bought from Alavera Optical; nor did they commit any act detrimental to Prudentialife's interests. They argued that quite the contrary, their transactions with Alavera Optical were valid and done in the ordinary course of business; that their right to due process was violated as they were not given ample time and opportunity to defend themselves; that they were deprived of their right to counsel; and that their bargaining agent PPEU-FFW was not informed of the case against them. For these reasons, petitioners argued that they should be awarded their money claims and damages.

In their Position Paper¹⁸ seeking dismissal of the Complaint, respondents cited Prudentialife's emphasis on promoting integrity and honesty among its ranks, which policy is embodied in its Personnel Manual, the pertinent provision of which was precisely utilized in indicting petitioners. They insisted that petitioners were dishonest in knowingly claiming reimbursement for overpriced or padded eyeglasses, in falsifying the official receipts and other documents relative to the optical benefit allowance, and in obtaining reimbursement for eyeglasses

¹⁵ Id. at 265-266.

¹⁶ National Labor Relations Commission National Capital Region Arbitration Branch, Quezon City.

¹⁷ *Rollo*, pp. 284-315.

¹⁸ Id. at 205-229.

which they did not pay for or receive. They charged that petitioners' bare denials are drowned by overwhelming evidence gathered – which include confessions by other employees – proving their knowledge, complicity, and participation in the fraudulent scheme. Respondents pointed out that when the fraudulent scheme was carried out on January 27, 2006, petitioners – except for Castillo – were all present in one room where the eye examinations were conducted, together with the employees who confessed to the scheme; they were all issued official receipts on the same day, and claimed reimbursement at the same time on January 30, 2006. Respondents added that Alavera Optical applied the same *modus operandi* to all the employees it dealt with in regard to the optical benefit program; that petitioners could not have been excepted, and that their eyeglasses were similarly priced and within the range of the eyeglasses of those who confessed to the scheme; and that having committed falsification of company documents, petitioners were guilty of serious misconduct and dishonesty, which merit dismissal and denial of respondents' monetary claims and prayer for an award of damages.

On the issue of due process, respondents argued that the twin notice requirements were satisfied: the notices to explain apprised the recipients thereof of their supposed acts and the rule violated, as well as the penalty prescribed for such violations. Moreover, notices of termination were duly sent to petitioners. All in all, petitioners were afforded due process and given the opportunity to defend themselves. Finally, respondents took exception to the inclusion of Prudentialife officers as respondents to the Complaint, claiming that their acts were done pursuant to their duties and in furtherance of the corporate objective, which should thus exempt them from personal liability.

On April 30, 2007, Labor Arbiter Fe S. Cellan issued a Decision¹⁹ in the illegal dismissal case, decreeing as follows:

WHEREFORE, in view of the foregoing, the instant consolidated complaints are hereby DISMISSED for lack of merit.

SO ORDERED.²⁰

The Labor Arbiter held that there was ground to dismiss petitioners, finding that there was a concerted and premeditated scheme to defraud Prudentialife, using the optical benefit provision in the CBA to enrich the availing employees by declaring overpriced eyeglasses, obtaining reimbursement therefor, and pocketing the difference between the amount reimbursed and the actual cost or selling price of the spectacles. This constituted dishonesty.

¹⁹ Id. at 379-391.

²⁰ Id. at 391.

The Labor Arbiter added that respondents took pains to investigate and substantiate the charges against the guilty employees, submitting the subject eyeglasses to other optical shops for examination and comparison instead of merely relying upon the written explanations of the employees and the admissions obtained from some of them. Having established breach of trust through a scheme perpetrated to defraud Prudentialife, the Labor Arbiter held that the company possessed the right to dismiss the guilty employees as a measure of self-protection.

The Labor Arbiter held further that the dismissal of an estafa charge²¹ against the guilty employees does not necessarily result in a finding of illegal dismissal. Conversely, the filing of a subsequently dismissed estafa charge cannot constitute unfair labor practice, as this is a right granted to Prudentialife as a party injured by the fraudulent scheme; the filing of criminal charges could not have the effect of preventing petitioners from filing the illegal dismissal case, nor were the latter cowed into fear as a result of the filing of the charges.

The Labor Arbiter found baseless petitioners' monetary claims, prayer for damages, and their effort to hold the individual respondents liable, stating that petitioners have not substantiated these claims and it has not been shown that the individual respondents exceeded their authority in the performance of their functions, or that they acted in bad faith.

Ruling of the National Labor Relations Commission

Respondents filed an appeal with the NLRC. In a December 8, 2008 Decision,²² the NLRC reversed the Labor Arbiter, decreeing thus:

CONFORMABLY WITH ALL THE FOREGOING, the present appeal is partly Granted in that complainants-appellants were illegally dismissed and hence, should be reinstated and be paid their full backwages from the time they were illegally dismissed up to the finality of this decision.

All other claims of complainants-appellants are dismissed for lack of merit.

SO ORDERED.²³

In sum, the NLRC held that petitioners' liability has not been substantiated,

²¹ Previously filed against employees who took part in the optical benefit program, including petitioners.

²² *Rollo*, pp. 113-123; penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioner Raul T. Aquino.

²³ *Id.* at 122.

it not having been shown that petitioners were privy to the fraudulent scheme. The NLRC believed that the admissions of the other employees do not prove petitioners' complicity and participation in the scheme. It declared that respondents failed to submit independent evidence to show the petitioners' guilt, and that petitioners were not given the opportunity to meet and cross-examine respondents' witnesses – or those employees who submitted written explanations admitting the presence of an illegal scheme to profit by the optical benefit provision in the CBA, namely Roselle Marquez, Edgardo Cayanan, Jennifer Garcia, Nerissa Rivera, Orlando Labicane, Michael Arceo, Jennifer Fronda and Leopoldo Padlan; thus, their statements are inadmissible.

Nonetheless, the NLRC declared that there was no denial of procedural due process, since petitioners were afforded the opportunity to meet the charges against them and respondents were not remiss in their duty to accord them this right during the process. Regarding the charge of unfair labor practice, the NLRC was convinced that respondents are not guilty of undue discrimination in initiating criminal charges against petitioners for their perceived violation of the Revised Penal Code.

Respondents moved for reconsideration, but in an August 8, 2009 Resolution,²⁴ the NLRC stood its ground.

Ruling of the Court of Appeals

Respondents went up to the CA via an original Petition for *Certiorari*,²⁵ insisting that there was just cause to dismiss the petitioners for serious misconduct. On January 14, 2011, the CA issued the assailed Decision, decreeing as follows:

WHEREFORE, the foregoing considered, the petition is GRANTED.

The assailed Decision dated 08 December 2008 of public respondent NLRC as well as its assailed Resolution dated 28 August 2009 are REVERSED and SET ASIDE, and the Decision dated 30 April 2007 of Labor Arbiter Fe S. Cellan is hereby REINSTATED.

SO ORDERED.²⁶

In reversing the NLRC, the CA found that there was indeed cause to

²⁴ Id. at 124-126; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan.

²⁵ Id. at 61-112.

²⁶ Id. at 585.

dismiss petitioners, the evidence indicating that petitioners and the other employees knew, assented and took part in the scheme to profit by pocketing the difference between the declared cost and actual cost of the eyeglasses; that based on the written statements of the other participants to the scheme, petitioners are guilty of serious misconduct, dishonesty, fraud and breach of trust, which rendered them unfit to continue working for Prudentialife. The appellate court cited particularly the fact that the eyeglasses purchased by petitioners from Alavera Optical did not have any grade.

The CA added that since the instant case is a labor case, only substantial evidence – and not guilt beyond reasonable doubt – is required in establishing petitioners' liability; that due process was observed by respondents, as petitioners were furnished with the requisite twin notices before their services were terminated; and that petitioners were afforded the opportunity to be heard on their defense through their respective written explanations, and no hearing was required before a decision on their case could be properly arrived at.

Petitioners moved to reconsider, reiterating that the CA based its Decision on conjecture; that the evidence against them was not substantial; and that due process was not observed. In a March 16, 2011 Resolution,²⁷ however, the CA stood its ground. Thus, the instant Petition.

Issues

Petitioners submit the following assignment of errors:

I

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RENDERED ITS DECISION NOT IN ACCORD WITH LAW AND JURISPRUDENCE AS ALREADY DETERMINED BY THIS HONORABLE COURT;

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE DECISION RENDERED BY THE NATIONAL LABOR RELATIONS COMMISSION WHICH DETERMINED THAT:

1. While the affidavits offered in evidence by respondents-appellees indeed recounted how the fraudulent scheme is being undertaken by Alavera Optical and some employees who availed of their services, it cannot however, escape our attention the fact that there is nothing in the said affidavits that categorically implicate complainants-appellants to the

²⁷ Id. at 612-613.

subject transactions;

2. Let it be emphasized that in labor cases, substantial evidence is required to establish one's case. By substantial evidence, it means such relevant evidence which a reasonable mind might accept to support a conclusion. x x x this Commission would not be amiss to state that time and again it held that unsubstantiated accusation no matter how sincerely felt is nothing but hearsay that deserves no probative value;
3. Be it noted that in the cases of Aniceto W. Naguit Jr. v. NLRC, 408 SCRA 617 and the case of Mario Hornales v. NLRC, 364 SCRA 778, it has been settled that for an affidavit to be given evidentiary weight, the affiants must testify on [their] statements therein to attest [to] the veracity of [their] testimony and; the opposing party must be given the opportunity to meet and cross-examine the affiants in order for them to test the truthfulness of their statements. x x x it is palpably clear complainants-appellants were not afforded by respondents-appellees the opportunity to meet the affiants and to cross-examine them. Likewise, neither were these affiants testified [sic] on the veracity of their statements either during the administrative investigation conducted by the respondents-appellees nor before the Labor Arbiter. x x x²⁸

Petitioners' Arguments

In their Petition and Reply,²⁹ petitioners urge a judicious review of the case given the conflicting decisions of the labor tribunals and the appellate court. They add that it was improper for the CA to adjudge them guilty of wrongdoing based on the written admissions of their co-employees and not on evidence pointing to their wrongdoing, and it is unfair for the CA to sweepingly rule that the acts of some employees were attributable to all who availed of the optical benefit allowance.

Petitioners further cite that while Prudentialife supposedly found that the eyeglasses they purchased had no grade, they were not afforded the opportunity to meet and contest this finding; that this finding was not included in the written notice to explain which they received, and thus could not be a valid basis for their dismissal since they were unable to explain their side on such issue. Petitioners reiterate the NLRC findings that the other employees who admitted to the illegal scheme did not implicate them, nor can these employees' statements be used to show petitioners' guilt or privity to the illegal scheme since these written statements are inadmissible in evidence as they were not given the opportunity to contest them, nor were they allowed to cross-examine the employees who prepared and submitted them; that in *Garcia v. Malayan Insurance Co., Inc.*,³⁰ it was held that the statement of a co-employee may not be used to prove the guilt of an employee accused of theft of company property; and that there can be no other

²⁸ Id. at 33-34.

²⁹ Id. at 552-568.

³⁰ 572 Phil. 230 (2008).

conclusion than that their dismissal was based on mere conjecture and suspicion, and for this reason, the burden of proof – which falls on Prudentialife – has not been properly discharged.

Additionally, petitioners claim that they did not unduly profit from availing of the optical benefit provision under the CBA, since they did not claim or receive anything other than the eyeglasses; that no evidence was shown to support respondents' claim that their eyeglasses were overpriced, and any variation in prices of eyeglasses between the various optical shops merely shows that free market forces were in operation – not that the particular eyeglasses they obtained from Alavera Optical were overpriced; and that their categorical denial was sufficient to negate any accusation or suspicion of involvement in the scheme or conspiracy surrounding the optical benefit provision in the CBA.

Petitioners thus pray for the reversal of the assailed dispositions and the reinstatement of the December 8, 2008 NLRC Decision. In addition, they seek an award of damages and attorney's fees.

Respondents' Arguments

In their Comment,³¹ respondents pray for the denial of the Petition, arguing against a departure from the CA pronouncement and insisting that the appellate court's disposition of the issues was sound and based on substantial evidence. They contest the NLRC Decision, claiming that it is gravely erroneous and based on a misapprehension of the facts. They insist on the validity of petitioners' dismissal, which according to them was based on adequate documentary evidence; and that the fact that not all who were involved in the illegal scheme were dismissed does not affect the liability of petitioners. Besides, some of them resigned or left Prudentialife right after the incident occurred while others have shown that their availment of the optical benefit was genuine. They hold that the petitioners' dismissal was based on substantial evidence gathered in an investigation duly conducted, and on the findings of reputable optical shops which made an examination and comparison of the petitioners' eyeglasses; that overall, petitioners are guilty of dishonesty; that they did not violate petitioners' right to due process; and finally, that petitioners are not entitled to their money claims, damages, and attorney's fees given that their dismissal was for cause and no bad faith attended the same.

Our Ruling

The Court affirms.

³¹ *Rollo*, pp. 622-650.

When there is a divergence between the findings of facts of the labor tribunals and the CA, there is a need to refer to the record. "It is an established rule that the jurisdiction of the Supreme Court in cases brought before it from the CA via Rule 45 of the 1997 Rules of Civil Procedure is generally limited to reviewing errors of law. This Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again. There are, however, recognized exceptions to this rule such as when there is a divergence between the findings of facts of the NLRC and that of the CA."³²

The evidence on record suggests that, with the aim in view of availing the optical benefit provision under the CBA, Prudentialife employee Elvie Villaviaje initiated a company-wide scheme with Alavera Optical whereby the latter, through its optometrists, conducted eye examinations within company premises and issued prescriptions on January 27, 2006, and subsequently prepared and released eyeglasses to the participating Prudentialife employees. In turn, these employees claimed reimbursement for the cost of their eyeglasses through the optical benefit provision, to the allowable extent of ₱2,500.00. The evidence shows that even before they could pay for the cost of their eyeglasses, Alavera Optical offered to issue, as it did issue, official receipts in advance to the availing employees, which they used to secure reimbursements from Prudentialife ahead of the actual payment of the eyeglasses; the petitioners acknowledged this fact in their individual and respective written explanations. Likewise, some of the availing employees³³ – except petitioners – admitted that they knew that the true cost of their respective eyeglasses ranged from only ₱1,200.00 – ₱1,800.00; that Alavera Optical deliberately issued official receipts for a greater amount ranging from ₱2,500.00 – ₱2,600.00 with their full knowledge and consent; that they used these official receipts to claim reimbursement; and that Prudentialife actually reimbursed them to the extent of ₱2,500.00.

It also appears that after some of the subject eyeglasses were submitted to other optical shops for inspection, comparison and examination, it turned out that these did not have any grade, or that the grade did not match the prescription issued for the eyeglasses. Specifically, Dolendo and Sy's eyeglasses had no grade, while the grade on Evangelista's eyeglasses did not match the prescription issued to her. It was likewise found that the cost of the eyeglasses – including petitioners', as declared in the respective official receipts and reimbursement requests covering them, was excessive compared to similar frames and lenses being sold or offered by other optical shops.

For its part, Alavera Optical submitted a fictitious address, telephone number and Tax Identification Number, using these in the written prescriptions it

³² *Best Wear Garments v. de Lemos*, G.R. No. 191281, December 5, 2012, 687 SCRA 355, 363-364.

³³ Roselle Marquez, Edgardo Cayanan, Jennifer Garcia, Nerissa Rivera, Orlando Labicane, Michael Arceo, Jennifer Fronda and Leopoldo Padlan.

issued. And to entice Prudentialife employees into participating in the scheme, Alavera Optical offered to release the eyeglasses and issue the prescriptions and official receipts even before actual payment therefor is made – which meant that participating employees need not pay for the cost of their eyeglasses from their own pockets, but could use the documents to obtain immediate reimbursement from Prudentialife.

It likewise appears that based on the reimbursement requests/petty cash vouchers and official receipts, the cost of the eyeglasses is more or less the same, or at an average of ₱2,500.00, which coincidentally is the maximum reimbursable amount under the optical benefit provision in the CBA.

From the above, it appears that there was a conspiracy to defraud Prudentialife using the optical benefit provision in the CBA to unduly enrich the availing employee, and possibly Alavera Optical, through overpricing of the latter's eyeglasses and appropriation of the difference between the bloated price and the actual cost. Employees who participated in the scheme knew, as they were informed by the proponents of the scheme – namely Elvie Villaviaje and Alavera Optical, of the fact that if they participated and underwent eye examination through Alavera Optical, they would be issued a prescription and official receipt indicating that they paid up to ₱2,600.00 for the frames and lenses that were prescribed, which documents they could then use to obtain reimbursements of up to ₱2,500.00 from Prudentialife – even if they did not actually pay for them, and though the cost of the eyeglasses was less than ₱2,500.00. Any employee who, knowing of the scheme, yet participates therein, becomes a co-conspirator to the fraud.

It is elementary that “when there is a conspiracy, the act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial.”³⁴ In proving complicity, direct evidence is not necessary, as it can be clearly deduced from the acts of the conspirators;³⁵ it may be proved through a series of acts done in pursuance of a common unlawful purpose.³⁶

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the

³⁴ *People v. Medina*, 354 Phil. 447, 460 (1998).

³⁵ *People v. Hong Yen E*, G.R. No. 181826, January 9, 2013, 688 SCRA 309, 316.

³⁶ *People v. Alvarez*, 251 Phil. 666, 675 (1989), citing *People v. Cadag*, 112 Phil. 314, 320 (1961); *People v. Cruz*, 114 Phil. 1055, 1061-1062 (1962); *People v. Alcantara*, 144 Phil. 623, 635 (1970).

accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.³⁷

From the evidence on record, it has been sufficiently shown that petitioners actually took part in the commission of the acts complained of, which makes them co-conspirators to the scheme. For sure, it cannot be said that they are exceptions to the rule simply because they categorically denied participation, or that there is no direct evidence of their complicity. Quite the contrary, there is evidence pointing to their participation in the fraudulent scheme. First of all, they all knew that even though they were not paying for the eyeglasses, Alavera Optical would issue, as it did issue, an official receipt falsely showing that the eyeglasses have been paid for, which they would then use, as they did use, to obtain reimbursement from Prudentialife. By presenting the false receipt to their employer to obtain reimbursement for an expense which they did not in fact incur, this constituted dishonesty.

Secondly, it was discovered that Dolendo's and Sy's eyeglasses had no grade, while Evangelista's eyeglass lens did not match the prescription issued to her. An eyeglass without graded lenses could only indicate that the wearer thereof has no vision problems, which does away with the necessity of availing of the optical benefit provision under the CBA which is understandably reserved for those employees who have developed vision problems in the course of employment. By availing of the benefit, the employee represents to Prudentialife that he has developed vision problems. If this is not true, then he has committed an act of dishonesty as well. Given the circumstances then obtaining, the same principle holds true with respect to eyeglasses whose lenses do not match the corresponding prescription.

For their dishonesty, the penalty of dismissal is justified pursuant to Section 2.6 (i) of the Prudentialife Personnel Manual which prescribes the penalty of dismissal for acts of padding receipts for reimbursement or liquidation of advances or expenses. Dishonesty is a serious offense, and "no employer will take to its bosom a dishonest employee."³⁸ Dishonesty implies a "[d]isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity[; l]ack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."³⁹ Acts of dishonesty have been held to be sufficient grounds for dismissal as a measure of self-protection on the part of the employer.⁴⁰

³⁷ *Candao v. People*, G.R. Nos. 186659-710, October 19, 2011, 659 SCRA 696, 719-720.

³⁸ *Maneja v. National Labor Relations Commission*, 353 Phil. 45, 64 (1998).

³⁹ *Philippine Amusement and Gaming Corporation v. Rilloraza*, 412 Phil. 114, 133 (2001), citing Black's Law Dictionary, Sixth Ed., p. 468, 1990.

⁴⁰ *Auxilio, Jr. v. National Labor Relations Commission*, G.R. No. 82189, August 2, 1990, 188 SCRA 263, 267.

The written statements of petitioners' co-employees admitting their participation in the scheme are admissible to establish the plan or scheme to defraud Prudentialife; the latter had the right to rely on them for such purpose. The argument that the said statements are hearsay because the authors thereof were not presented for cross-examination does not persuade; the rules of evidence are not strictly observed in proceedings before the NLRC, which are summary in nature and decisions may be made on the basis of position papers.⁴¹ Besides, these written declarations do not bear directly on petitioners' participation in the scheme; their guilt has been established by evidence other than these statements.

Petitioners' reliance on *Garcia v. Malayan Insurance Co., Inc.*⁴² is misplaced. Far from declaring that the statement of a co-employee may not be used to prove the guilt of an employee accused of theft of company property, the Court held therein that the affidavit of the co-employee cannot serve as basis for the finding that said petitioner conspired in the theft because it was so lacking in crucial details. The opposite is thus true: the affidavit or statement of a co-employee in a labor case may prove an employee's guilt or wrongdoing if it recites crucial details of his involvement.

Furthermore, petitioners' contention that they were not apprised of the fact that it has been discovered that their eyeglasses had no grade comes as a surprise. The truth or falsity of this fact or allegation is readily ascertainable by the petitioners themselves; the answer is literally right before their very eyes. If their eyeglasses indeed had a grade, then they would have said so outright – and not relegate the matter to a mere due process issue. They are presumed to wear these very spectacles each and every day. Besides, as early as in the respondents' Position Paper below, it was raised as an issue that petitioners' eyeglasses either had no grade or did not match the prescription issued therefor; indeed, petitioners have been given sufficient opportunity to meet such accusation in the Labor Arbiter stage.

Finally, petitioners' argument and prayer for an award of damages and attorney's fees may not be allowed, since they did not question the NLRC's denial thereof in its December 8, 2008 Decision. Only respondents went up to the CA on *certiorari*. "It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court whose decision is brought up on appeal. The exceptions to this rule, such as where there are (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors, do not apply in this case."⁴³ "[A] party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that he can do is to make a counter-assignment of errors or to argue on issues raised below

⁴¹ *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 844 (2003).

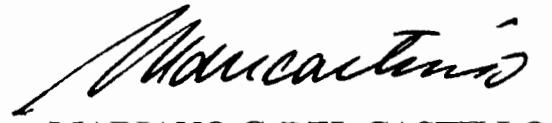
⁴² See note 30.

⁴³ *Bank of the Philippine Islands v. Lifetime Marketing Corporation*, 578 Phil. 354, 363 (2008).

only for the purpose of sustaining the judgment in his favor.”⁴⁴

WHEREFORE, the Petition is **DENIED**. The January 14, 2011 Decision and March 16, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 111981 are **AFFIRMED**.

SO ORDERED.

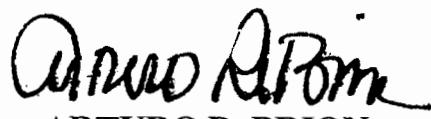


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



BIENVENIDO L. REYES
Associate Justice

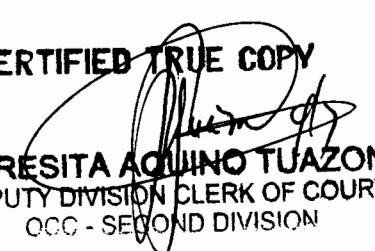
⁴⁴ *Daabay v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 199890, August 19, 2013.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO***Associate Justice**Chairperson***CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO***Chief Justice***CERTIFIED TRUE COPY**
TERESITA AQUINO TUAZON
DEPUTY DIVISION CLERK OF COURT
QCC - SECOND DIVISION