



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**DISTRIBUTION & CONTROL
PRODUCTS, INC./VINCENT M.
TIAMSIC,**

Petitioners,

- versus -

JEFFREY E. SANTOS,

Respondent.

G.R. No. 212616

Present:

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
LEONEN,
MARTIRES, JJ.

Promulgated:

10 JUL 2017
[Signature]

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DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision¹ and Resolution² of the Court of Appeals (CA), dated November 22, 2013 and May 20, 2014, respectively, in CA-GR. SP No. 125911. The questioned CA Decision affirmed the May 16, 2012 Decision³ and June 25, 2012 Resolution⁴ of the National Labor Relations Commission (NLRC) which, in turn affirmed, with modification the January 30, 2012 Decision⁵ of the Labor Arbiter (LA), which found herein respondent illegally dismissed and ordered his reinstatement and payment of his full backwages.

¹ Penned by Associate Justice Jose C. Reyes, Jr., with the concurrence of Associate Justices Mario V. Lopez and Socorro B. Inting, Annex "A" to Petition, *rollo* pp. 26-34.
² Annex "B" to Petition; *id.* at 35-37.
³ *Rollo*, pp. 79-87.
⁴ *Id.* at 98-100.
⁵ *Id.* at 61-66.

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The pertinent factual and procedural antecedents of the case are as follows:

Herein petitioner is a domestic corporation engaged in the business of selling and distributing electrical products and equipment with petitioner Vincent M. Tiamsic as its president. Respondent, on the other hand, was employed as petitioners' company driver.

On July 25, 2011, herein respondent filed against herein petitioners a complaint for constructive illegal dismissal and payment of separation pay. In his Position Paper⁶, respondent contended that: he started working as petitioners' company driver on April 5, 2005; on December 16, 2010, he received a notice informing him that he was being placed under preventive suspension for a period of thirty (30) days beginning December 17, 2010 because he was one of the employees suspected of having participated in the unlawful taking of circuit breakers and electrical products of petitioners; a criminal complaint was filed against him and several other persons with the Prosecutor's Office of Mandaluyong City; he immediately inquired from petitioner company's Human Resources Department as to the exact reason why he was suspended because he was never given the opportunity to explain his side before he was suspended but the said Department did not give him any concrete explanation; and after the lapse of his 30-day suspension he was no longer allowed to return to work without any justification for such disallowance.

On their part, petitioners claimed in their Position Paper⁷ that: they employed respondent as their company driver whose job included the delivery of items purchased by customers, receipt documentation and recording of previously purchased products which were returned by customers and coordination with the company warehouseman and the accounting department concerning all items which are subject of delivery and receipt by the company; on February 19, 2010, petitioner corporation, through its hired auditors, conducted a physical stock inventory of all materials stored in the company's warehouse and in its office building; after such inventory, it was found out that a number of electrical materials and products with an estimated value of ₱457,394.35, were missing; a subsequent inventory on April 24, 2010 likewise revealed that a 2000-ampere circuit breaker worth ₱106,341.75 was also missing, as well as thirty-seven (37) pieces of 40-ampere circuit breakers which had a total value of ₱39,940.04; herein respondent and the company warehouseman were the only persons who had complete access to the company warehouse as they were entrusted with the handling of all products from the company's suppliers; considering the size and weight of the missing items, they can

⁶ *Id.* at 111-118.

⁷ *Id.* at 103-110.



only be carried by no less than two (2) persons; petitioners demanded an explanation from respondent and the warehouseman, but they failed to make an account as to how these products had gone missing from the warehouse and office building; as such, petitioners filed a criminal complaint for qualified theft and, thereafter, they suspended herein respondent; and after the lapse of his suspension, respondent no longer returned to work.

On January 30, 2012, the LA handling the case rendered his Decision finding respondent to be illegally terminated from his employment, thus, ordering his reinstatement and payment of his full backwages amounting to ₱297,916.67. The LA held that herein petitioners had the burden of proving that respondent's dismissal was valid and their failure to discharge this burden only means that the dismissal was not justified and, therefore, illegal.

Petitioners filed an appeal with the NLRC.

On May 16, 2012, the NLRC promulgated its Decision dismissing petitioners' appeal and affirming, with modification, the decision of the LA. In addition to the payment of backwages, the NLRC ordered petitioners to pay respondent separation pay equivalent to one (1) month for every year of service, instead of reinstatement.

Petitioners filed a Motion for Reconsideration but the NLRC denied it in its Resolution dated June 25, 2012.

Aggrieved, petitioners filed a petition for *certiorari* with the CA.

On November 22, 2013, the CA rendered its assailed Decision denying the *certiorari* petition and affirming the questioned NLRC Decision and Resolution.

Petitioners filed a Motion for Reconsideration, but it was likewise denied in the CA Resolution of May 20, 2014.

Hence, the present petition for review on *certiorari* anchored on the following issues:

WHETHER OR NOT THE COURT OF APPEALS INTRUDED INTO THE RIGHT OF THE EMPLOYER TO DISMISS AN EMPLOYEE WHOSE CONTINUED EMPLOYMENT IS INIMICAL TO THE EMPLOYER'S INTEREST; [AND]



WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECIDING THE INSTANT CASE NOT IN ACCORD WITH THE HONORABLE SUPREME COURT DECISIONS, i.e., WHERE DISMISSED EMPLOYEE FOR VALID GROUND SHOULD BE PAID ONLY NOMINAL DAMAGES, IF THE TWO-NOTICE RULE IS NOT COMPLIED WITH.⁸

The petition lacks merit.

Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security.⁹ What this means is that an employer shall not dismiss an employee except for a just or authorized cause and only after due process is observed.¹⁰

In the case of *Brown Madonna Press, Inc. v. Casas*,¹¹ this Court held:

In determining whether an employee's dismissal had been legal, the inquiry focuses on whether the dismissal violated his right to substantial and procedural due process. An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee.

The violation of either the substantial due process right or the procedural due process right of an employee produces different results. Termination without a just or authorized cause renders the dismissal invalid, and entitles the employee to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

An employee's removal for just or authorized cause but without complying with the proper procedure, on the other hand, does not invalidate the dismissal. It obligates the erring employer to pay nominal damages to the employee, as penalty for not complying with the procedural requirements of due process.

Thus, two separate inquiries must be made in resolving illegal dismissal cases: **first**, whether the dismissal had been made in accordance with the procedure set in the Labor Code; and **second**, whether the dismissal had been for just or authorized cause.¹²

⁸ *Rollo*, p. 18.

⁹ *Baguio Central University v. Gallente*, 722 Phil. 494, 504 (2013).

¹⁰ *Id.*

¹¹ G.R. No. 200898, June 15, 2015, 757 SCRA 525.

¹² *Brown Madonna Press, Inc. v. Casas*, *supra*, at 541-542.



As to substantive due process, this Court, in *Agusan Del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al.*,¹³ held that:

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.¹⁴

In the instant case, petitioners contend that their termination of respondent's employment was based on their loss of trust and confidence in him.

Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code, which provides that an employer may terminate an employment for "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."

However, in order for the employer to properly invoke this ground, the employer must satisfy two conditions.

First, the employer must show that the employee concerned holds a position of trust and confidence.¹⁵ Jurisprudence provides for two classes of positions of trust.¹⁶ The first class consists of managerial employees, or those who, by the nature of their position, are entrusted with confidential and delicate matters and from whom greater fidelity to duty is correspondingly expected.¹⁷ The second class includes "cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property."¹⁸

¹³ 589 Phil. 306 (2008).

¹⁴ *Agusan del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al.*, *supra*, at 313, citing *Philippine Long Distance Company, Inc. v. Tiamson*, 511 Phil. 384, 394-395 (2005).

¹⁵ *Baguio Central University v. Gallente*, *supra* note 9, at 505.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Second, the employer must establish the existence of an act justifying the loss of trust and confidence.¹⁹ To be a valid cause for dismissal, the act that betrays the employer's trust must be real, *i.e.*, founded on clearly established facts, and the employee's breach of the trust must be willful, *i.e.*, it was done intentionally, knowingly and purposely, without justifiable excuse.²⁰ Moreover, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.²¹

Stated differently, proof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.²² Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause.²³ Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal.²⁴ Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature and the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.²⁵ Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.²⁶

Applied to the present case, the LA, NLRC and the CA are unanimous in their finding that petitioners were not able to discharge their burden of proving that their termination of respondent's employment was for a just and valid cause. This is a question of fact and it is settled that findings of fact of *quasi*-judicial agencies are accorded great respect, even finality, by this Court.²⁷ This proceeds from the general rule that this Court is not a trier of facts, as questions of fact are contextually for the labor tribunals to resolve, and only errors of law are generally reviewed in petitions for review on *certiorari* criticizing the decisions of the CA.²⁸

¹⁹ *Id.*

²⁰ *Id.* at 505-506.

²¹ *Lima Land, Inc., et al. v. Cuevas*, 635 Phil. 36, 48-49 (2010).

²² *Manarpiis v. Texan Philippines, Inc., et al.*, 752 Phil. 305, 322 (2015).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Lima Land, Inc., et al. v. Cuevas*, *supra* note 21, at 54.

²⁷ *South Cotabato Communications Corporation, et al. v. Secretary of Labor and Employment*, G.R. No. 217575, June 15, 2016.

²⁸ *Id.*



It is true that respondent may indeed be considered as one who occupies a position of trust and confidence as he is one of those who were entrusted with the handling of a significant amount or portion of petitioners' products for sale. However, even a quick perusal of the records at hand would show that petitioners failed to present substantial evidence to support their allegations that respondent had, in any way, participated in the theft of the company's stolen items and that after his preventive suspension he no longer reported for work. In other words, petitioners were not able to establish the existence of an act justifying their alleged loss of trust and confidence in respondent.

As to whether or not respondent was afforded procedural due process, the settled rule is that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing.²⁹ The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises 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.³⁰ 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.³¹

In *Unilever Philippines, Inc. v. Rivera*,³² this Court laid down the guidelines on how to comply with procedural due process in terminating an employee, to wit:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

²⁹ *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445 (2010).

³⁰ *Id.*

³¹ *Id.*

³² 710 Phil. 124 (2013).



(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.³³

In the instant case, the LA, the NLRC and the CA again uniformly ruled that respondent was dismissed sans procedural due process. The only notice given by petitioners to respondent was the notice of his 30-day preventive suspension and, as found by the LA, nothing therein indicated that he was required nor was given the opportunity to explain his side, considering that he was being implicated in the theft of the subject circuit breakers and other electrical products. It is true that petitioners conducted their own investigation but the same was made without the participation of respondent.

As to the required notice of termination, petitioners allege that they did not terminate respondent from his employment and that it was the latter who actually decided to abandon his job. However, the LA, the NLRC and the CA again unanimously found that petitioners failed to substantiate their allegation and the Court finds no cogent reason to depart from such finding.

WHEREFORE, the instant petition for review on *certiorari* is **DENIED**. The Decision and Resolution of the Court of Appeals, dated November 22, 2013 and May 20, 2014, respectively, in CA-G.R. SP No. 125911, are **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

³³ *Unilever Philippines, Inc. v. Rivera, supra*, at 136-137, citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-116 (2007). (Emphasis in the original)

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

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, Second Division

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