



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ALASKA MILK CORPORATION  
and the ESTATE OF WILFRED  
UYTENGUSU,

G.R. No. 228412

Petitioners,

- versus -

ERNESTO L. PONCE,  
Respondent.

X ----- X

ERNESTO L. PONCE,  
Petitioner,

G.R. No. 228439

Present:

- versus -

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

ALASKA MILK CORPORATION,  
ROYAL FRIESLAND CAMPINA  
(RFC), as Successors-In-Interest  
and Solidary Debtors with the  
Estate of WILFRED UYTENGUSU,  
ALASKA MILK WORKERS UNION  
and FREDDIE BAUTISTA,  
Respondents.

Promulgated:

26 JUL 2017

X ----- X

DECISION

MENDOZA, J.:

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the May 4, 2016 Decision<sup>1</sup> and the

<sup>1</sup> Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justice Japar B. Dimaampao and Associate Justice Franchito N. Diamante, concurring; *rollo* (G.R. No. 228412, Vol. I), pp. 47-71.

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November 7, 2016 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 132932, which reversed and set aside the July 29, 2013 Decision<sup>3</sup> and September 30, 2013 Resolution<sup>4</sup> of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001544-13, a case for illegal dismissal.

### The Antecedents

On April 1, 2008, Alaska Milk Corporation (AMC) hired Ernesto L. Ponce (*Ponce*), a licensed mechanical engineer, as Manager for Engineering Services of its Milk Powder Plant (MPP) and Ultra High Temperature Plant (UHT) with a monthly compensation of ₱120,000.00. On May 1, 2009, he was promoted as Director for Engineering Services with a monthly salary of ₱200,000.00. He held the position until his termination from employment on February 25, 2010.

#### *Version of Ponce*

Ponce contends that the crux of the case emanated from his investigation of the surge in AMC's overtime costs for the years 2006 to 2008, even though the production of milk commodities did not substantially increase throughout those years. AMC's erstwhile Chairman of the Board, Wilfredo Uytengsu, Sr. (*Uytengsu, Sr.*), was alarmed about the ₱34.1 million overtime costs. Thus, he verbally directed Ponce to investigate the matter. On May 4, 2009, Ponce submitted his report on the excessive overtime costs, *viz*:

1. The mischief behind the spiralling overtime costs was Alaska Milk Workers Union's uncontrolled grant of personal loans to employees with usurious interest charges.
2. Some of AMC's HR and payroll managers financed the union's lending business.
3. AMC's payroll system automatically deducted from the workers' pay slips the loan collection in favor of the union.
4. With the usurious rates charged on the loan and automatic deduction from the wages, the workers were left with minimal take home pay.
5. The Production Management and Human Resource Departments, in conspiracy with the union, directed unnecessary overtime work in order to encourage the workers to obtain more loans.
6. The unnecessary overtime work directed by the managers of AMC and union officers caused the remarkable increase in overtime cost.<sup>5</sup>

<sup>2</sup> Id. at 73-76.

<sup>3</sup> Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora, concurring; id. at 489-522.

<sup>4</sup> *Rollo* (G.R. No. 228412, Vol. II), pp. 563-564.

<sup>5</sup> *Rollo* (G.R. No. 228412, Vol. I), p. 316.

To correct the reported anomalous lending scheme perpetrated by the Alaska Milk Workers Union (*AMWU*) and some of AMC's corporate managers, Ponce recommended placing a limit on the salary deductions from the workers' wages, which would be implemented through a gradual and prudent phase-in period of six months to one year. Uytengsu, Sr., however, did not heed Ponce's suggestion and, instead, abruptly ordered AMC's Human Resources and Operation Management Department to stop the automatic deduction of loan payments to AMWU.

Consequently, AMWU and the AMC corporate managers involved in the lending scheme suffered in their cash collections. Thereafter, AMWU issued death threats to AMC's management, including Ponce and some other managers. The death threats, however, did not deter Uytengsu, Sr. from curtailing the automatic payroll deduction. As such, AMWU petitioned for Ponce's dismissal from employment and threatened to stage a concerted action against AMC, to which Uytengsu, Sr. yielded. Thus, he issued the First Performance Evaluation Memorandum,<sup>6</sup> dated February 16, 2010, directing Ponce to explain why he should not be dismissed for gross and habitual negligence and other analogous causes.

*Version of AMC and Uytengsu, Sr.*

For their part, AMC and Uytengsu, Sr. averred that sometime in April 2009, AMC's President and Chief Executive Officer, Wilfred Steven Uytengsu, Jr. (*Uytengsu, Jr.*), witnessed Ponce's abrasive behavior and was constrained to remind him to be courteous to his colleagues. On January 21, 2010, Uytengsu, Sr. sent an e-mail to Ponce calling his attention to his failure to provide updates on several engineering works and problems involving his areas of concern. Not long after, in February 2010, Uytengsu, Sr. received a copy of an e-mail that Ponce sent to 12 of his colleagues in connection with his "Receipted Allowance" (*R/A*) for business-related expenses. In the said e-mail (*R/A e-mail*), Ponce solicited official receipts from his colleagues in exchange for a five percent (5%) rebate on the value of the receipts submitted to him. The *R/A* e-mail reads:

Dear Neighbors and Friends,

Do you want to earn extra from your own expenses? Here is my deal; I need your OFFICIAL RECEIPTS of only the following:

- 1) Any reputable Restaurants, Fast Food, Catering, or Food Chain (Please Turo-turo, Fish-ball Stalls, and Karenderia is Not Included);

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<sup>6</sup> *Rollo* (G.R. No. 228412, Vol. II), pp. 673-675.

- 2) Gasoline, Liquified Petroleum Gas (LPG), or Diesel Fuel, and Lubricants of any type of SUV, Vans, Motorcycles, or Cars; and
- 3) Repair and Maintenance Expenses of your Suv, Van, Motorcycles, or Cars from a reputable Shop (House Maintenance is NOT ALLOWED).

I will give you an Instant Rebate equivalent to Five Percent (5%) of your submitted official receipts. Here are the rules:

- 1) You have to ask for a BIR Registered OFFICIAL RECEIPTS from the Cashier or Manager (Receipts form [sic] Office Supply Stores are not acceptable);
- 2) The Official Receipts must specifically indicate "Alaska Milk Corporation" or Alaska MC (AMC or "Customer" is not acceptable);
- 3) The Reciepts [sic] must be dated from the 26<sup>th</sup> of the previous month to the 18<sup>th</sup> of the current month (Receipts dated from the 19<sup>th</sup> to the 25<sup>th</sup> is not acceptable);
- 4) Write your name at the back with your signature so I can trace the receipts if questioned;
- 5) Deadline of submission for each month or Cut-off date is on the 18<sup>th</sup> of the month, and to be submitted to my Wife at the Staff-Housing so you will get your Instant Rebate (I will not accept submissions in my office since I do not carry Cash);
- 6) Strictly NO TEMPERING [sic] OF RECEIPTS;
- 7) This is a First Person agreement and your immediate family (Reciepts [sic] from Friend, Distant Relatives, and Kumpares are not acceptable); and
- 8) Your transactions or receipts must be verifiable and traceable, thus the Food Chain, Restaurant, Fuel Station, and Repair Shop must be reputable.

I think this is all for now. Please gather your receipt starting today, and again cut-off date and submission is on the 18<sup>th</sup> of each month. For now, I am not setting any limit per receipt [sic] but transactions less than Php 10,000 will be appreciated. Thank you.

Estoy Ponce  
3B Alaska Staff Housing, Magsaysay Road  
San Antonio, San Pedro, Laguna.<sup>7</sup>

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<sup>7</sup> Id. at 669-670.

On February 16, 2010, Uytengsu, Sr. issued the First Performance Evaluation Memorandum, directing Ponce to explain why his services should not be terminated for gross and habitual neglect of duties and other analogous causes under Article 282 of the Labor Code.

After finding Ponce's explanation unsatisfactory, AMC issued the Second Performance Evaluation Memorandum<sup>8</sup> and terminated Ponce's employment effective February 25, 2010. His dismissal was premised on the following grounds:

- 1) Failure to provide updates on ongoing and planned engineering works in the plant and inform/obtain approval of Uytengsu before implementing engineering works;
- 2) E-mailed his twelve colleagues requesting for official receipts in exchange for a five percent rebate to be used in liquidating his receipted allowance/fraudulently submitting official receipts of expenses which he did not incur;
- 3) Disrespectful manner towards the AMC's President and CEO who called Ponce's attention regarding his violation of AMC's company policy;
- 4) Continued abrasive attitude towards his fellow officers and specially to his subordinates and other rank-and-file workers of AMC, whom Ponce allegedly subjected to unjust treatment and abusive language resulting in death threats being hurled against Ponce and the filing of several complaints against AMC by its employees, a fact allegedly admitted by Ponce during the mandatory conference on October 8, 2010; and
- 5) Repeated failure to cause the implementation of several engineering projects/improvements on various buildings, such as (i) to install the required PVC pipes below the company's Godan packaging line; (ii) to install water tight metal door at the company's high compressor room; (iii) to implement increase in floor area of the UHT-1 mezzanine floor; (iv) approving the purchase of overpriced stainless steel sheets; and (v) providing incorrect information to AMC's marketing department on the exact dimensions of its billboard installations.<sup>9</sup>

On April 14, 2010, Ponce filed a complaint for illegal dismissal with prayer for reinstatement, payment of backwages and damages against AMC, the estate of Uytengsu, Sr., AMWU, and its president Ferdinand Bautista.<sup>10</sup>

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<sup>8</sup> Id. at 680.

<sup>9</sup> *Rollo* (G.R. No. 228412, Vol. I), p. 52.

<sup>10</sup> AMWU and Ferdinand Bautista were dropped as respondents per Resolution of the LA, dated August 24, 2012; *rollo* (G.R. No. 228412, Vol. I), pp. 163-175.

*The LA Ruling*

In a Decision,<sup>11</sup> dated January 30, 2013, the LA ruled that Ponce was illegally dismissed. In resolving the issue on gross and habitual neglect of duties, it opined that the instances cited by AMC were hardly gross enough to warrant dismissal. The LA held that fault could not rest upon Ponce's shoulders alone, considering that satisfactory completion of the tasks was subject to an interplay of factors beyond his control and responsibility. It added that while delay in the completion of assigned task was unacceptable, the same could not be equated with negligence.

Anent Ponce's act of soliciting receipts for his R/A, the LA noted that AMC did not issue any warning or admonition against him during the period covering May 5, 2009, the day after Ponce sent the R/A e-mail, up to February 15, 2010, the day before the First Performance Evaluation was issued. It pointed out that AMC never claimed, much less proved, that Ponce had presented for reimbursement representation expenses covered by an official receipt belonging to any one of his co-employees. Hence, the LA concluded that AMC condoned Ponce's act because it was unbelievable for AMC to have taken more than nine (9) months before it informed Ponce that solicitation of receipts was a violation of company rules. The dispositive portion reads:

**WHEREFORE**, the complaint for illegal dismissal is **GRANTED** and respondent Alaska Milk Corporation is directed to reinstate complainant to his former position as Director for Engineering Services or any position equivalent thereto, without loss of seniority rights and other privileges and to pay him backwages, inclusive of allowances and other benefits or their monetary equivalent from 11 August 2010 up to his actual reinstatement which as of this date amounts to ₱5,926,000.00.

In the event appeal is interposed from this decision by either of the parties, respondent corporation is, nevertheless directed to comply with the order for complainant's immediate reinstatement even pending appeal. In such a case, respondent corporation is directed to notify complainant and this Office within ten (10) days from receipt hereof, of the manner how it shall reinstate complainant to work, either physically or in the payroll at its option, without loss of seniority rights in either case.

Respondent corporation is further directed to pay complainant attorney's fee in the amount of ₱300,000.00. All other claims are **DENIED** for failure of complainant to substantiate the same and for lack of merit.

**SO DECIDED.**<sup>12</sup>

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<sup>11</sup> Penned by Labor Arbiter Michaela A. Lontoc, *rollo* (G.R. No. 228412, Vol. I), pp. 312-343.

<sup>12</sup> *Id.* at 342-343.

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Aggrieved, AMC elevated an appeal before the NLRC.

*The NLRC Ruling*

In a Decision, dated July 29, 2013, the NLRC *reversed* and *set aside* the LA's ruling. It ruled that the act of soliciting official receipts in exchange for a 5% rebate was an act of dishonesty inimical to the interest of AMC, as Ponce would be collecting receipted allowance from expenses which he did not actually incur. The NLRC rejected the LA's theory that AMC condoned the act because it did not warn or admonish Ponce prior to the issuance of the First Performance Evaluation Memorandum. It pointed out that Ponce's R/A e-mail came to the knowledge of Uytensu, Sr. only in February 2010. The NLRC opined that Ponce's explanation on the R/A e-mail issue was an admission which required no proof. Accordingly, it ruled that there was sufficient evidence to sustain Ponce's dismissal on the ground of loss of trust and confidence.

Further, the NLRC did not sustain Ponce's claim that his dismissal was effected to appease the union and forestall a threat of concerted action. It observed that Ponce submitted his report concerning the overtime costs on May 4, 2009, but such report preceded the June 24, 2009 Memorandum wherein Uytensu, Sr. allegedly ordered him to investigate the matter. Thus, the NLRC concluded that the June 24, 2009 Memorandum was not really an order for Ponce to investigate. The *fallo* reads:

**WHEREFORE**, the decision appealed from is **REVERSED** and **SET ASIDE** and a new one entered **DISMISSING** the complaint for lack of merit.

**SO ORDERED.**<sup>13</sup>

Unconvinced, Ponce filed a petition for *certiorari* with the CA.

*The CA Ruling*

In its assailed decision, dated May 4, 2016, the CA *reversed* and *set aside* the NLRC ruling. It held that no substantial evidence was presented to prove the cause of Ponce's dismissal.

The CA opined that Ponce's dismissal on the ground of loss of trust and confidence was a mere afterthought. It found that the First Performance Evaluation Memorandum did not mention Ponce's acts which resulted in AMC's loss of trust and confidence; and that there was neither any

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<sup>13</sup> Id. at 522.

explanation nor discussion of his alleged sensitive and delicate position requiring AMC's utmost trust. Moreover, the appellate court noted that it was only in the Second Performance Evaluation Memorandum (termination letter) that AMC invoked loss of trust and confidence as a ground for dismissal.

The CA further held that the penalty of dismissal was too harsh. It observed that AMC failed to issue any warning during the period after the sending of the R/A e-mail up to the day prior to the issuance of the First Performance Evaluation Memorandum. Also, the CA noted that Ponce had no previous disciplinary record in his almost two (2) years of service; and that his promotion attested to his competence and diligence in the performance of his duties. The decretal portion reads:

**WHEREFORE**, premises considered, the *Petition for Certiorari under Rule 65 of the Rules of Court* is **GRANTED**.

The July 29, 2013 *Decision* of the National Labor Relations Commission in *NLRC LAC NO. 05-001544-13* is hereby **REVERSED** and **SET ASIDE**. The *January 30, 2013 Decision* of the Labor Arbiter in *NLRC RAB IV-04-00701-10-L* is hereby **REINSTATED**.

**SO ORDERED.**<sup>14</sup>

AMC and Uytengsu, Sr. moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated November 7, 2016.

Hence these petitions.

*G.R. No. 228412*

AMC and Uytengsu, Sr. argue that the ordinary standards in imposing disciplinary penalties to rank and file employees are not applicable to Ponce who is a managerial employee; that the mere existence of a basis for believing that the managerial employee has breached the trust and confidence of his employer is sufficient for his dismissal; that soliciting receipts for payment of expenses which Ponce himself did not incur constitutes a valid and just cause for AMC's loss of trust and confidence; and that the First Performance Evaluation Memorandum categorically enumerated Ponce's infractions which caused AMC's loss of trust and confidence in him.

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<sup>14</sup> Id. at 71.

On the issue of gross and habitual neglect of duties, AMC and Uytengsu, Sr. emphasize Ponce's admission that he was purposely remiss in his duties and that several AMC employees have filed complaints against him. They point out that the totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee; and that the offenses committed by him should not be taken singly and separately but in their totality.<sup>15</sup>

In his Comment,<sup>16</sup> Ponce claims that the R/A scheme is illegal and a form of tax evasion because it results in the understatement of corporate income tax and unpaid fringe benefits tax. He contends that the R/A is a "poisonous tree" which cannot be the source of any legal right for termination of employment.

Further, Ponce alleges that the R/A was part of his compensation and solicitation of official receipts would allow him to receive the complete balance thereof. He points out that both the LA and the CA noted that he never presented any official receipts from other persons; that loss of trust and confidence was an afterthought as AMC was unable to prove that solicitation of official receipts was against company policy; and that said solicitation was not done intentionally, knowingly and purposely so as to constitute a breach of trust. Ponce also insists that he was dismissed from employment in order to forestall the threat of concerted action.

*G.R. No. 228439*

Ponce prays that he be awarded: (1) backwages amounting to ₱20,657,500.00, or in the alternative, where his actual reinstatement is no longer feasible, the aggregate amount of ₱97,037,100.00, representing compensation until he reaches the retirement age of 65 years old; (2) actual damages amounting to ₱1,695,600.00, representing the company car plan which AMC demanded to be returned, withheld Director's Incentive Bonus equivalent to three months salary and miscellaneous expenses; (3) ₱7,000,000.00 as moral damages; (4) ₱18,000.00 as temperate damages; (5) ₱2,400,000.00 as exemplary damages; and (6) attorney's fees of ₱500,000.00.

### **ISSUE**

#### **WHETHER THERE IS JUST CAUSE TO TERMINATE PONCE'S EMPLOYMENT**

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<sup>15</sup> *Valiao v. CA*, 479 Phil. 459, 470 (2004).

<sup>16</sup> *Rollo* (G.R. No. 228412, Vol. II), pp. 986-1010.

### The Court's Ruling

*AMC and Uytengsu, Sr.'s petition for review on certiorari is not defective and does not warrant an outright dismissal*

As a rule, the Court does not review questions of fact, but only questions of law in an appeal by certiorari under Rule 45 of the Rules of Court. The rule, however, is not absolute as the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory.<sup>17</sup>

In the case at bench, the factual findings of the LA and the CA differ from those of the NLRC. This divergence of positions constrains the Court to review and evaluate assiduously the evidence on record.

*AMC failed to show by substantial evidence that Ponce was guilty of gross and habitual neglect of duties*

Under Article 297 (b) [formerly Article 282 (b)] of the Labor Code, an employer may terminate an employee for gross and habitual neglect of duties. Neglect of duty, to be a ground for dismissal, must be both gross and habitual.<sup>18</sup> Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.<sup>19</sup> Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.<sup>20</sup>

After a thorough examination of the records, the Court agrees with the findings of the LA and the CA that Ponce's termination from employment based on gross and habitual neglect of duties is unwarranted.

The LA took pains to demonstrate the cogency of Ponce's explanations relevant to the charge of repeated failure to cause implementation of several engineering projects/improvements. She found that fault cannot rest upon Ponce's shoulders alone, inasmuch as satisfactory

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<sup>17</sup> *Cavite Apparel, Inc. v. Michelle Marquez*, 703 Phil. 46, 53 (2013).

<sup>18</sup> *St. Lukes Medical Center, Inc. v. Estrelito Notario*, 648 Phil. 285, 297 (2010).

<sup>19</sup> *Acebedo Optical v. NLRC*, 554 Phil. 524, 544 (2007).

<sup>20</sup> *St. Lukes Medical Center, Inc. v. Estrelito Notario*, supra note 18.

completion of the assigned tasks was subject to an interplay of factors beyond his sole control. Her analysis took into account the shared responsibility and collective decision-making involved in the implementation of AMC's projects.<sup>21</sup> On this score, the Court sees no compelling reason to disturb her well-considered conclusions.

Further, aside from enumerating the projects/improvements which Ponce purportedly failed to implement, AMC adduced no other evidence to substantiate its charges. As allegation is not evidence, the rule has always been to the effect that a party alleging a critical fact must support his allegation with substantial evidence which has been construed to mean such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.<sup>22</sup> Confronted with Ponce's explanations, records show that AMC proffered nothing beyond bare allegations to prove that failure to implement the projects/improvements was occasioned by gross neglect on the part of Ponce.

The fact that Ponce admitted to having been delayed in some of the tasks assigned to him does not establish gross and habitual neglect of duties. As gleaned from the records, this supposed admission refers to the delay in the works required for the installation of water tight metal door and increase in floor area of the UHT-1 mezzanine floor.<sup>23</sup> Anent this issue, Ponce explained that the plans for the works required were approved only in December 2009 after several revisions and modifications; and that upon his promotion, he was laden not only with engineering work assignments but also with non-engineering works, that is, personnel policies.<sup>24</sup>

Tested against the standards provided by law, the Court so holds that the delay which attended the aforesaid works does not evince a thoughtless disregard for AMC's interests. Again, aside from bare allegations, AMC failed to offer evidence showing that the delay was deliberately caused by Ponce so as to constitute gross negligence. It bears emphasis that the LA even noted AMC's admission in the First Performance Evaluation Memorandum that at least four to six concrete columns of the subject projects were already erected.<sup>25</sup> Evidently, these concrete columns stand to disprove culpable refusal on the part of Ponce in fulfilling his duties.

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<sup>21</sup> *Rollo* (G.R. No. 228412, Vol. I), pp. 334-337.

<sup>22</sup> *Tan Brothers Corporation of Basilan City v. Edna R. Escudero*, 713 Phil. 392, 402 (2013).

<sup>23</sup> *Rollo* (G.R. No. 228412, Vol. I), p. 337.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

*Although the charge of gross and habitual neglect of duties cannot stand, nevertheless, the records point to the existence of a just cause for termination – Loss of Trust and Confidence*

The pivotal issue of the controversy lies on the question of whether Ponce may be dismissed from employment on the ground of loss of trust and confidence.

Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 297 (c) [formerly Article 282 (c)] of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. In order for the said cause to be properly invoked, however, certain requirements must be complied with, namely: (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.<sup>26</sup>

There are two classes of positions of trust: (1) managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and (2) fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are, thus, classified as occupying positions of trust and confidence.<sup>27</sup>

As regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.<sup>28</sup>

It is undisputed that Ponce held the position of Director for Engineering Services and that he was in charge of managing AMC's Engineering Department. Hence, he belongs to the first class of employees

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<sup>26</sup> *Philippine Plaza Holdings, Inc. v. Ma Flora M. Episcopo*, 705 Phil. 210, 217 (2013).

<sup>27</sup> *Id.*

<sup>28</sup> *Zenaida D. Mendoza v. HMS Credit Corporation*, 709 Phil. 756, 767 (2013).

who occupy a position of trust and confidence. Having established the nature of employment, focus is now shifted to the more important question: Was there an act that would justify AMC's loss of trust and confidence in Ponce?

AMC and Uytengsu, Sr. argue that the sending of the R/A e-mail soliciting official receipts in exchange for a 5% cash rebate is an act inimical to the company's interests because Ponce will be reimbursed for expenses he did not incur. They consider such act a fraudulent representation sufficient to erode its trust and confidence.

After a judicious scrutiny of Ponce's R/A e-mail and his explanations on the matter, the Court rules that his dismissal from employment is justified.

*First*, the language of Article 297 (c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.<sup>29</sup> The opening sentence of Ponce's R/A e-mail readily exposes the attendant willfulness in his act. It reads: "*Dear Neighbors and Friends, Do you want to earn extra from your own expenses?*"<sup>30</sup> Going further, the body of the R/A e-mail consists of "rules" that the recipients will have to follow in order to be entitled to a 5% cash rebate on the value of the receipts they will submit.<sup>31</sup> The "rules" were intelligibly crafted with the end view of achieving a purpose, and the inciting tenor of the opening statement evinces premeditation. Thus, it is beyond cavil that the R/A e-mail is a product of a conscious design, certainly not one borne out of sheer carelessness or inadvertence.

*Second*, the act of soliciting receipts from colleagues constitutes dishonesty, inimical to AMC's interests, for the simple reason that Ponce would be collecting receipted allowance from expenses he did not actually incur. It has long been settled that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests. This is all the more true in the case of supervisors or personnel occupying positions of responsibility.<sup>32</sup>

*Third*, the R/A e-mail betrays a truly sinister purpose which AMC had a right to guard against. The solicitation involved therein was not a simple and perfunctory act of asking receipts from colleagues. The wordings of the R/A e-mail convey a well-calculated methodology. The "rules" constitute a

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<sup>29</sup> *Philippine Plaza Holdings, Inc. v. Ma Flora M. Episcope*, supra note 26.

<sup>30</sup> *Rollo* (G.R. No. 228412, Vol. II), pp. 669-670.

<sup>31</sup> *Id.*

<sup>32</sup> *MGG Marine Services, Inc. v. NLRC*, 328 Phil. 1046, 1067 (1996).

mechanism by which AMC will be misled to reimburse items of expense that did not actually come out of Ponce's pocket. Moreover, the solicitation was accompanied by an offer of a 5% cash rebate on the value of the receipts. The scheme envisioned in the R/A e-mail is already alarming by itself, but the fact that such was the brainwork of a director like Ponce all the more makes it disconcerting, as the situation would involve profiteering perpetrated by a person entrusted with the management of a department in the company.

In the case of *The Coca-Cola Export Corporation v. Gacayan*,<sup>33</sup> it was ruled that willful submission by a senior financial accountant of tampered or altered receipts to support claims for meal reimbursement was an act that justified dismissal from employment, as submission of fraudulent items of expense adversely reflected on the employee's integrity and honesty and is ample basis for petitioner company to lose its trust and confidence. The foregoing pronouncement is applicable to Ponce's case, considering that the receipts he sought to utilize belonged to other persons, with AMC indicated as the purchaser thereon. Verily, it does not take much to appreciate that this is an act of alteration or tampering of receipts.

Also, whether Ponce was actually able to gather and submit receipts to AMC for reimbursement is immaterial. The sending of the R/A e-mail already discloses a dishonest motive unbecoming of a director for engineering services, and the existence of that e-mail in the records is sufficient basis to justify Ponce's dismissal on the ground of loss of trust and confidence. Ponce ought to be reminded of his own words. In the R/A e-mail, he stated:

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The Official Receipts must specifically indicate "Alaska Milk Corporation" or Alaska MC (AMC or "Customer" is not acceptable).<sup>34</sup>

The LA committed an error of judgment when it faulted AMC for not presenting official receipts belonging to other individuals. It is sufficient that there was an instruction to indicate "Alaska Milk Corporation" or "Alaska MC" as the purchaser in the receipts.<sup>35</sup> It is unreasonable to expect that AMC will be able to sort out receipts that do not reflect Ponce's personal reimbursements, considering that there is no way to accurately determine ownership of the receipts submitted if AMC had been named as purchaser

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<sup>33</sup> *The Coca-Cola Export Corporation v. Clarita P. Gacayan*, 667 Phil. 594 (2011).

<sup>34</sup> *Rollo* (G.R. No. 228412, Vol. II), pp. 669-670.

<sup>35</sup> *Id.*

thereon. Indeed, the sending of the R/A e-mail soliciting receipts was the only act that AMC had to prove.

*Finally*, the CA erred in ruling that dismissal from employment was too harsh a penalty for Ponce. It considered that Ponce had no previous record in his almost two (2) years of service. Likewise, it ratiocinated that AMC and Uytengsu, Sr.'s claim of loss of confidence in Ponce's person crumbles in view of the latter's promotion on May 1, 2009. The CA's analysis, however, was premised on a misapprehension of facts.

It is undisputed that the R/A e-mail came to the knowledge of Uytengsu, Sr. only in February 2010.<sup>36</sup> Thus, to say that Ponce's promotion on May 1, 2009 negated the existence of loss of trust and confidence is *nonsequitur*, because the act which constituted the basis for dismissal from employment was discovered only in February 2010. From the date of promotion up to the date of discovery, AMC was unaware of the existence of the R/A e-mail. In the same vein, the lack of previous record for two (2) years of service cannot serve as justification to lessen the severity of the penalty. There is really no premium for a clean record of almost two (2) years to speak of, for a belated discovery of the misdeed does not serve to sanitize the intervening period from its commission up to its eventual discovery.

All told, there is sufficient basis to dismiss Ponce on the ground of loss of trust and confidence. Consequently, the denial of the petition in G.R. No. 228439 and its accompanying prayer for monetary awards follows.

**WHEREFORE**, the petition in G.R. No. 228412 is **GRANTED**. The May 4, 2016 Decision and the November 7, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 132932 are **VACATED** and **SET ASIDE**. The July 29, 2013 Decision of the National Labor Relations Commission is **REINSTATED** in full. No pronouncement as to costs.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

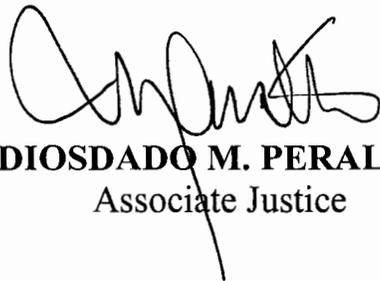
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<sup>36</sup>Rollo (G.R. No. 228412, Vol. I), p. 511.

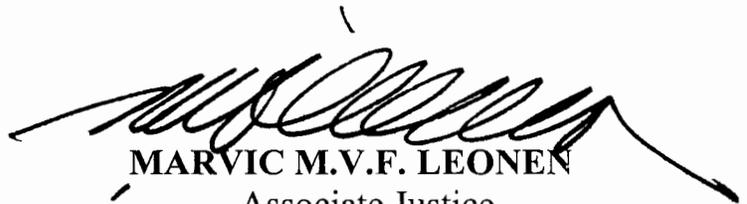
**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
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

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