Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

ZENAIDA D. MENDOZA, Petitioner,	**G.R. No. 187232**
	Present:
- versus -	
HMS CREDIT CORPORATION and/or FELIPE R. DIEGO, MA. LUISA B. DIEGO, HONDA MOTOR SPORTS CORPORATION and/or FELIPE R. DIEGO, MA. LUISA B. DIEGO, BETA MOTOR TRADING INCORPORATED and/or FELIPE DIEGO, MA. LUISA B. DIEGO, JIANSHE CYCLE WORLD INCORPORATED and/or JOSE B. DIEGO, Respondents.	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
	Promulgated: APR 17 2013

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DECISION

SERENO, *CJ*:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Decision dated 14 November 2008[1] issued by the Court of Appeals (CA) in CA G.R. SP No. 82653.

Petitioner Zenaida D. Mendoza (Mendoza) was the Chief Accountant of respondent HMS Credit Corporation (HMS Credit) beginning 1 August 1999.[2] During her employment, she simultaneously serviced three other respondent companies, all part of the Honda Motor Sports Group (HMS Group),[3] namely, Honda Motor Sports Corporation (Honda Motors), Beta Motor Trading Incorporated (Beta Motor) and Jianshe Cycle World

[1] *Rollo*, pp. 19-27. Penned by CA Associate Justice Rosmari D. Carandang and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Mariflor P. Punzalan Castillo.
[2] Id. at 5, Petition; Id. at 88 and 129, Letter dated 19 August 1999.
[3] CA *rollo*, p. 358, Memorandum [of Respondents] dated 3 September 2008.

(Jianshe).[4] Respondent Luisa B. Diego (Luisa) was the Managing Director of HMS Credit, while respondent Felipe R. Diego (Felipe) was the company officer to whom Mendoza directly reported.[5]

Mendoza avers that on 11 April 2002, after she submitted to Luisa the audited financial statements of Honda Motors, Beta Motor, and Jianshe, Felipe summoned Mendoza to advise her of her termination from service.[6] She claims that she was even told to leave the premises without being given the opportunity to collect her personal belongings.[7]

Mendoza also contends that when she went back to the office building on 13 April 2012, the stationed security guard stopped her and notified her of the instruction of Felipe and Luisa to prohibit her from entering the premises.[8] Later that month, she returned to the office to pick up her personal mail and to settle her food bills at the canteen, but the guard on duty told her that respondents had issued a memorandum barring her from entering the building.[9]

On the other hand, respondents maintain that Mendoza was hired on the basis of her qualification as a Certified Public Accountant (CPA),[10] which turned out to be a misrepresentation.[11] They likewise contend that not only did she fail to disclose knowledge of the resignations of two HMS Group officers, Art Labasan (Labasan) and Jojit de la Cruz (de la Cruz), and their subsequent transfer to a competitor company, but she also had a hand in pirating them. Thus, on 12 April 2002, they supposedly confronted her about these matters. In turn, she allegedly told them that if they had lost their trust in her, it would be best for them to part ways.[12] Accordingly, they purportedly asked her to propose an amount representing her entitlement to separation benefits. Before she left that night, they allegedly handed her ₱30,000 as payment for the external auditor she had contracted to examine the books of the HMS Group.[13]

On 30 April 2002, Mendoza filed with the National Labor Relations Commission (NLRC) a Complaint for Illegal Dismissal and Non-payment of

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[4] *Rollo*, p. 5, Petition.
[5] Id. at 88, Letter dated 19 August 1999 of Luisa to Mendoza. Note that in the Reply to: Respondents' Position Paper dated 12 August 2002, Mendoza indicated that Felipe was the President of Beta Motor. CA *rollo*, pp. 57-58.
[6] Id. at 5, Petition.
[7] Id.
[8] Id. at 7.
[9] Id.
[10] CA *Rollo*, p. 55, Personal Information Sheet of Mendoza.
[11] *Rollo*, p. 255, Memorandum [of Respondents] dated 21 December 2009.
[12] Id. at 258.
[13] Id. at 259.

Salaries/Wages, 13th Month Pay and Mid-Year Bonus.[14] The case was docketed as NLRC-NCR North Sector Case No. 00-04-02576-2002.[15]

On 28 January 2003, the Labor Arbiter rendered a Decision ruling that Mendoza had been illegally dismissed, and that the dismissal had been effected in violation of due process requirements.[16] Thus, the Labor Arbiter held respondents jointly and severally liable for the payment of separation pay, backwages, moral and exemplary damages, and attorney's fees in the total amount of ₱1,025,081.82.[17]

Respondents filed an Appeal dated 14 March 2003[18] and a Motion to Reduce Appeal Bond dated 21 March 2003 with the National Labor Relations Commission (NLRC), tendering the amount of only ₱650,000 on the ground of purported business losses.[19] In its Order dated 30 May 2003, the NLRC denied the request for the reduction of the appeal bond, and directed respondents to put up the additional amount of ₱122,801.66 representing the differential between the judgment award – not including the moral and exemplary damages and attorney's fees – and the sum previously tendered by them.[20] Respondents complied with the Order.[21]

On 30 September 2008, the NLRC rendered a Decision reversing the ruling of the Labor Arbiter.[22] In declaring that Mendoza had not been summarily dismissed, the NLRC held as follows: (a) her claim that she was terminated was incompatible with respondents' act of entrusting the amount of ₱30,000 to her as payment for the external auditor; (b) the same act demonstrated that the parties parted amicably, and that she had the intention to resign; and (c) her admission that respondents allowed her to take a leave of absence subsequent to their confrontation also belied her claim that she was dismissed.[23] Further, it also ruled that her misrepresentation as to her qualifications, her concealment of her meeting with a rival motorcycle dealership, and her non-disclosure of her meeting with the officers and mechanics of HMS Group amounted to a breach of trust, which constituted a just cause for termination, especially of managerial employees like her.[24] Nevertheless, it ordered respondents to pay her separation pay equivalent to one month for every year of service.[25]

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[14] Id. at 89.
[15] Id.
[16] Id. at 68-87.
[17] Id.
[18] Id. at 131-141.
[19] Id. at 142-143.
[20] Id. at 157-159; CA *rollo*, pp. 123-126.
[21] *Rollo*, p. 21, CA Decision. Note, however, that in their Motion to Reduce Bond dated 25 May 2004, respondents alleged that they had posted a Supersedeas Bond in the amount of ₱1,025,081.82. CA *rollo*, pp. 318-320.
[22] Id. at 56-66.
[23] Id. at 63.
[24] Id. at 62, 64-65.
[25] Id. at 66.

The NLRC denied the Motion for Reconsideration filed by Mendoza,[26] prompting her to file a Petition for Certiorari with the CA, which rendered a Decision affirming that of the lower tribunal.[27] The CA ruled that that there was no dismissal, as the parties had entered into a compromise agreement whereby respondents offered to pay Mendoza separation benefits in exchange for her voluntary resignation.[28] It further explained:

> On the merits, this case involves neither dismissal on the part of the employer nor abandonment on the part of the employee. On the evening of April 11, 2002, respondents and petitioner had already agreed on an amicable settlement with petitioner voluntarily resigning her employment and respondents paying her separation benefits. This is evident from the amiable manner with which the parties ended their meeting, with respondents entrusting to petitioner the ₱30,000.00 payment for the external auditor and the petitioner considering her absence the following day as a previously approved leave from work. It appears, however, that respondents had a sudden change of heart while petitioner was away on leave on April 12, 2002 because when the latter returned on April 13, 2002 she was already prevented from entering the office premises per strict instructions from respondents. Clearly, this was an attempt on the part of respondents to effectively renege on its commitment to pay separation benefits to petitioner.
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> While, generally, an employee who voluntarily resigns from employment is not entitled to separation pay, an arrangement whereby the employee would receive separation pay despite having resigned voluntarily constitutes a contract which is freely entered into and which must be performed in good faith. Thus, the NLRC correctly sustained the prior commitment of respondents to pay separation benefits to petitioner. For although loss of trust and confidence could have been a valid ground available to respondents, they did not institute the appropriate dismissal procedures against petitioner. Instead, they opted to enter into a compromise agreement with an offer to pay separation benefits in exchange for the latter's voluntary resignation. It is an accepted practice for parties to adjust their difficulties by mutual consent and, through the execution of a compromise agreement, prevent or to put an end to a lawsuit. And, since there was no dismissal, valid or otherwise, involved in this case, the non-observance of the notice requirements is of no relevance.[29]

Mendoza consequently filed the present Petition for Review, raising the following grounds:

a. The CA erred in concluding that respondents had timely filed their appeal with the NLRC.

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[26] CA *Rollo*, pp. 26-27, NLRC Resolution dated 28 November 2003.
[27] *Rollo*, pp. 19-27, CA Decision dated 14 November 2003.
[28] Id. at 26.
[29] Id. at 25-26.

b. The CA erred in ruling that there was no illegal dismissal.[30]

Thus, in disposing of the instant case, the following issues must be discussed: (a) whether the appeal of respondents to the NLRC was timely filed, and (b) whether Mendoza was illegally dismissed.

First issue: Timely filing of the appeal before the NLRC

The relevant portion of Article 223 of the Labor Code on appeals of decisions, awards or orders of the Labor Arbiter as follows:

> Art. 223. x x x In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In *Pasig Cylinder v. Rollo,*[31] this Court explained that the required posting of a bond equivalent to the monetary award in the appealed judgment may be liberally interpreted as follows:

> x x x. True, Article 223 of the Labor Code requires the filing of appeal bond "in the amount equivalent to the monetary award in the judgment appealed from." However, both the Labor Code and this Court's jurisprudence abhor rigid application of procedural rules at the expense of delivering just settlement of labor cases. Petitioners' reasons for their filing of the reduced appeal bond — the downscaling of their operations coupled with the amount of the monetary award appealed — are not unreasonable. Thus, the recourse petitioners adopted constitutes substantial compliance with Article 223 consistent with our ruling in *Rosewood Processing, Inc. v. NLRC,* where we allowed the appellant to file a reduced bond of ₱50,000 (accompanied by the corresponding motion) in its appeal of an arbiter's ruling in an illegal termination case awarding ₱789,154.39 to the private respondents.[32]

In the case at bar, respondents filed a Motion to Reduce Appeal Bond, tendering the sum of ₱650,000 – instead of the ₱1,025,081.82 award stated in the Decision of the Labor Arbiter – because it was allegedly what respondents could afford, given the business losses they had suffered at that time.[33] Upon the denial by the NLRC of this Motion, respondents promptly complied with its directive to post the differential in the amount of ₱122,801.66, which had been computed without including the award of

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[30] Id. at 9-10.
[31] G.R. No. 173631, 8 September 2010, 630 SCRA 320.
[32] Id. at 329-330.
[33] *Rollo*, p. 142.

moral and exemplary damages and attorney's fees.[34] Following the pronouncement in *Pasig Cylinder*, the CA was correct in holding that the appeal was timely filed on account of respondents' substantial compliance with the requirement under Article 223.

Second issue: Illegal dismissal of Mendoza

The Labor Code provides for instances when employment may be legally terminated by either the employer or the employee, to wit:

> Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:
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> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> b. Gross and habitual neglect by the employee of his duties;
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> c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
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> e. Other causes analogous to the foregoing.
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> xxx xxx xxx
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> Art. 285. Termination by employee.
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> a. An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.
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> b. An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:
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> 1. Serious insult by the employer or his representative on the honor and person of the employee;
>
> 2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
>
> 3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and

[34] Id. at p. 21, CA Decision.

4. Other causes analogous to any of the foregoing.

In instances in which the termination of employment by the employer is based on breach of trust, a distinction must be made between rank-and-file employees and managerial employees, thus:

> The degree of proof required in labor cases is not as stringent as in other types of cases. It must be noted, however, that recent decisions of this Court have distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, 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. **But 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**.[35] (Emphasis supplied)

Further, in the case of termination by the employer, it is not enough that there exists a just cause therefor, as procedural due process dictates compliance with the two-notice rule in effecting a dismissal: (a) the employer must inform the employee of the specific acts or omissions for which the dismissal is sought, and (b) the employer must inform the employee of the decision to terminate employment after affording the latter the opportunity to be heard.[36]

On the other hand, if the termination of employment is by the employee, the resignation must show the concurrence of the intent to relinquish and the overt act of relinquishment, as held in *San Miguel Properties v. Gucaban*:[37]

> Resignation — the formal pronouncement or relinquishment of a position or office — is the voluntary act of an employee who is in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has then no other choice but to disassociate himself from employment. **The intent to relinquish must concur with the overt act of relinquishment**; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he in fact intended to terminate his employment. **In**

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[35] *Etcuban v. Sulpicio Lines*, 489 SCRA 483, 496-497.
[36] *Mansion Printing Center v. Bitara*, G.R. No. 168120, 25 January 2012.
[37] G.R. No. 153982, 18 July 2011, 654 SCRA 18.

> **illegal dismissal cases, fundamental is the rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned**.[38] (Emphases supplied)

In this case, the NLRC and the CA were in agreement that although Mendoza committed acts that amounted to breach of trust, the termination of her employment was not on that basis.[39] Instead, both tribunals held that the parties parted amicably, with Mendoza evincing her voluntary intention to resign and respondents' proposed settlement to pay her separation benefits.[40] This Court does not agree with these findings in their entirety.

Whether Mendoza was a Chief Accountant of HMS Credit, as stated in her appointment letter,[41] or a Finance Officer of all the corporations under the HMS Group, as claimed by respondents,[42] what is certain is that she was a managerial employee. In securing this position, she fraudulently misrepresented her professional qualifications by stating in her Personal Information Sheet that she was a CPA. Based on the records, she never controverted this imputation of dishonesty or, at the very least, provided any explanation therefor. Thus, this deceitful action alone was sufficient basis for respondents' loss of confidence in her as a managerial employee.

In addition, this Court finds no reason to deviate from the factual findings of the NLRC and the CA as regards the existence of other circumstances that demonstrated Mendoza's breach of trust. The NLRC held in this wise:

> In sum, the commission finds that [Mendoza] was not illegally dismissed. [Respondents] could have validly dismissed [her] for just cause because she had forfeited her employment by having incurred breach of trust that they had reposed in her. [She] had concealed from [them] the fact that she was going to visit a rival motorcycle dealership in Tarlac, called Honda Mar, on the afternoon of April 5, 2002, in the company of its owner; the notice she had given was that, on the morning of that date, she would get her child's report card from her school. She also failed to disclose to them the fact that she saw in that store Labasan and De la Cruz, and [respondents'] mechanics, Gatus and Mejis, who cleaned and painted the same. And she gave the appearance of giving aid and support to [respondents'] competitor, to the prejudice of [their] business standing and goodwill. These were acts of disloyalty for which [they] would have been justified in terminating [her] service on the ground of loss of confidence.[43]

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[38] Id. at 28-29.
[39] *Rollo*, pp. 62-63, NLRC Decision; *rollo*, p. 26, CA Decision.
[40] Id. at 63, 65, NLRC Decision; id. at 25, CA Decision.
[41] Id. at 88, Letter dated 19 August 1999.
[42] Id. at 57, NLRC Decision dated 30 September 2003.
[43] Id. at 64.

However, despite the existence of a just cause for termination, Mendoza was nevertheless dismissed from service in violation of procedural due process, as respondents failed to observe the two-notice requirement. Instead, respondents insisted that she voluntarily resigned, which argument the NLRC and the CA sustained. This Court is not persuaded.

Respondents were unable to discharge their burden to prove the contemporaneous existence of an intention on the part of Mendoza to resign and an overt act of resignation. Aside from their self-serving allegation that she had offered to resign after they had expressed their loss of trust in her, there is nothing in the records to show that she voluntarily resigned from her position in their company. In this regard, it is worthy to underscore the established rule that the filing of a complaint for illegal dismissal is inconsistent with resignation or abandonment.[44]

Moreover, the conclusion of the NLRC and the CA that Mendoza voluntarily resigned in consideration of respondents' supposed payment of a settlement is bereft of any basis. The lower tribunals merely surmised that the parties forged a compromise agreement despite respondents' own admission that they never decided thereon.[45] In fact, the records are clear that none of the parties claimed the existence of any settlement in exchange for her resignation.

From the foregoing discussion, it is evident that although there was a just cause for terminating the services of Mendoza, respondents were amiss in complying with the two-notice requirement. Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual.[46] Instead, the employer must indemnify the employee in the form of nominal damages.[47] Therefore, the dismissal of Mendoza should be upheld, and respondents cannot be held liable for the payment of either backwages or separation pay. Considering all the circumstances surrounding this case, this Courts finds the award of nominal damages in the amount of ₱30,000[48] to be in order.

WHEREFORE, the Petition for Review is **DENIED.** The Decision dated 14 November 2008 of the CA in CA G.R. SP No. 82653 is **AFFIRMED WITH MODIFICATION**: the award of separation pay is deleted and in lieu thereof, nominal damages in the amount of ₱30,000 is awarded in favor of petitioner.

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[44] *Nationwide Security and Allied Services v. Valderama*, G.R. No. 186614, 23 February 2011, 644 SCRA 299, 307.
[45] CA *rollo*, p. 140, Motion for Partial Reconsideration dated 28 October 2003.
[46] *Agabon v. NLRC*, 485 Phil. 248, 287-288.
[47] Id.
[48] *De Jesus v. Aquino*, G.R. No. 164662, 18 February 2013.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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