



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**PHILIPPINE
HOLDINGS, INC.,**

PLAZA

G.R. No. 192826

Petitioner,

Present:

CARPIO, *J.*, Chairperson,

DEL CASTILLO,

PEREZ,

MENDOZA,* and

PERLAS-BERNABE, *JJ.*

- versus -

MA. FLORA M. EPISCOPE,

Respondent.

Promulgated:

FEB 27 2013 *HM Cabalag/Perfecto*

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DECISION

PERLAS-BERNABE, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the March 26, 2010 Decision¹ and July 5, 2010 Resolution² rendered by the Court of Appeals (CA) in CA-G.R. SP No. 102188. The CA reversed and set aside the Resolutions³ of the National Labor Relations Commission (NLRC) dated May 30, 2007 and November 14, 2007 in NLRC NCR CA No. 047187-06/NLRC NCR-12-13621-04 and thereby declared respondent to have been illegally dismissed.

The Facts

Petitioner Philippine Plaza Holdings, Inc. (PPHI) is the owner and operator of the Westin Philippine Plaza Hotel (Hotel). Respondent Ma. Flora

* Designated Acting Member per Special Order No. 1241 dated February 20, 2013.

¹ *Rollo*, pp. 25-34. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Ramon R. Garcia and Elihu A. Ybañez, concurring.

² *Id.* at 36-39.

³ *Id.* at 117-123 and 129-130. Penned by Commissioner Angelita A. Gacutan, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring.

M. Episcopo (Episcopo) was employed by PPHI since July 24, 1984 until she was terminated on November 4, 2004 for dishonesty, willful disobedience and serious misconduct amounting to loss of trust and confidence.

In order to check the performance of the employees and the services in the different outlets of the Hotel, PPHI regularly employed the services of independent auditors and/or professional shoppers. For this purpose, Sycip, Gorres and Velayo auditors dined at the Hotel's Café Plaza on August 28, 2004. After dining, the auditors were billed the total amount of ₱2,306.65, representing the cost of the food and drinks they had ordered under Check No. 565938.⁴ Based on the audit report⁵ submitted to PPHI, Episcopo was one of those who attended to the auditors and was the one who handed the check and received the payment of ₱2,400.00. She thereafter returned Check No. 565938, which was stamp marked "paid," together with the change.

Upon verification of the foregoing check receipt with the sales report of Café Plaza, it was discovered that the Hotel's copy of the receipt bore a discount of ₱906.45⁶ on account of the use of a Starwood Privilege Discount Card registered in the name of Peter A. Pamintuan, while the receipt issued by Episcopo to the auditors reflected the undiscounted amount of ₱2,306.65 considering that none of the auditors had such discount card. In view of the foregoing, the amount actually remitted to the Hotel was only ₱1,400.20 thus, leaving a shortage of ₱906.45.

On September 30, 2004, the Hotel issued a Show-Cause Memo⁷ directing Episcopo to explain in writing why no disciplinary action should be taken against her for the questionable and invalid discount application on the settlement check issued to the auditors on August 28, 2004.

In her handwritten letter,⁸ Episcopo admitted that she was on duty on the date and time in question but alleged that she could no longer recall if the concerned guests presented a Starwood Privilege Discount Card.

On October 4, 2004, Episcopo was placed on preventive suspension without pay.⁹ During the administrative hearing on October 6, 2004, Episcopo, who was therein assisted by the Union President and four union representatives from National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN)-Philippine Plaza Hotel Chapter, confirmed the fact that she was the one who presented the subject check and received the corresponding payment from the guests. She, however, denied stamping the said check as "paid" or that she gave any discount without a

⁴ Id. at 66.

⁵ Id. at 64.

⁶ Id. at 67.

⁷ Id. at 78.

⁸ Id. at 69.

⁹ Id. at 80.

discount card, explaining that she could not have committed such acts given that all receipts and discount applications were handled by the cashier. But when asked why the discounted receipt was not given to the guests, she merely replied that she could no longer remember. In a separate inquiry, the cashier of Café Plaza, however, maintained that a Starwood Privilege Discount Card must have been presented during the said incident given that there was a Discount Slip¹⁰ and a stamped receipt indicating such discounted payment.¹¹

Finding Episcopo to have failed to sufficiently explain the questionable discount application on the settlement bill of the auditors, her employment was terminated for committing acts of dishonesty, which was classified as a Class D offense under the Hotel's Code of Discipline, as well as for willful disobedience, serious misconduct and loss of trust and confidence.¹²

Aggrieved, Episcopo filed a complaint¹³ for illegal dismissal with prayer for payment of damages and attorney's fees against PPHI before the NLRC docketed as NLRC-NCR Case No. 00-12-13621-04.

Rulings of the LA and the NLRC

On October 20, 2005, the Labor Arbiter (LA) rendered a Decision in favor of PPHI and thus, dismissed Episcopo's complaint for illegal dismissal.¹⁴ The LA found that there was substantial evidence to support the charge of improper discount application and observed that the said act resulted to a loss on the part of the Hotel. Accordingly, the LA held that Episcopo's actions rendered her unworthy of the trust and confidence demanded by her position which thus, warranted her dismissal.

On appeal,¹⁵ the NLRC affirmed the LA's decision in the May 30, 2007 Resolution.¹⁶ Episcopo's motion for reconsideration¹⁷ was likewise denied in the November 14, 2007 Resolution.¹⁸

¹⁰ Id. at 68.

¹¹ Id. at 70-73.

¹² Id. at 81-83.

¹³ Id. at 48-49.

¹⁴ Id. at 102-108. Penned by Labor Arbiter Roma C. Asinas.

¹⁵ Id. at 109-115. Verified Notice of Appeal with Appeal Memorandum.

¹⁶ Id. at 117-123.

¹⁷ Id. at 124-127.

¹⁸ Id. at 129-130.

Ruling of the CA

On *certiorari*, the CA gave due course to the petition and reversed the NLRC's Decision.¹⁹ It found the report submitted by the auditors grossly insufficient to support the conclusion that Episcopo was guilty of the charges imputed against her. It described the report as a mere transaction account in tabular form, bereft of any evidentiary worth. It was unsigned and bore no indication of her alleged culpability. The CA likewise did not give credence to the minutes of the administrative hearing because it was based on the same unaudited report. Hence, the CA(1) declared Episcopo's dismissal illegal; (2) ordered her reinstatement to her former position without loss of seniority rights and benefits under the Labor Code; and (3) remanded the case to the NLRC for further proceedings on her money claims and other benefits. The dispositive portion of the CA's Decision reads:

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The assailed Resolutions dated May 30, 2007 and November 14, 2007 of the public respondent NLRC are **REVERSED** and **SET ASIDE**. Petitioner is hereby ordered reinstated to her former position without loss of seniority rights and benefits under the Labor Code. The case is hereby remanded to the NLRC for further proceedings on her money claims and other benefits.

SO ORDERED.²⁰

Dissatisfied, PPHI moved for reconsideration which was, however, denied in the assailed July 5, 2010 Resolution.²¹

Hence, the instant petition anchored on the sole ground that:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND RULED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT ACTED AS A TRIER OF FACTS AND ORDERED THE REINSTATEMENT OF THE RESPONDENT AND PAYMENT OF BACKWAGES.²²

The Ruling of the Court

The petition is impressed with merit.

¹⁹ Id. at 25-34.

²⁰ Id. at 33-34.

²¹ Id. at 36-39.

²² Id. at 11.

At the outset, it is settled that the jurisdiction of the Supreme Court in cases brought before it from the CA via Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court or quasi-judicial agency,²³ as in this case. There is therefore a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.²⁴

After a judicious review of the records, as well as the respective allegations and defenses of the parties, the Court is constrained to reverse the findings and conclusion of the CA.

Article 293 (formerly Article 279) of the Labor Code²⁵ provides that the employer shall not terminate the services of an employee except only for a just or authorized cause. If an employer terminates the employment without a just or authorized cause, then the employee is considered to have been illegally dismissed and is thus, entitled to reinstatement or in certain instances, separation pay in lieu thereof, as well as the payment of backwages.

Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 296 (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. But in order for the said cause to be properly invoked, 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.**²⁶

It is noteworthy to mention that there are two classes of positions of trust: *on the one hand*, there are 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; *on the other hand*, there are 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

²³ *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010, 615 SCRA 13, 26-27.

²⁴ *Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445-446.

²⁵ Renumbered pursuant to Republic Act No. 10151.

²⁶ *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 323-324; emphasis and underscoring supplied.

are thus classified as occupying positions of trust and confidence.²⁷ Episcopo belongs to this latter class and therefore, occupies a position of trust and confidence.

As may be readily gleaned from the records, Episcopo was employed by PPHI as a service attendant in its Café Plaza. In this regard, she was tasked to attend to dining guests, handle their bills and receive their payments for transmittal to the cashier. It is also apparent that whenever discount cards are presented, she maintained the responsibility to take them to the cashier for the application of discounts. Being therefore involved in the handling of company funds, Episcopo is undeniably considered an employee occupying a position of trust and confidence and as such, was expected to act with utmost honesty and fidelity.

Anent the second requisite, records likewise reveal that Episcopo committed an act which justified her employer's (PPHI's) loss of trust and confidence in her.

Primarily, it is apt to point out that proof beyond reasonable doubt is not required in dismissing an employee on the ground of loss of trust and confidence; it is sufficient that there lies some basis to believe that the employee concerned is responsible for the misconduct and that the nature of the employee's participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.

On this point, the Court, in the case of *Bristol Myers Squibb (Phils.), Inc. v. Baban*,²⁸ citing *Atlas Fertilizer Corporation v. National Labor Relations Commission*,²⁹ ruled as follows:

[A]s a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.

In addition, it must be observed that only substantial evidence is required in order to support a finding that an employer's trust and confidence accorded to its employee had been breached. As explained in the case of *Lopez v. Alturas Group of Companies*:³⁰

²⁷ *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA, 590, 604.

²⁸ G.R. No. 167449, December 17, 2008, 574 SCRA 198, 208-209.

²⁹ G.R. No. 120030, June 17, 1997, 273 SCRA 551, 558.

³⁰ G.R. No. 191008, April 11, 2011, 647 SCRA 568, 573-574, citing *Cruz, Jr. v. CA*, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 654-655.

xxx, the language of Article 282(c) [now, Article 296 (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. Moreover, **it must be based on substantial evidence** and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized. (Emphasis supplied.)

In the present case, records would show that Episcopo committed acts of dishonesty which resulted to monetary loss on the part of PPHI and more significantly, led to the latter's loss of trust and confidence in her. Notwithstanding the impaired probative value of the unaudited and unsigned auditor's report, the totality of circumstances supports the foregoing findings:

First, it remains unrefuted that Episcopo attended to the auditors when they dined at the Café Plaza on the date and time in question. In fact, Episcopo herself admitted that she tendered Check No. 565938 bearing the amount of ₱2,306.65 and received the amount of ₱2,400.00 as payment;

Second, it is likewise undisputed that the check receipt on file with the Hotel for the same transaction reflected only the amount of ₱1,400.20 in view of the application of a certain Starwood Privilege Discount Card registered in the name of one Peter Pamintuan, while the receipt given to the auditors bore the undiscounted amount of ₱2,306.65 which thus, resulted to a ₱906.45 discrepancy. During the proceedings, both receipts were actually presented in evidence yet, Episcopo never interposed any objection on the authenticity of the same; and

Third, when asked to explain the said discrepancy, Episcopo merely imputed culpability on the part of the cashier, whom she claimed prepared all the receipts that were returned to the guests.


From the foregoing incidents, it is clear that Episcopo was remiss in her duty to carefully account for the money she received from the café's guests. It must be observed that though the receipts were prepared by the cashier, Episcopo, as a service attendant, was the one who actually handled the money tendered to her by the hotel clients. In this regard, prudence dictates that Episcopo should have at least known why there was a shortage in remittance. Yet when asked, Episcopo could not offer any plausible explanation but merely shifted the blame to the cashier. Irrefragably, as an employee who was routinely charged with the care and custody of her employer's money, Episcopo was expected to have been more circumspect in the performance of her duties as a service attendant. This she failed to observe in the case at bar which thus, justifies PPHI's loss of trust and confidence in her as well as her consequent dismissal.

Perforce, having substantially established the actual breach of duty committed by Episcopo and the due observance of due process, no grave abuse of discretion can be imputed against the NLRC in sustaining the finding of the LA that her dismissal was proper under the circumstances.


Finally, with respect to Episcopo's other monetary claims, namely, service incentive leave credits and 13th month pay, the Court finds no error on the part of the LA when it denied the foregoing claims considering that Episcopo failed to proffer any legitimate basis to substantiate her entitlement to the same.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed March 26, 2010 Decision and July 5, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 102188 are **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter, as affirmed by the NLRC, dismissing respondent Ma. Flora M. Episcopo's complaint for illegal dismissal and other monetary claims is **REINSTATED**.

SO ORDERED.



ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
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