Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ERIC ALVAREZ, substituted by ELIZABETH ALVAREZ-CASAREJOS, Petitioner,	**G.R. No. 202158**
	Present:
	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO REYES,
- versus -	PERLAS-BERNABE,* and LEONEN,** *JJ.*
GOLDEN TRI BLOC, INC. and ENRIQUE LEE, Respondents.	Promulgated: SEP 25 2013

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DECISION

REYES, *J.*:

This is a petition for review[1] from the Decision[2] dated January 17, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120968 dismissing the complaint for illegal dismissal filed by petitioner Eric Alvarez (petitioner) against respondents Golden Tri Bloc, Inc. (GTBI) and its owner, Enrique Lee.

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* Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

** Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

1 *Rollo*, pp. 10-25.

2 Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Elihu A. Ybañez and Florito S. Macalino, concurring; id. at 182-201.

The Facts

Sometime in November 1996, respondent GTBI hired the petitioner as a Service Crew in one of its Dunkin Donuts franchise store in Antipolo City, Rizal. Six (6) months later, he attained the status of a regular employee. He was thereafter promoted as Shift Leader and served as such for four (4) years. Sometime in 2001, he was again promoted as Outlet Supervisor and was assigned to three (3) Dunkin Donuts outlets located at San Roque, Cogeo and Super 8, Masinag, all in Antipolo City. He received a monthly salary of ₱10,000.00.

On May 27, 2009, the petitioner reported for duty at around 12:30 in the afternoon at Dunkin Donuts, Super 8, Masinag branch. Since his time card was at the San Roque branch, he telephoned Chastine[3] Kaye Sambo (Sambo), shift leader, and requested her to "punch-in" his time card to reflect that he is already on duty. She obliged. Roland Salindog (Salindog), the petitioner's senior officer called the Super 8, Masinag branch and verified that he has indeed reported for work.

The following day, however, the petitioner was informed by Sambo that both of them are suspended and that he had to prepare an incident report regarding his time card.

In his incident report[4] dated May 29, 2009, the petitioner admitted instructing Sambo to punch-in his timecard. He explained that he went straight to and arrived at the Super 8, Masinag branch at around 12:35 p.m. He inspected the stocks in the branch and taught a certain 'Ritz' on how to prepare stocks acquisition report for June 2009. He owned up to his fault and stated that he should have instead recorded the time of his arrival by writing on the time card and that he should have brought it with him. He apologized and promised that a similar incident will not happen again.

On June 5, 2009, GTBI sent him a letter directing him to report to the main office for a dialogue on June 9, 2009 failing which would amount to the waiver of his right to be heard and the management may make a decision based only on his written explanation.[5] The dialogue pushed through. After which the petitioner was placed on preventive suspension for 30 days without pay.

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3 In other parts of the record, she is referred to as Christine.
4 *Rollo*, p. 101.
5 Id. at 86.

On June 23, 2009, GTBI notified the petitioner of its decision to terminate his employment effective that day on the ground of loss of trust.[6]

Feeling aggrieved, the petitioner filed, on July 9, 2009, before the Labor Arbiter (LA), a complaint for illegal dismissal with claims for sick leave pay, separation pay and moral and exemplary damages.[7]

In his Position Paper[8], the petitioner averred that in his 12 years of service with the company, he was never subjected to any disciplinary action. He argued that the ground relied upon for his termination is not applicable to him because he is a supervisor and not a managerial employee. He is not entrusted with the company's money or property and that his duties pertained to the preparation and submission of daily and monthly reports and organization of manpower schedules. Even assuming that the ground applies to him, it still does not validate his termination because the alleged offense is not related to his work duties. He asserted that he did not lie to or defraud GTBI because he was, in truth, already on duty as verified by his senior officer, Salindog. He contended that dismissal is not commensurate with the offense he committed considering his lengthy and satisfactory service with the company as shown in his several rank promotions.

For its part, GTBI maintained that it had justifiable reason to lose trust in and dismiss the petitioner for having committed a dishonest act punishable under the company's Code of Conduct and Discipline[9] with termination from employment.[10]

GTBI further claimed that the petitioner's dismissal from employment was attended with the requisite procedural due process. He was notified of his offense and afforded the chance to explain his side. His explanation was, however, found unacceptable and he was deemed unfit to hold the position of Outlet Supervisor because his continued employment with the company will be detrimental to its interests. The company's decision to terminate him was likewise made known to him through a notice sent on June 26, 2009.[11]

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6 Id. at 102.
7 Id. at 74-75.
8 Id. at 76-85.
9 Id. at 95-97.
10 Id. at 87-94.
11 Id.

His monetary claims were debunked for lack of factual basis in as much as he is also not entitled to moral and exemplary damages since his dismissal was valid and that it was carried out without bad faith and fraud, nor was it attended with act oppressive to labor or contrary to morals, good customs or public policy.[12]

Ruling of the Labor Arbiter

In a Decision[13] dated April 29, 2010, the LA found the petitioner to have been illegally dismissed. The LA held that the transgression imputed to the petitioner was not willful in character neither did not imply any wrongful intent so as to bring it within the ambit of gross misconduct as a just cause for termination. His wrongdoing was trivial in nature and a mere error in judgment since he acted in good faith and had no intention to defraud GTBI. Also, the offense of dishonesty stated in GTBI's Code of Conduct and Discipline imply a conscious and deliberate wrongful intent to defraud, which is not present in that ascribed to the petitioner. The LA conferred great weight to his length of service with GTBI and his unblemished record and held that such considerations render dismissal a disproportionate and harsh penalty to the mistake he committed. The LA further ruled that his reinstatement is no longer a viable option and as such, an award of separation pay, in addition to backwages, is proper computed at one (1) month salary for every year of service, with a fraction of six (6) months being considered as one (1) whole year.[14] Accordingly, the LA disposed as follows:

> WHEREFORE, premises considered, the dismissal of the [petitioner] is hereby declared illegal. Respondent Golden Tri Bloc[,] Inc. is hereby ordered to pay [the petitioner] the total amount of Two Hundred Sixty Thousand Nine Hundred Twenty[-]Nine Pesos and 49/100 ([₱]260,929.49) representing his separation pay and full backwages.

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12 Id.

13 Issued by Labor Arbiter Danna M. Castillon; id. at 48-52.

14 The monetary award was computed by the LA in this manner:

Full backwages		
From 5/29/09 – 4/29/10		
a) Basic Pay		
[₱]10,000.00 x 11 mos.	[₱]110,000.00	
b) 13th month pay		
[₱]10,000.00/12	9,166.67	
c) SIL		
[₱]10,000.00/26 x 5 x 11 mos./12	1,762.82	[₱]120,929.49
Separation Pay		
11/96-5/29/10		
[₱]10,000.00 x 14 years		[₱]140,000.00
Total		[₱]260,929.49

Id. at 52.

All other claims are ordered dismissed for lack of merit.

SO ORDERED.[15]

Ruling of the NLRC

Dismayed, GTBI appealed to the National Labor Relations Commission (NLRC). To bolster its position that the petitioner was not illegally dismissed, GTBI submitted records of infractions committed by the petitioner before the incident in issue, *viz*:

(1) Tardiness for which he was given corrective counseling on October 25, 1997;
(2) Product shortages for which he was sternly warned on July 12, 1999;
(3) Negligence resulting in disruption of business operations on July 29, 1999 for which he was suspended for three (3) days;
(4) Habitual tardiness for which he was given another corrective counselling on January 9, 2000;
(5) Product shortages and inconsistencies in his inventory, for which he was reprimanded on January 17, 2000;
(6) Product shortages and inconsistencies in his inventory for which he was suspended for one (1) week from January 26, 2000;
(7) Product shortages and inconsistencies in his inventory for which he was suspended for three (3) days starting May 9, 2003;
(8) Dishonesty for causing a co-employee to punch-in his timecard for which he was suspended for 45 days instead of dismissal on July 4, 2003, with a stern warning that a repetition of the same offense shall be punished with dismissal;
(9) Habitual tardiness for which he was meted three (3) days suspension;
(10) Failure to punch-out for which he was suspended for three (3) days on May 16, 2004;
(11) Negligence resulting in product shortages causing disruption of business operations;
(12) Negligence resulting in product oversupply;
(13) Tardiness for which he was reprimanded;[16]
(14) Dishonesty for causing a subordinate to punch in his timecard for which he was dismissed from service effective June 23, 2009.

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15 Id.
16 Id. at 300-313.

GTBI explained that it found no need to present the foregoing records before the LA considering that the petitioner's last offense of dishonesty was sufficiently serious to justify his dismissal.

In its Decision[17] dated December 15, 2010, the NLRC denied the appeal and held that the petitioner's act of requesting his subordinate to "punch-in" his timecard does not fall within the ambit of serious misconduct because it was not willful in character. On the contrary, the petitioner acted in good faith for reporting his arrival at the workplace. The records of petitioner's previous infractions were rejected by the NLRC since they were raised for the first time on appeal.

On motion for reconsideration, the NLRC reversed its initial ruling and gave credence to records of the petitioner's previous infractions and based thereon, found his dismissal valid. The NLRC applied the "totality rule" which states that: "the totality of infractions or number of violations committed during the period of employment shall be considered in determining the penalty to be imposed on the erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other."[18] The NLRC's Resolution[19] dated May 30, 2011 disposed thus:

> **WHEREFORE**, Our Decision dated December 15, 2010 is hereby vacated and set aside and a new one rendered dismissing the instant Complaint for lack of merit.
>
> **SO ORDERED**.[20]

On June 20, 2011, the petitioner passed away due to myocardial infarction secondary to skin tuberculosis. His sister, Elizabeth Alvarez Casajeros, survived him and she was thereby substituted in his stead in the case.[21]

Ruling of the CA

The petitioner elevated the case to the CA in a special civil action for *certiorari* under Rule 65 of the Rules of Court. In its Decision[22] dated

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17 Id. at 54-61.
18 Id. at 68, citing *Valiao v. CA*, 479 Phil. 459, 470-471 (2004).
19 Id. at 62-71.
20 Id. at 70-71.
21 Notice of Death, id. at 72; Death Certificate, id. at 73.
22 Id. at 182-201.

January 17, 2012, the CA upheld the NLRC's conclusions adding that it had the power to receive evidence of the petitioner's previous infractions and based thereon there is satisfactory basis for GTBI to impose on him the ultimate penalty of dismissal. The CA disposed thus:

> **WHEREFORE**, premises considered, the Petition is **DENIED**. No pronouncement as to costs.
>
> **SO ORDERED**.[23]

The petitioner moved for reconsideration,[24] but his motion was denied in CA's Resolution[25] dated May 18, 2012. Hence, the present recourse ascribing that the CA erred in upholding the evidence belatedly submitted by GTBI and in ruling that the petitioner committed serious misconduct despite the absence of a wrongful intent in the transgression that led to his dismissal.

The Court's Ruling

The petition is bereft of merit.

At the outset, it bears emphasizing that the inconsistent factual findings and conclusions of the LA and NLRC have already been addressed and settled by the CA when it affirmed the latter tribunal.[26] Hence, the Court, not being a trier of facts, ought to accord respect if not finality to the findings of the CA especially when the same are amply substantiated by the records, [27] as in this case.

Under Article 293 (formerly Article 279) of the Labor Code,[28] an employer shall not terminate the services of an employee except only for a just or authorized cause. A dismissal not anchored on a just or authorized cause is considered illegal and it entitles the employee to reinstatement or in certain instances, separation pay in lieu thereof, as well as the payment of backwages.

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23 Id. at 198.
24 Id. at 202-206.
25 Id. at 208-209.
26 *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 28.
27 *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 631.
28 Renumbered by Republic Act No. 10151 entitled "An Act Allowing the Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree No. Four Hundred Forty-Two, As Amended, Otherwise Known as the Labor Code of the Philippines.

Article 296(c) (formerly Article 279[c]) of the same Code[29] codifies the just causes of termination, among which is the employer's loss of trust and confidence in its employee, the ground cited by GTBI in dismissing the petitioner.

Loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, 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.[30]

There are two classes of positions of trust. First, are the 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. The second class consists of the 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.[31]

It is undisputed that at the time of his dismissal, the petitioner was holding supervisory position after having risen from the ranks since the start of his employment. His position is unmistakably one imbued with trust and confidence as he is charged with the delicate task of overseeing the operations and manpower of three stores owned by GTBI. As a supervisor, a high degree of honesty and responsibility, as compared with ordinary rank-and-file employees, was required and expected of him. The fact that he was not charged with the custody of the company's money or property is inconsequential because he belongs to the first class of employees occupying position of trust and not to the fiduciary rank and file class.

The second requirement for dismissal due to loss of trust and confidence is further qualified by jurisprudence. The complained act must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts.[32] The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[33]

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29 Id.

30 *Philippine Plaza Holdings, Inc. v. Ma. Flora M. Episcope*, G.R. No. 192826, February 27, 2013.

31 Id.

32 *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 324.

33 Id.

The analogous factual findings of the CA and the NLRC conform to the foregoing guidelines. The punching of time card is undoubtedly work related. It signifies and records the commencement of one's work for the day. It is from that moment that an employee dons the cape of duties and responsibilities attached to his position in the workplace. It is the reckoning point of the employer's corresponding obligation to him – to pay his salary and provide his occupational and welfare protection or benefits. Any form of dishonesty with respect to time cards is thus no trivial matter especially when it is carried out by a supervisory employee like the petitioner.

The transgression imputed to the petitioner was likewise attended with willfulness. It must be noted that the petitioner misled the labor tribunals in claiming that during his entire 12-year stint with GTBI, he was never meted with any disciplinary action. Records, however, disprove such claim. Additional evidence were submitted by GTBI before the NLRC on appeal[34] and as correctly ruled by the CA, the same may be allowed as the rules of evidence prevailing in courts of law or equity are not controlling in labor proceedings.[35]

The said evidence shows at least three (3) different offenses – ranging from tardiness, negligence in preparing inventory to dishonesty relating to his timecard – repeatedly committed by the petitioner over the years and for which he has been constantly disciplined. On July 4, 2003, the petitioner was found guilty of asking an employee to punch-in his time card for him. He was suspended for 45 days with a warning that a recurrence of the same act will merit dismissal from service.[36] He, however, disregarded this incident and the corrective intention of disciplinary action taken on him when he repeated the same act on May 27, 2009.

A repetition of the same offense for which one has been previously disciplined and cautioned evinces deliberateness and willful intent; it negates mere lapse or error in judgment. While it may be assumed that the petitioner has become stubborn or has forgotten the 2003 episode, it should not work to his advantage, because either cause demonstrates his indifference to GTBI's policies on employees' conduct and discipline. Based on this consideration, taken together with his numerous other offenses, GTBI had compelling reasons to conclude that the petitioner has become unfit to remain in its employ.

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34 *Rollo*, pp. 300-313.

35 LABOR CODE OF THE PHILIPPINES, Article 221; *Mcdonald's (Katipunan Branch) v. Alba*, G.R. No. 156382, December 18, 2008, 574 SCRA 427.

36 *Rollo*, p. 307.

In *Merin v. NLRC*,[37] the Court ruled that in determining the sanction imposable to an employee, the employer may consider and weigh his other past infractions, thus:

> 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. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[38]
> (Citations omitted)

The NLRC and the CA were thus correct in applying the totality of infractions rule and in adjudging that the petitioner's dismissal was grounded on a just and valid cause. The standards of procedural due process were likewise observed in effecting the petitioner's dismissal. As ascertained by the NLRC and CA, GTBI sent the petitioner a Notice to Explain dated May 27, 2009. On May 29, 2009, he reported to GTBI's office and submitted his written explanation as shown in his letter bearing the same date. On August 26, 2009, he received GTBI's Notice of Termination dated June 23, 2009.[39]

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated January 17, 2012 and Resolution dated May 18, 2012 of the Court of Appeals in CA-G.R. SP No. 120968 are **AFFIRMED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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37 G.R. No. 171790, October 17, 2008, 569 SCRA 576.

38 Id. at 581-582.

39 *See* CA's Decision dated January 17, 2012, *rollo*, pp. 194-195.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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