Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

P.J. LHUILLIER, INC. and MARIO RAMON LUDEÑA, Petitioners,	**G.R. No. 198620** Present:
- versus -	VELASCO, JR., *J.*, *Chairperson*, VILLARAMA, JR., REYES, PERLAS-BERNABE,* and JARDELEZA, *JJ.*
FLORDELIZ VELAYO, Respondent.	Promulgated: **November 12, 2014**

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DECISION

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Decision[2] dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 03069, affirming the finding of the National Labor Relations Commission (NLRC) that respondent Flordeliz Velayo (respondent) was illegally dismissed. The Resolution[3] dated September 14, 2011 denied the motion for reconsideration thereof.

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* Acting member per Special Order No. 1866 dated November 4, 2014 *vice* Associate Justice Diosdado M. Peralta.

1 *Rollo*, pp. 3-20.

2 Penned by Associate Justice Edgar T. Lloren, with Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan, concurring; id. at 23-32.

3 Id. at 34-35.

The Facts

The essential antecedent facts are summarized in the assailed CA decision, to wit:

> On June 13, 2003, (herein petitioner) PJ (CEBU) LHUILLIER, INC. (PJ LHUILLIER for brevity) hired FLORDELIZ M. ABATAYO [sic] as Accounting Clerk at the LH-4, Cagayan de Oro City Branch with a basic monthly salary of P9,353.00. On February 9, 2008 appellant (herein private respondent) was served with a Show Cause Memo by MARIO RAMON LUDEÑA, Area Operations Manager of PJ Lhuillier (herein petitioner), ordering her to explain within 48 hours why no disciplinary action should be taken against her for dishonesty, misappropriation, theft or embezz[le]ment of company funds in violation of Item 11, Rule V of the Company Code of Conduct. Thereafter, (s)he was placed under preventive suspension from February 9 to March 8, 2008 while her case was under investigation.
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> The charges against the appellant (herein private respondent) were based on the Audit Findings conducted on October 29, 2007, where the overage amount of P540.00 was not reported immediately to the supervisor, not recorded at the end of that day.
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> On February 11, 2008, complainant (herein private respondent) submitted her reply and admitted that she was not able to report the overage to the supervisor since the latter was on leave on that day and that she was still tracing the overage; and that the omission or failure to report immediately the overage (sic) was just a simple mistake without intent to defraud her employer.
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> On March 10, 2008, after the conduct of a formal investigation and after finding complainant's (herein private respondent's) [explanations] without merit, PJ LHUILLIER (herein petitioner) terminated her employment as per Notice of Termination on grounds of serious misconduct and breach of trust.[4] (Citation omitted)

On March 14, 2008, the respondent filed a complaint for illegal dismissal, separation pay and other damages against P.J. Lhuillier, Inc. (PJLI) and Mario Ramon Ludeña, Area Operations Manager (petitioners). On July 23, 2008, the Labor Arbiter (LA) rendered judgment, the dispositive portion of which reads as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby entered ordering the dismissal of the instant complaint for lack of merit.
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> SO ORDERED.[5]

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4 Id. at 24.
5 Id. at 25.

The LA found that the respondent's termination was valid and based not on a mere act of simple negligence in the performance of her duties as cashier:

> This is not a case of simple negligence as the facts show that complainant, instead of reporting the matter immediately, had set aside the P540.00 for her personal use instead of reporting the overage or recording it in the operating system of the company.
>
> Complainant is not entitled to moral as well as exemplary damages for lack of basis.[6]

On appeal, the NLRC in its Decision dated March 19, 2009 countermanded the LA, holding that the respondent was illegally dismissed since the petitioners failed to prove a just cause of serious misconduct and willful breach of trust:

> In fine, the Labor Arbiter *a quo* utterly disregarded the rule on proportionality that has been observed in a number of cases, that is, "the penalty imposed should be commensurate to the gravity of his offense." x x x
>
> x x x x
>
> In the instant case, PJ LHUILLIER was not able to discharge the burden of proving that the dismissal of the complainant was for valid or just causes of serious misconduct and willful breach of trust. Thus, We disagree with the Labor Arbiter's findings and conclusion that complainant was validly dismissed from service.
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> x x x x
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> ... Significantly, the complainant's omission or procedural lapse did not cause any loss or damage to the company.[7]

Nonetheless, finding that the relations between the petitioners and the respondent have become strained, the NLRC did not order the reinstatement of the respondent. Thus:

> WHEREFORE, the instant appeal is GRANTED. The assailed decision is hereby SET ASIDE and REVERSED, and a new one entered declaring that complainant was ILLEGALLY DISMISSED. Accordingly, respondent PJ (CEBU) LHUILLIER, INC. is hereby ORDERED:
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> (a) to pay complainant separation pay equivalent to one (1) month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year in lieu of reinstatement due to strained

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6 Id.

7 Id. at 26-27.

> relationship, computed from June 13, 2003 up to the finality of the promulgation of this judgment;
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> (b) to pay complainant FULL BACKWAGES in accordance with Bustamante vs. NLRC ruling (265 SCRA 061); and
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> (c) to pay ten percent (10%) of the total money award as attorney's fees.
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> SO ORDERED.[8]

The NLRC subsequently denied the petitioners' motion for reconsideration thereof. On July 31, 2009, the petitioners filed a petition for *certiorari* in the CA with prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, invoking the following issues:

> I
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> WHETHER OR NOT THE RESPONDENT [NLRC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DEVIATED FROM THE FINDINGS OF FACTS OF THE HONORABLE LABOR ARBITER.
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> II
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> WHETHER OR NOT PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION PENDING THE RESOLUTION OF THE INSTANT PETITION.[9]

The respondent filed her comment on August 19, 2009. On October 8, 2009, the petitioners filed an urgent motion to resolve their petition for *certiorari* and prayer for TRO and/or writ of preliminary injunction. On November 9, 2009, the CA denied the petitioners' prayer for TRO stating that they have not shown that they stood to suffer grave and irreparable injury if the TRO was denied. The remaining issue in the CA, then, was whether the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it set aside the factual conclusion and ruling of the LA. The CA ruled in the negative:

> We concur with the NLRC in finding for private respondent. Time and again, the Supreme Court has held that it is cruel and unjust to impose the drastic penalty of dismissal if not commensurate to the gravity of the misdeed.

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8 Id. at 25-26.

9 Id. at 27-28.

In employee termination disputes, the employer bears the burden of proving that the employee's dismissal was for just and valid cause. In the instant case, the evidence does not support the finding of the Labor Arbiter that private respondent is guilty of serious misconduct.

In this jurisdiction, the Supreme Court has consistently defined misconduct as an improper or wrong conduct, a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, implies wrongful intent and not mere error of judgment. To be a just cause for termination under Article 282 of the Labor Code of the Philippines, the misconduct must be serious, that is, it must be of such grave and aggravated character and not merely trivial or unimportant. However serious, such misconduct must nevertheless be in connection with the employee's work; the act complained of must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer.

Private respondent's lapse was not a "serious" one, let alone indicative of serious misconduct. In fact, she (herein private respondent) admitted that she was not able to report the overage to the supervisor since the latter was on leave on that day and that she was still tracing the overage; **and that the omission or failure to report immediately the overage was just a simple mistake without intent to defraud her employer**. As found by the NLRC, private respondent worked for petitioner for almost six (6) years, and it is not shown that she committed any infraction of company rules during her employment. In fact, private respondent was once awarded by petitioner due to her heroic act of defending her Manager, Ms. Lilibeth Cortez, while resisting a hold-upper.

The settled rule is that when supported by substantial evidence, factual findings made by quasi-judicial and administrative bodies are accorded great respect and even finality by the courts. These findings are not infallible, though; when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. Hence, when factual findings of the Labor Arbiter and the NLRC are contrary to each other, there is a necessity to review the records to determine which conclusions are more conformable to the evidentiary facts. The case before Us shows that the finding of the NLRC is supported by substantive evidence as compared to the finding of the Labor Arbiter with respect to the issue of illegal dismissal. Moreover, in case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.

Finally, it is a time-honored principle that although it is the prerogative of management to employ the services of a person and likewise to discharge him, such is not without limitations and restrictions. The dismissal of an employee must be done with just cause and without abuse of discretion. It must not be done in an arbitrary and despotic manner. To hold otherwise would render nugatory the security of tenure clause enshrined in the Constitution.[10] (Citations omitted and emphasis ours)

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[10] Id. at 28-30.

Invoking Article 279[11] of the Labor Code, the CA agreed with the NLRC that the respondent should have been reinstated without loss of seniority rights and other privileges, with payment of her full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time her compensation was withheld up to the time of actual reinstatement. However, with the parties' relations now strained, the CA conceded that the payment of a separation pay, along with backwages as a separate and distinct relief, is an acceptable alternative to reinstatement. The CA further awarded the respondent attorney's fees since she was forced to litigate and incur expenses to protect her rights and interests by reason of the unjustified acts of the petitioners.

Petition for Review in the Supreme Court

In this petition, the petitioners raise the following issues:

I. WHETHER OR NOT THE MISAPPROPRIATION BY A PAWNSHOP PERSONNEL IN THE AMOUNT OF [₱]540.00, COUPLED WITH SUBSEQUENT DENIALS, AMOUNT TO A SERIOUS MISCONDUCT IN OFFICE?

II. WHETHER OR NOT THE IMPOSITION OF THE PENALTY OF TERMINATION FROM OFFICE [UPON] A PAWNSHOP PERSONNEL WHO MISAPPROPRIATED AN AMOUNT OF P540.00 FROM THE COFFERS OF THE PAWNSHOP, AND WHO MADE SUBSEQUENT DENIALS, IS CRUEL AND UNJUST?[12]

The appellate court agreed with the NLRC that the respondent's lapse was "just a simple mistake without intent to defraud her employer;"[13] that the incident was neither serious nor indicative of serious misconduct; and that her dismissal was disproportionate to her offense. It accepted the respondent's explanation that her failure to report her cash overage of □540.00 on October 29, 2007 to the branch manager, who was her immediate superior, was because the latter was then on leave, and that for days thereafter, she was hard-pressed in trying to trace and determine the cause thereof. The CA noted that the respondent had worked for PJLI for almost six years without any previous infractions of company rules, and that she was once commended for a heroic act of defending her former branch manager, Ms. Lilibeth Cortez, during a branch holdup.

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11 **Art. 279. Security of Tenure.** – x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

12 *Rollo*, pp. 9-10.

13 Id. at 29.

On the other hand, the petitioners strongly maintain that under Rule V(A)(11) of its Code of Conduct on "Dishonesty, Misappropriation, Theft or Embezzlement of Company Funds or Property," the respondent committed a "First Level Offense" which is punishable by outright dismissal. According to the petitioners, the respondent committed the following acts which constitute dishonesty and serious misconduct:

1. The respondent did not enter the discovered cash overage in the "operating system" (computerized cash ledger) of the branch on October 29, 2007 notwithstanding that she was fully aware of the company's policy that such unexplained receipt should be recorded at the end of the business day;

2. The respondent did not report the cash overage to her immediate superior, Branch Manager Violette Grace Tuling (Tuling), upon the latter's return from a leave of absence on November 3, 2007. Neither did the respondent seek Tuling's help concerning the matter, and just averred that she was afraid to be scolded by Tuling;

3. The respondent deliberately lied about her cash overage after Tuling confronted her on December 17, 2007;

4. Again, the respondent falsely denied the cash overage when the company auditor asked her to explain how it happened; and

5. The respondent concocted a cover-up by claiming that a computer glitch occurred when she was about to post the cash overage in the operating system.[14]

Ruling of the Court

There is merit in the petition.

It need not be stressed that the nature or extent of the penalty imposed on an erring employee must be commensurate to the gravity of the offense as weighed against the degree of responsibility and trust expected of the employee's position. On the other hand, the respondent is not just charged with a misdeed, but with loss of trust and confidence under Article 282(c) of the Labor Code, a cause premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of management. Needless to say, such an employee

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[14] Petitioner's Memorandum; id. at 77.

bears a greater burden of trustworthiness than ordinary workers, and the betrayal of the trust reposed is the essence of the loss of trust and confidence which is a ground for the employee's dismissal.[15]

The respondent's misconduct must be viewed in light of the strictly fiduciary nature of her position.

In addition to its pawnshop operations, the PJLI offers its "*Pera Padala*" cash remittance service whereby, for a fee or "sending charge," a customer may remit money to a consignee through its network of pawnshop branches all over the country. On October 29, 2007, a customer sent □500.00 through its branch in Capistrano, Cagayan de Oro City, and paid a remittance fee of □40.00. Inexplicably, however, no corresponding entry was made to recognize the cash receipt of □540.00 in the computerized accounting system (operating system) of the PJLI. The respondent claimed that she tried very hard but could not trace the source of her unexplained cash surplus of □540.00, but a branch audit conducted sometime in December 2007 showed that it came from a "*Pera Padala*" customer.

To be sure, no significant financial injury was sustained by the PJLI in the loss of a mere □540.00 in cash, which, according to the respondent she sincerely wanted to account for except that she was pre-empted by fear of what her branch manager might do once she learned of it. But in treating the respondent's misconduct as a simple negligence or a simple mistake, both the CA and the NLRC grossly failed to consider that she held a position of utmost trust and confidence in the company.

There are two classes of corporate positions of trust: on the one hand 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 other officers or members of the managerial staff; on the other hand are 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.[16]

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15 *Mercury Drug Corporation v. Serrano,* 519 Phil. 409, 418 (2006); *Caingat v. NLRC*, 493 Phil. 299, 308 (2005).

16 *M+W Zander Philippines, Inc., et al. v. Enriquez,* 606 Phil. 591, 607 (2009).

The respondent was first hired by the petitioners as an accounting clerk on June 13, 2003, for which she received a basic monthly salary of □9,353.00. On October 29, 2007, the date of the subject incident, she performed the function of vault custodian and cashier in the petitioners' Branch 4 pawnshop in Capistrano, Cagayan de Oro City. In addition to her custodial duties, it was the respondent who electronically posted the day's transactions in the books of accounts of the branch, a function that is essentially separate from that of cashier or custodian. It is plain to see then that when both functions are assigned to one person to perform, a very risky situation of conflicting interests is created whereby the cashier can purloin the money in her custody and effectively cover her tracks, at least temporarily, by simply not recording in the books the cash receipt she misappropriated. This is commonly referred to as lapping of accounts.[17] Only a most trusted clerk would be allowed to perform the two functions, and the respondent enjoyed this trust.

The series of willful misconduct committed by the respondent in mishandling the unaccounted cash receipt exposes her as unworthy of the utmost trust inherent in her position as branch cashier and vault custodian and bookkeeper.

The respondent insists that she never intended to appropriate the money but was afraid that Tuling would scold her, and that she kept the money for a long time in her drawer and only decided to take it home after her search for the cause of the cash overage had proved futile. Both the CA and the NLRC agreed with her, and held that what she committed was a simple mistake or simple negligence.

The Court disagrees.

Granting *arguendo* that for some reason not due to her fault, the respondent could not trace the source of the cash surplus, she nonetheless well knew and understood the company's policy that unexplained cash must be treated as miscellaneous income under the account "Other Income," and that the same must be so recognized and recorded at the end of the day in the

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[17] *See OCA v. Roque, et al.*, 597 Phil. 603, 608 (2009), citing Joseph T. Wells, CPA, CFE. *Skimming: The Achilles Heel of the Audit.* Association of Certified Fraud Examiners, based in the USA <http.//www.nysscpa.org/printversions/cpaj/2007/607/p60.htm.> (visited on January 8, 2009):

"Lapping" is a concealment technique where the subtraction of money from one customer is covered by applying the payment of a different customer. For example, a cashier may steal a payment from customer A and cover it by applying a payment from customer B to customer A's account. Then when customer C pays, that amount is applied to customer B['s account] and so on. Smart crooks would never lap accounts receivable, but amateurs do not realize that the technique requires constant monitoring to avoid detection. Most lapping schemes don't last long because of the continuous manual intervention required.

branch books or "operating system." No such entry was made by the respondent, resulting in unrecorded cash in her possession of □540.00, which the company learned about only two months thereafter through a branch audit.

Significantly, when Tuling returned on November 3, 2007 from her leave of absence, the respondent did not just withhold from her the fact that she had an unaccounted overage, but she refused to seek her help on what to do about it, despite having had five days to mull over the matter until Tuling's return.

In order that an employer may invoke loss of trust and confidence in terminating an employee under Article 282(c) of the Labor Code, certain requirements must be complied with, namely: (1) the employee 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.[18] While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt,[19] it being sufficient that there is 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 unworthy of trust and confidence demanded by his position.[20]

The petitioners are fully justified in claiming loss of trust and confidence in the respondent. While it is natural and understandable that the respondent should feel apprehensive about Tuling's reaction concerning her cash overage, considering that it was their first time to be working together in the same branch, we must keep in mind that the unaccounted cash can only be imputed to the respondent's own negligence in failing to keep track of the transaction from which the money came. A subsequent branch audit revealed that it came from a "*Pera Padala*" remittance, implying that although the amount had been duly remitted to the consignee, the sending branch failed to record the payment received from the consigning customer. For days following the overage, the respondent tried but failed to reconcile her records, and for this inept handling of a "*Pera Padala*" remittance, she already deserved to be sanctioned.

Further, as a matter of strict company policy, unexplained cash is recognized at the end of the day as miscellaneous income. Inexplicably, despite being with the company for four years as accounting clerk and cashier, the respondent failed to make the required entry in the branch operating system recognizing miscellaneous income. Such an entry could have been easily reversed once it became clear how the overage came about.

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18 *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 323-324.

19 *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg,* 443 Phil. 866, 874 (2003).

20 *Philippine Plaza Holdings, Inc. v. Episcope*, G.R. No. 192826, February 27, 2013, 692 SCRA 227, 236.

But the respondent obviously thought that by skipping the entry, she could keep Tuling from learning about the overage. Her trustworthiness as branch cashier and bookkeeper has been irreparably tarnished. The respondent's untrustworthiness is further demonstrated when she began to concoct lies concerning the overage: *first*, by denying its existence to Tuling and again to the company auditor; *later*, when she falsely claimed that a computer glitch or malfunction had prevented her from posting the amount on October 29, 2007; and *finally,* when she was forced to admit before the company's investigating panel that she took and spent the money.[21]

Mere substantial evidence is sufficient to establish loss of trust and confidence

The respondent's actuations were willful and deliberate. A cashier who, through carelessness, lost a document evidencing a cash receipt, and then wilfully chose not to record the excess cash as miscellaneous income and instead took it home and spent it on herself, and later repeatedly denied or concealed the cash overage when confronted, deserves to be dismissed.

Article 282[22] of the Labor Code allows an employer to dismiss an employee for willful breach of trust or loss of confidence. It has been held that a special and unique employment relationship exists between a corporation and its cashier. Truly, more than most key positions, that of a cashier calls for utmost trust and confidence,[23] and it is the breach of this trust that results in an employer's loss of confidence in the employee.[24] In *San Miguel Corporation v. NLRC, et al.*,[25] the Court held:

> As a rule this Court leans over backwards to help workers and employees continue in their employment. We have mitigated penalties imposed by management on erring employees and ordered employers to reinstate workers who have been punished enough through suspension. **However, breach of trust and confidence and acts of dishonesty and infidelity in**

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21 Per PJLI Formal Investigation Report, *rollo*, pp. 90-92.

22 **ART. 282. Termination by employer.** – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(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 representative; and

(e) Other causes analogous to the foregoing.

23 *Metro Drug Corporation v. NLRC,* 227 Phil. 121, 124-125 (1986).

24 *Quezon Electric Cooperative v. NLRC,* 254 Phil. 84, 88 (1989). *See Cañeda v. Philippine Airlines, Inc.*, 545 Phil. 560, 564 (2007).

25 213 Phil. 168 (1984).

> **the handling of funds and properties are an entirely different matter.**[26] (Emphasis ours)

It has been held that in dismissing a cashier on the ground of loss of confidence, it is sufficient that there is some basis for the same or that the employer has a reasonable ground to believe that the employee is responsible for the misconduct, thus making him unworthy of the trust and confidence reposed in him.[27] Therefore, if there is sufficient evidence to show that the employer has ample reason to distrust the employee, the labor tribunal cannot justly deny the employer the authority to dismiss him.[28] Indeed, employers are allowed wider latitude in dismissing an employee for loss of trust and confidence, as the Court held in *Atlas Fertilizer Corporation v. NLRC*:[29]

> As a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions which by their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust 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. x x x.[30] (Citations omitted)

Furthermore, it must also be stressed 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 *Lopez v. Alturas Group of Companies*:[31]

> [T]he language of Article 282(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

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26 Id. at 175.
27 *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg,* supra note 19, at 874-875.
28 *Reynolds Philippine Corporation v. Eslava,* 221 Phil. 614, 620 (1985).
29 340 Phil. 85 (1997).
30 Id. at 94.
31 G.R. No. 191008, April 11, 2011, 647 SCRA 568.

> 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.[32] (Emphasis and underscoring in the original)

In holding a position requiring full trust and confidence, the respondent gave up some of the rigid guarantees available to ordinary employees. She insisted that her misconduct was just an "innocent mistake," and maybe it was, had it been committed by other employees. But surely not as to the respondent who precisely because of the special trust and confidence given her by her employer must be penalized with a more severe sanction.[33]

A cashier's inability to safeguard and account for missing cash is sufficient cause to dismiss her.

The respondent insisted that she never intended to misappropriate the missing fund, but in *Santos v. San Miguel Corp.*,[34] the Court held that misappropriation of company funds, notwithstanding that the shortage has been restituted, is a valid ground to terminate the services of an employee for loss of trust and confidence.[35] Also, in *Cañeda v. Philippine Airlines, Inc.*,[36] the Court held that it is immaterial what the respondent's intent was concerning the missing fund, for the undisputed fact is that cash which she held in trust for the company was missing in her custody. At the very least, she was negligent and failed to meet the degree of care and fidelity demanded of her as cashier. Her excuses and failure to give a satisfactory explanation for the missing cash only gave the petitioners sufficient reason to lose confidence in her.[37] As it was held in *Metro Drug Corporation v. NLRC*:[38]

> It would be most unfair to require an employer to continue employing as its *cashier* a person whom it reasonably believes is no longer capable of giving full and wholehearted trustworthiness in the stewardship of company funds.[39]

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32 Id. at 573-574, citing *Cruz, Jr. v. CA*, 527 Phil. 230, 242-243 (2006).

33 *See Metro Drug Corporation v. NLRC,* supra note 23 and *Cañeda v. Philippine Airlines, Inc.*, supra note 24.

34 447 Phil. 264 (2003).

35 Id. at 278.

36 545 Phil. 560 (2007).

37 Id. at 565.

38 227 Phil. 121 (1986).

39 Id. at 127.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated June 30, 2011 of the Court of Appeals in CA-G.R. SP No. 03069 is **REVERSED and SET ASIDE.** The Decision of the Labor Arbiter dated July 23, 2008 is **REINSTATED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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.

ANTONIO T. CARPIO
Acting Chief Justice