



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

ZAIDA R. INOCENTE,
 Petitioner,

G.R. No. 202621

Present:

- versus -

CARPIO, *J.*, Chairperson,
 BRION,
 DEL CASTILLO,*
 MENDOZA, and
 LEONEN, *JJ.*

**ST. VINCENT FOUNDATION FOR
 CHILDREN AND AGING,
 INC./VERONICA MENGUITO,**
 Respondents.

Promulgated:

22 JUN 2016

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DECISION

BRION, J.:

In this petition for review on *certiorari*,¹ we resolve the challenge to the February 27, 2012 decision² and the July 11, 2012 resolution³ of the Court of Appeals (*CA*) in CA-G.R. Sp No. 118576.

The *CA*'s February 27, 2012 decision affirmed the October 28, 2010 decision⁴ of the National Labor Relations Commission (*NLRC*) in *NLRC* LAC Case No. 05-001025-10 (*NLRC* NCR Case No. 07-10270-09) as it, in turn, affirmed the November 27, 2009 decision⁵ of the Labor Arbiter (*LA*).

The *LA*'s November 27, 2009 decision denied the complaint for illegal dismissal filed by petitioner *Zaida R. Inocente* for lack of merit.

* On Leave.

¹ *Rollo*, pp. 8-40.

² Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Stephen C. Cruz and Edwin D. Sorongon, *id.* at 43-55.

³ *Id.* at 57.

⁴ Penned by Presiding Commissioner Herminio V. Suelo, *id.* at 189-198.

⁵ Penned by Labor Arbiter Antonio R. Macam, *id.* at 144-155.

The Factual Antecedents

Respondent St. Vincent Foundation for Children and Aging, Inc. (*St. Vincent*) is a non-stock, non-profit foundation engaged in providing assistance to children and aging people and conducting weekly social and educational activities among them. It is financially supported by the Kansas based Catholic Foundation for Children and Aging (*CFCA*), a Catholic foundation dedicated to promoting Christian values and uplifting the welfare of the children all over the world. Respondent Veronica *Menguito* is St. Vincent's President/Directress (collectively, they shall be referred to as *respondents*).

In 2000, St. Vincent hired Zaida as Program Assistant; it promoted her as Program Officer the following year. Zaida, then single, was known as Zaida Febrer Ranido. Zaida's duties as program officer included the following: monitoring and supervising the implementation of the programs of the foundation, providing training to the staff and sponsored members, formulating and developing program policies for the foundation, facilitating staff meetings, coordinating and establishing linkages with other resource agencies and persons, as well as preparing St. Vincent's annual program plan and budget, and year-end reports.

In 2001, Zaida met *Marlon* D. Inocente. Marlon was then assigned at St. Vincent's Bataan sub-project. In 2002, Marlon was transferred to St. Vincent's sub-project in Quezon City. Zaida and Marlon became close and soon became romantically involved with each other.

In September 2006, St. Vincent adopted the CFCA's Non-Fraternization Policy; it reads in full:

CFCA Policy 4.2.2.3. Non-Fraternization Policy

While CFCA **does not wish to interfere with the off-duty and personal conduct of its employees**, to prevent unwarranted sexual harassment claims, uncomfortable working relationships, morale problems among other employees, and even the appearance of impropriety, employees who direct and coordinate the work of others are **strongly discouraged** from engaging in consensual romantic or sexual relationships with any employee or volunteer of CFCA.⁶ [emphasis supplied]

Despite St. Vincent's adoption of the Non-Fraternization Policy, Zaida and Marlon discretely continued their relationship; they kept their relationship private and unknown to St. Vincent even after Marlon resigned in July 2008.

On February 19, 2009, Zaida experienced severe abdominal pain requiring her to go to the hospital. The doctor later informed her that she had suffered a miscarriage. While confined at the hospital, Zaida informed

⁶ *Id.* at 11.

St. Vincent of her situation. Menguito verbally allowed Zaida to go on maternity leave until April 21, 2009. Zaida was released from the hospital two days after her confinement.

On March 31, 2009, Zaida was again confined at the hospital for ectopic pregnancy. Zaida, thereafter, underwent surgery⁷ to have one of her fallopian tubes removed. She was discharged from the hospital on April 4, 2009.

On May 18, 2009, Zaida received from St. Vincent a letter⁸ dated May 14, 2009 and signed by Menguito requiring her to explain in writing why no administrative action should be taken against her. St. Vincent charged her with violation of the CFCA Non-Fraternization Policy and of the St. Vincent's Code of Conduct provisions prohibiting: (1) acts against agency interest and policy by indulging in immoral and indecent act; (2) acts against persons by challenging superiors' authority, threatening and intimidating co-employees, and exerting undue influence on subordinates to gain personal benefit; and (3) violations within the terms of employment by doing an act offensive to the moral standard of the Foundation.

In her May 19, 2009 reply-letter, Zaida defended that: (1) her relationship with Marlon started long before St. Vincent's Non-Fraternization Policy took effect; (2) Marlon was no longer connected with St. Vincent since 2008; (3) her relationship with Marlon is not immoral as they were both of legal age and with no impediments to marry; (4) they kept their relationship private and were discreet in their actions; (5) Marlon stayed at her place only to take care of her while she was sick; and (6) they already planned to get married as soon as she recovers and their finances improve.

Zaida's explanation failed to convince St. Vincent. In the letter dated May 30, 2009,⁹ St. Vincent terminated Zaida's employment for immorality, gross misconduct and violation of St. Vincent's Code of Conduct.

Zaida and Marlon were subsequently married on June 23, 2009.¹⁰

On July 14, 2009, Zaida filed before the LA her complaint for illegal dismissal, with prayer for reinstatement, backwages, moral and exemplary damages and litigation expenses.

The Labor Tribunal's Rulings

In its decision¹¹ dated November 27, 2009, the labor arbiter (LA) dismissed Zaida's complaint for lack of basis. The LA found that, despite

⁷ The procedure is known as "salpingectomy."

⁸ *Rollo*, pp. 60-61.

⁹ *Id.* at 78-80.

¹⁰ *Id.* at 223.

¹¹ *Supra* note 5.

the implementation of the Non-Fraternization Policy in 2006, Zaida maintained and concealed from St. Vincent her relationship with Marlon. The LA pointed out that as a program officer, Zaida was under the obligation to observe this Policy and to inform her employer of her relationship. Her acts, therefore, could be characterized as an act of dishonesty constituting willful breach of trust and confidence justifying her dismissal.

The LA also found the dismissal compliant with the due process requirements of two notices, each of which properly appraised Zaida of the specific acts that formed the basis for her dismissal.

In its October 28, 2010 decision,¹² the NLRC agreed with the LA's findings. It additionally pointed out that Zaida's act of continuing her intimate relationship with Marlon despite the implementation of the Non-Fraternization Policy constituted not only immoral conduct; it also prejudiced the interest of St. Vincent as it set a bad example not only to her subordinates but also to the children-beneficiaries of St. Vincent. Her act, therefore, amounted to serious misconduct justifying her dismissal.

The NLRC denied Zaida's motion for reconsideration¹³ in its January 11, 2011 resolution.¹⁴ The denial prompted Zaida's *certiorari* petition¹⁵ before the CA.

The CA's Ruling

The CA denied Zaida's *certiorari* petition for lack of merit.¹⁶

The CA agreed that Zaida's dismissal was valid, reiterating that Zaida's act of continuing her relationship with Marlon despite the implementation of the Non-Fraternization Policy, and without the benefit of marriage, went against the very policy of promoting Christian values that she was charged to uphold. Her subsequent marriage to Marlon did not help her situation as, under the circumstances, it appeared more of an afterthought intended to circumvent St. Vincent's rules and code of conduct.

Lastly, the CA declared that her dismissal was not due to her pregnancy and, therefore, did not violate Article 137(2) of the Labor Code. Rather, her pregnancy was merely the operative act that led to the discovery of her immoral conduct.

Zaida filed the present petition after the CA denied her motion for reconsideration¹⁷ in the CA's July 11, 2012 resolution.¹⁸

¹² *Supra* note 4.

¹³ *Rollo*, pp. 199-205. See also *rollo*, pp. 211-222 for her Supplement to Motion for Reconsideration.

¹⁴ *Id.* at 234-235.

¹⁵ *Id.* at 236-261.

¹⁶ *Supra* note 2.

¹⁷ *Rollo*, pp. 317-329.

¹⁸ *Supra* note 3.

The Petition

Zaida considers St. Vincent's Non-Fraternization Policy to be an invalid exercise of its management prerogative. She argues that the Policy is unreasonable; it infringes on the constitutional rights of persons as it seeks to control even those conduct committed outside of the workplace and beyond office hours. She contends that her relationship with Marlon, who ceased to be connected with St. Vincent since 2008 and which relationship they had kept private, clearly goes beyond aspects of the employment and St. Vincent's legitimate business interests – matters which it could validly regulate under its management prerogative.

She also argues that the charge of loss of trust and confidence was without clear legal and factual basis as St. Vincent failed to meet the standards that would justify loss of trust and confidence. She points out that:

First, as Program Officer, she merely recommends, but does not formulate, program policies; the responsibility to formulate would have made her position as one of trust and confidence. Neither was she invested with confidence on delicate matters, nor charged with the custody or care of St. Vincent's assets and properties.

Second, St. Vincent dismissed her for immorality, gross misconduct and violation of the Code of Conduct. The labor tribunals' finding of willful breach of trust and confidence, therefore, smacks of bad faith as it deprived her of the opportunity to properly answer the charge.

Third, the acts of fraternization and pregnancy outside of marriage which the respondents used as grounds for her dismissal are not work related and do not render her unfit to continue working for St. Vincent.

Fourth, her relationship with Marlon started long before St. Vincent implemented its Non-Fraternization Policy; it should not retroactively apply to her.

And *fifth*, at the time of her dismissal, Marlon had long ceased to be St. Vincent's employee such that the respondents could not validly use their relationship and the Non-Fraternization Policy as grounds for her dismissal.

Further, Zaida argues that, as worded, St. Vincent's Non-Fraternization Policy does not altogether prohibit consensual romantic or sexual relationships between employees and/or volunteers of CFCA, but merely discourages such relationships. The Policy, in fact, does not even require full disclosure (of such relationships) that could have otherwise justified the respondents in terminating her employment on the ground of dishonesty. Granting *arguendo* that her relationship with Marlon and her pregnancy outside of marriage could be considered immoral, the respondents failed to prove that these acts were prejudicial or detrimental to their interests.

Finally, Zaida argues that her dismissal constitutes discrimination against women. She points out that at the time the respondents dismissed her, allegedly for immorality, she was still recovering from her miscarriage. The respondents' act, therefore, clearly violated Article 137(2) of the Labor Code, Republic Act No. 9710 (the Magna Carta of Women) and the Convention on the Elimination of All Forms of Discrimination Against Women (*CEDAW*).

The Case for the Respondents

The respondents counter¹⁹ that Zaida's petition should be denied outright because it is procedurally flawed; it raises: (1) factual issues that are prohibited under Rule 45 of the Rules of Court; and (2) new issues that cannot be raised only on appeal. Findings of fact of the labor tribunals are conclusive and should no longer be disturbed, especially when, as in this case, they are affirmed by the CA.

In any case, the respondents submit that the Non-Fraternization Policy was issued in the valid exercise of management prerogative. It was intended to "prevent unwarranted sexual harassment claims, uncomfortable working relationships, morale problems among other employees, and even the appearance of impropriety."

Zaida's employment was terminated not because of her violation of its policy, and certainly not because of her pregnancy that could otherwise have contravened the laws prohibiting discrimination against women. Rather, her employment was terminated because of immorality constituting serious misconduct and willful breach of trust and confidence – grounds that the Labor Code provides as just causes for dismissal.

The Court's Ruling

We grant the petition.

I. Procedural issue: jurisdictional limitations of the Court's Rule 45 review of the CA's Rule 65 decision in labor cases

In a **Rule 45 review** of a **CA Labor decision rendered under Rule 65** of the Rules of Court, what we review are the legal errors that the CA may have committed in arriving at the assailed decision, in contrast with the review for jurisdictional errors that underlie an original *certiorari* action.

In determining this legal correctness, we examine the CA decision in the same context that it determined the presence or the absence of grave abuse of discretion in the NLRC decision that it reviewed, not on the basis of whether the NLRC decision was correct on the merits. In simple terms, we

¹⁹ *Rollo*, pp. 344-356.

test the CA's decision within the same context that the Rule 65 petition was presented before it.

Under this approach, the question that we ask is: *Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?*²⁰

We point out as well that underlying this jurisdictional limitation of our Rule 45 review is the legal reality that in the review of the labor tribunals' rulings, the courts generally accord respect to their factual findings and the conclusions that they draw from them in view of the tribunals' expertise in their field. There is also the legal reality that the NLRC decision brought before the CA under the original *certiorari* action is already final and executory and can only be reversed on a finding of grave abuse of discretion.

In resolving the present Rule 45 petition, we are therefore, bound by the intrinsic limitations of a Rule 65 *certiorari* proceeding: it is an extraordinary remedy aimed solely at correcting errors of jurisdiction or acts committed without jurisdiction, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction. It does not address mere errors of judgement, unless the error transcends the bounds of the tribunal's jurisdiction.

As defined, "grave abuse of discretion" refers to the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.

To be sure, the rule that precludes an inquiry into the correctness of the labor tribunals' appreciation and assessment of the evidence, and the conclusions drawn from them, is not without exceptions. The Court, in the past, has recognized that certain exceptional situations require a review of the labor tribunals' factual findings and the evidence. When there is a showing that the NLRC's factual findings and conclusions were arrived at arbitrarily, as when its judgement was based on misapprehension or erroneous apprehension of facts or on the use of wrong or irrelevant considerations²¹ – situations that are tainted with grave abuse of discretion – the Court may review these factual findings.

Finally, we should not forget that a Rule 45 review is an appeal from the ruling of the CA on pure questions of law. We do not admit and review questions of facts unless necessary to determine *whether the CA correctly affirmed the NLRC decision for lack of grave abuse of discretion.*

²⁰ *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

²¹ *Belongilot v. Cua, et al.*, 650 Phil. 392, 405 (2010).

In the present case, the labor tribunals ruled that Zaida's intimate relationship with Marlon out of wedlock (resulting in her failed pregnancy) and her continuation and concealment of this relationship despite the implementation of the Non-Fraternization Policy, constituted immorality and dishonesty that, taken together, justified her dismissal on the ground of serious misconduct and wilful breach of trust and confidence. The CA fully agreed with the labor tribunals' findings and conclusions.

Using the above analysis as guide, we are convinced that the CA grievously erred in upholding the NLRC's ruling. To our mind, the NLRC gravely abused its discretion when it declared that the acts imputed against Zaida were sufficient bases for her dismissal.

II. Substantive issue: validity of Zaida's dismissal

A. Burden of proof in dismissal situations

In every dismissal situation, the employer bears the burden of proving the existence of just or authorized cause for the dismissal and the observance of due process requirements. This rule implements the security of tenure of the Constitution by imposing the burden of proof on employers in termination of employment situations.²² The failure on the part of the employer to discharge this burden renders the dismissal invalid.

Articles 282, 283, and 284 (now Articles 296, 297 and 298)²³ of the Labor Code enumerates the grounds that justifies the dismissal of an employee. These include: serious misconduct or willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime, and causes analogous to any of these, all under Article 282; closure of establishment and reduction of personnel, under Article 283; and disease, under Article 284.

Article 277 (now Article 291) of the Labor Code, and Books V and VI of the Omnibus Rules Implementing the Labor Code, on the other hand, lay down the procedural requirements of a valid dismissal. These are: (1) written notice specifying the ground or grounds for the dismissal; (2) ample opportunity for the employee to be heard and defend himself; and (3) written notice of termination stating that upon due consideration of all the circumstances, grounds have been established to justify his dismissal.

We recognize, in this respect, that of these two requisites for a valid dismissal, the presence or absence of just or authorized cause is the more crucial. The absence of a valid cause automatically renders any dismissal action invalid, regardless of the employer's observance of the procedural due process requirements.

²² See Section 3, Article XIII of the Constitution.

²³ Per R.A. No. 10151 (June 21, 2011), the Labor Code Articles beginning with 130 have been renumbered.

A. *Presence or Absence of Valid Cause for the dismissal*

Based on the notice to explain and on the termination letter, we find that St. Vincent essentially dismissed Zaida for: (1) engaging in intimate out-of-wedlock relationship with Marlon which it considered immoral; (2) for her failure to disclose the relationship to the management – an omission violating its Non-Fraternization Policy which it characterized as gross misconduct; and (3) for violating its Code of Conduct, *i.e.* committing acts against her superiors' authority and her co-employees, violating the terms of her employment, and engaging in immoral conduct that goes against its interest as a Christian institution.

In their respective decisions, the LA, the NLRC, and the CA found the dismissal valid on the ground of loss of trust and confidence and serious misconduct.

The LA, the NLRC, and the CA considered Zaida's act of maintaining her relationship with Marlon, despite the implementation of the Non-Fraternization Policy, immoral act that is prejudicial to St. Vincent's interests and which amounted to serious misconduct. They also considered her failure to disclose the relationship as an act of dishonesty that willfully breached St. Vincent's trust.

Willful breach of trust (or loss of confidence as interchangeably referred to in jurisprudence and as used in this Opinion) and serious misconduct are just causes for the dismissal of an employee under Article 282 (a) and (c), respectively, (now Article 296)²⁴ of the Labor Code. To justify the employee's dismissal on these grounds, the employer must show that the employee indeed committed act/s constituting breach of trust or serious misconduct, which acts the courts must gauge within the parameters defined by the law and jurisprudence.

To place our discussions in proper perspective, the determination of whether Zaida was validly dismissed on the ground of willful breach of trust and serious misconduct requires the prior determination of, *first*, whether Zaida's intimate relationship with Marlon was, under the circumstances, immoral; and, *second*, whether such relationship is absolutely prohibited by or is strictly required to be disclosed to the management under St. Vincent's Non-Fraternization Policy.

We shall separately address these grounds in the discussions below.

²⁴ As directed by Republic Act No. 10151 (June 21, 2011), the Labor Code articles, beginning with Article 130, have been renumbered.

1. On the charge of immorality and engaging in conduct prejudicial to the interest of St. Vincent

We find the NLRC's findings of immorality or of committing acts prejudicial to the interest of St. Vincent, to be baseless.

a. The totality of the attendant circumstances must be considered in determining whether an employee's conduct is immoral

Immorality pertains to a course of conduct that offends the morals of the community.²⁵ It connotes conduct or acts that are willful, flagrant or shameless, and that shows indifference to the moral standards of the upright and respectable members of the community.²⁶

Conducts described as immoral or disgraceful refer to those acts that plainly contradict accepted standards of right and wrong behavior; they are prohibited because they are detrimental to the conditions on which depend the existence and progress of human society.²⁷

Notwithstanding this characterization, the term "immorality" still often escapes precise definition; the determination of whether it exists or has taken place depends on the attendant circumstances, prevailing norms of conduct, and applicable laws.²⁸

In other words, it is the totality of the circumstances surrounding the conduct *per se* as viewed in relation with the conduct generally accepted by society as respectable or moral, which determines whether the conduct is disgraceful or immoral.²⁹ The determination of whether a particular conduct is immoral involves: (1) a consideration of the totality of the circumstances surrounding the conduct; and (2) an assessment of these circumstances in the light of the prevailing norms of conduct, *i.e.*, what the society generally considers moral and respectable,³⁰ and of the applicable laws.

²⁵ See *Santos v. NLRC*, 350 Phil. 560, 568 (1998).

²⁶ See *Abella v. Barrios, Jr.*, Adm Case No. 7332, June 18, 2013, 698 SCRA 683, 695.

²⁷ See *Estrada v. Escritor*, 455 Phil. 411, 589 (2003); and *Leus v. St. Scholastica's College*, G.R. No. 187226, January 28, 2015, citing *Estrada*.

²⁸ *Santos v. NLRC*, *supra* note 25, at 568. See also *Chua-Qua v. Clave*, G.R. No. L-49549, August 30, 1990, 189 SCRA 117, as cited in *Leus v. St. Scholastica's College*, *supra* note 27.

²⁹ See in *Leus v. St. Scholastica's College*, *supra* note 27.

³⁰ *Id.*, where the Court laid out in clear terms these two-step process in determining whether a conduct in question is immoral or disgraceful. The Court, applying this process, declared that while Leus was employed in "an educational institution where the teachings and doctrines of the Catholic Church, including that on pre-marital sexual relations, is strictly upheld and taught to the students," her conduct, which resulted in pregnancy out of wedlock, cannot be considered disgraceful or immoral when viewed against the prevailing norms of conduct.

While *Leus* is of fairly recent vintage, this two-step process laid out by the Court merely defined in clearer terms the criteria to be followed in the determination and echoes the policy which the Court has earlier enunciated in: *Santos v. NLRC*, *supra* note 25, at 568; *Estrada v. Escritor*, *supra* note 27; *Concerned Employee v. Mayor*, 486 Phil. 51 (2004); *Anonymous v. Radam*, 565 Phil. 321 (2007); and *Abanag v. Mabute*, 662 Phil. 354 (2011), to name a few.

b. In dismissal situations, the sufficiency of a conduct claimed to be immoral must be judged based on secular, not religious standards.

In determining whether the acts complained of constitute “disgraceful and immoral” behavior under the Civil Service Laws, the distinction between public and secular morality on the one hand, and religious morality, on the other hand, should be kept in mind. This distinction as expressed – *albeit* not exclusively – in the law, on the one hand, and religious morality, on the other, is important because the jurisdiction of the Court extends only to public and secular morality.³¹

In this case, we note that both Zaida and Marlon at all times had no impediments to marry each other. They were adults who met at work, dated, fell in love and became sweethearts. The intimate sexual relations between them were consensual, borne by their love for one another and which they engaged in discreetly and in strict privacy. They continued their relationship even after Marlon left St. Vincent in 2008. And, they took their marriage vows soon after Zaida recovered from her miscarriage, thus validating their union in the eyes of both men and God.

All these circumstances show the sincerity and honesty of the relationship between Zaida and Marlon. They also show their genuine regard and love for one another – a natural human emotion that is neither shameless, callous, nor offensive to the opinion of the upright and respectable members of the secular community. While their actions might not have strictly conformed with the beliefs, ways, and mores of St. Vincent – which is governed largely by religious morality – or with the personal views of its officials, these actions are not prohibited under any law nor are they contrary to conduct generally accepted by society as respectable or moral.

Significantly, even the timeline of the events in this case supports our observation that their intimate relations was founded on love, *viz.*: Zaida and Marlon met in 2002 and soon become sweethearts; St. Vincent adopted the Non-Fraternization policy in September 2006; Marlon resigned from St. Vincent in July 2008; in February 2009, Zaida had the miscarriage that disclosed to St. Vincent Zaida’s relationship with Marlon; and St. Vincent terminated Zaida’s employment in May 2009.

Clearly from this timeline, Zaida and Marlon have long been in their relationship (for about four years) by the time St. Vincent adopted the Policy; their relationship, by that time and given the turn out of the events, would have already been very serious. To be sure, no reasonable person could have expected them to sever the relationship simply because St. Vincent chose to adopt the Non-Fraternization Policy in 2006. As Zaida

³¹ See *Anonymous v. Radam*, *supra* note 30, at 326; and *Estrada v. Escritor*, *supra* note 27, at 591.

aptly argued, love is not a mechanical emotion that can easily be turned on and off. This is the lesson Shakespeare impressed on us in *Romeo and Juliet* – a play whose setting antedated those of Marlon and Zaida by about 405 hundred years.³²

We thus reiterate that mere private sexual relations between two unmarried and consenting adults, even if the relations result in pregnancy or miscarriage out of wedlock and without more, are not enough to warrant liability for illicit behavior. The voluntary intimacy between two unmarried adults, where both are not under any impediment to marry, where no deceit exists, and which was done in complete privacy, is neither criminal nor so unprincipled as to warrant disciplinary action.³³

To use an example more recent than Shakespeare's, if the Court did not consider the complained acts in *Escritor* immoral, more so should the Court in this case not consider Zaida's consensual intimate relationship with Marlon immoral.

c. *Zaida's relationship with Marlon was not an act per se prejudicial to the interest of St. Vincent.*

Since Zaida and Marlon's relationship was not *per se* immoral based on secular morality standards, St. Vincent carries the burden of showing that they were engaged in an act prejudicial to its interest and one that it has the right to protect against. We reiterate, in this respect, that Zaida and Marlon were very discrete in their relationship and kept this relationship strictly private. They did not flaunt their affections for each other at the workplace. No evidence to the contrary was ever presented. Zaida and Marlon's relationship, in short, was almost completely unknown to everyone in St. Vincent; the respondents in fact even admitted that they discovered the relationship only in 2009.

Significantly, St. Vincent has fully failed to expound on the interest that is within its own right to protect and uphold. The respondents did not specify in what manner and to what extent Zaida and Marlon's relationship prejudiced or would have prejudiced St. Vincent's interest. To be sure, the other employees and volunteers of St. Vincent know, by now, what had happened to Zaida and the circumstances surrounding her dismissal. But, the attention which the relationship had drawn could hardly be imputed to her; if at all, it was the respondents' actions and reactions which should be blamed for the undesired publicity.

Moreover, aside from the relationship that St. Vincent considered to be immoral, it did not specify, nor prove any other act or acts that Zaida

³² *Romeo and Juliet* written by William Shakespeare, was first published in an unauthorized quarto in 1597; the authorized quarto appeared in 1599. (See www.britannica.com/topic/Romeo-and-Juliet, last accessed May 23, 2016).

³³ See *Abanag v. Mabute*, *supra* note 30, at 359.

might have committed to the prejudice of St. Vincent's interest. A mere allegation that Zaida committed act or acts prejudicial to St. Vincent's interest, without more, does not constitute sufficient basis for her dismissal.

2. On the charge of violation of the Non-Fraternization Policy

Neither can we agree with the NLRC's findings that Zaida's relationship with Marlon violated St. Vincent's Non-Fraternization Policy.

For reference, we reiterate below the Policy's provisions:

CFCA Policy 4.2.2.3. Non-Fraternization Policy

While CFCA **does not wish to interfere with the off-duty and personal conduct of its employees**, to prevent unwarranted sexual harassment claims, uncomfortable working relationships, morale problems among other employees, and even the appearance of impropriety, **employees who direct and coordinate the work of others are strongly discouraged from engaging in consensual romantic or sexual relationships with any employee or volunteer of CFCA.**³⁴ [Emphasis supplied]

A reading of the Policy's provisions shows that they profess to touch only on on-duty conduct of its employees. Contrary to the respondents' arguments, too, the CFCA employees who direct or coordinate the work of others are only "*strongly discouraged from engaging in consensual romantic or sexual relationships with any employee or volunteer of CFCA.*" It does not prohibit them, (either absolutely or with qualifications) from engaging in consensual romantic or sexual relationships.

To discourage means "to deprive of courage or confidence: dishearten, deject; to attempt to dissuade from action: dampen or lessen the boldness or zeal of for some action."³⁵

To prohibit, on the other hand, means "to forbid by authority or command: enjoin, interdict; to prevent from doing or accomplishing something: effectively stop; to make impossible: disbar, hinder, preclude."³⁶

While "to discourage" and "to prohibit" are essentially similar in that both seek to achieve similar ends, *i.e.*, the non-happening or non-accomplishment of an event or act, they are still significantly different in degree and in terms of their effect and impact in the realm of labor relations laws.

The former – "to discourage" – may lead the actor *i.e.*, the employee, to disfavor, disapprobation, or some other unpleasant consequences, but the actor/employee may still nonetheless do or perform the "discouraged" act.

³⁴ Rollo, p. 11.

³⁵ See Webster's Third New International Dictionary, Unabridged (1993), p. 646.

³⁶ Webster's Third New International Dictionary, Unabridged (1993), p. 1813.

If the actor/employee does or performs the “discouraged” act, the employee may not be subjected to any punishment or disciplinary action as he or she does not violate any rule, policy, or law.

In contrast, “to prohibit” will certainly subject the actor/employee to punishment or disciplinary action if the actor/employee does or performs the prohibited act as he or she violates a rule, policy or law.

From this perspective, a St. Vincent employee who directs or coordinates the work of other St. Vincent employee or volunteer, and who engages in a consensual romantic or sexual relationship with a St. Vincent employee or volunteer will not violate the Non-Fraternization Policy unless circumstances are shown that the act goes beyond the usual norms of morality. For example, the employees’ ascendancy or supervising authority, over another employee with whom he or she had a relationship, and the undue advantage taken because of this ascendancy or authority, if shown, would lead to a different conclusion. At most, the employee may be considered to have committed an act that is frowned upon; but certainly, the employee does not commit an act that would warrant his or her dismissal.

In addition, an examination of the Policy’s provisions shows that it does not require St. Vincent’s employees to disclose any such consensual romantic or sexual relationships to the management. In fact, nowhere in the records does it show that St. Vincent employees are under any obligation to make the disclosure, whose violation would subject the employee to disciplinary action.

Accordingly, the failure of a St. Vincent employee to disclose to the management his or her consensual romantic or sexual relationship with another employee or volunteer does not constitute a violation of the Non-Fraternization Policy.

Based on these considerations, we find that Zaida clearly did not violate the Non-Fraternization Policy when she continued her relationship with Marlon despite the Policy’s adoption in 2006. As explicitly worded, the Policy “does not wish to interfere with the off-duty and personal conduct of its employees,” and only strongly discourages (thus still technically allows) consensual romantic or sexual relationships; it does **not** prohibit such relationships. No evidence furthermore has been shown indicating Zaida’s abuse of her supervisory position, before or after the Policy was put in place. Her failure, therefore, to observe the Policy or to otherwise disclose the relationship, which continued even after the adoption of the Policy, did not constitute a violation of company policy to justify her dismissal.

3. On the charge of violation of the Code of Conduct provisions prohibiting acts against agency interest, acts against persons, and violations of the terms of employment

We also do not find sufficient basis for Zaida's dismissal for violation of the Code of Conduct provisions prohibiting: acts against agency interest by indulging in immoral and indecent act; acts against persons by challenging superiors' authority, threatening and intimidating co-employees and exerting undue influence on subordinates to gain personal benefit; and violations of the terms of employment by doing an act offensive to the moral standards of the foundation.

We point out in this respect that the charges of violating the Code of Conduct provisions prohibiting acts against agency interest and violations of the terms of employment are both premised on the alleged immoral and indecent acts committed by Zaida in engaging in consensual romantic or sexual relationship with Marlon. Since Zaida did violate the Non-Fraternization Policy, these other charges were clearly unwarranted and baseless.

In the same vein, we likewise find no sufficient basis for Zaida's dismissal for allegedly violating the Code of Conduct provisions prohibiting acts against persons. While St. Vincent claimed, in the May 28, 2009 Notice of Termination, that Zaida "exerted undue influence on [her co-workers and subordinates] to favor [herself] and/or Mr. Inocente", it did not specify in what manner and to what extent she unduly influenced her co-workers and subordinates for hers and Marlon's benefit.

To justify a dismissal based on the act of "exert[ing] undue influence," the charge must be supported by a narration of the specific act/s she allegedly committed by which she unduly influenced her co-worker and subordinates, of the dates when these act/s were committed, and of the names of the co-workers and/or subordinates affected by her alleged actions. The respondents, however, miserably failed to establish these relevant facts. In other words, the charge of exerting undue influence is a conclusion that was not supported by any factual or evidentiary basis.

4. Dismissal on the ground of serious misconduct and willful breach of trust and confidence

Based on the above considerations, we find Zaida's dismissal illegal for lack of valid cause. St. Vincent failed to sufficiently prove its charges against Zaida to justify her dismissal for serious misconduct and loss of trust and confidence.

a. Serious misconduct

Misconduct has been defined as improper or wrong conduct. It is the transgression of some established or definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be serious, the misconduct must be of such grave or aggravated character and not merely trivial and unimportant; it must be connected with the employee's work to constitute just cause for separation.³⁷

Thus, for an employee to be validly dismissed on the ground of serious misconduct, the employee must **first, have committed misconduct or an improper or wrong conduct. And second, the misconduct or improper behavior is: (1) serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.**³⁸

As we explained above, Zaida's relationship with Marlon is neither illegal nor immoral; it also did not violate the Non-Fraternization Policy. In other words, Zaida did not commit any misconduct, serious or otherwise, that would justify her dismissal based on serious misconduct.

Moreover, St. Vincent failed to show how Zaida's relationship with Marlon affected her performance of her duties as a Program Officer and that she has become unfit to continue working for it, whether for the same position or otherwise. Her dismissal based on this ground, therefore, is without any factual or legal basis.

b. Willful breach of trust and confidence

Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: (1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or (2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property.³⁹ In any of these situations, it is the employee's breach of the trust that his or her position holds which results in the employer's loss of confidence.

Significantly, loss of confidence is, by its nature, subjective and prone to abuse by the employer. Thus, the law requires that the breach of trust – which results in the loss of confidence – must be willful. The breach is willful if it is done intentionally, knowingly and purposely, without

³⁷ *Samson v. National Labor Relations Commission*, 386 Phil. 669, 682 (2000).

³⁸ *Marival Trading, Inc. v. National Labor Relations Commission*, 552 Phil. 762, 779 (2007).

³⁹ See *Mabeza v. NLRC*, 338 Phil. 386, 395-396 (1997) and *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008), as cited in *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, G.R. No. 185335, June 13, 2012, 672 SCRA 375, 385-387.

justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.⁴⁰

We clarify, however, that it is the breach of the employer's trust, not the specific employee act/s which the employer claims caused the breach, which the law requires to be willful, knowingly and purposefully done by the employee to justify the dismissal on the ground of loss of trust and confidence.

In *Vitarich Corp. v. NLRC*,⁴¹ we laid out the guidelines for the application of the doctrine of loss of confidence, namely: **(1) the loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.**⁴² In short, there must be an actual breach of duty which must be established by substantial evidence.⁴³

We reiterated these guidelines in *Nokom v. National Labor Relations Commission*,⁴⁴ *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals*,⁴⁵ *Lopez v. Keppel Bank Philippines, Inc.*,⁴⁶ citing *Nokom*, and *Lima Land, Inc., et al. v. Cuevas*.⁴⁷

In the present case, we agree that Zaida indeed held a position of trust and confidence. Nonetheless, we cannot support the NLRC's findings that she committed act/s that breached St. Vincent's trust. Zaida's relationship with Marlon, to reiterate, was not wrong, illegal, or immoral from the perspective of secular morality; it is also not prohibited by the Non-Fraternization Policy nor is it required, by the Policy, to be disclosed to St. Vincent's management or officials. In short, Zaida did not commit any act or misconduct that willfully, intentionally, or purposely breached St. Vincent's trust.

Notably, St. Vincent did not charge Zaida with, nor terminate her employment for, willful breach of trust. Rather, it charged her with violation of the Non-Fraternization Policy and of the Code of Conduct, and dismissed her for immorality, gross misconduct, and violation of the Code of Conduct – none of which implied or suggested willful breach of trust.

In this regard, we reiterate, with approval, Zaida's observations on this point: the labor tribunals' findings of willful breach of trust and

⁴⁰ *Dela Cruz v. National Labor Relations Commission*, 335 Phil. 932, 942 (1997); *Lima Land, Inc., et al. v. Cuevas*, 635 Phil. 36, 50 (2010).

⁴¹ 367 Phil. 1 (1999).

⁴² *Id.* at 11-12.

⁴³ *Lima Land, Inc., et al. v. Cuevas*, *supra* note 42, at 50.

⁴⁴ 390 Phil. 1228, 1244 (2000).

⁴⁵ 494 Phil. 697, 718 (2005).

⁴⁶ G.R. No. 176800, September 5, 2011, 656 SCRA 718, 729.

⁴⁷ *Supra* note 42, at 50.

confidence shows clear bad faith as it effectively deprived her of an opportunity to rebut any charge of willful breach of trust.

C. Compliance with the Procedural Due Process Requirements

All three tribunals agreed, in this case, that the due process requirements, as laid out under Article 277 of the Labor Code and its IRR, were sufficiently observed by St. Vincent in its dismissal action.

We disagree with the three tribunals.

As pointed out above, St. Vincent did not specify in what manner and to what extent Zaida unduly influenced her co-workers and subordinates for hers and Marlon's benefit with regard to the charge of committing acts against persons. For the charge of "exert[ing] undue influence" to have validly supported Zaida's dismissal, it should have been supported by a narration of the specific act/s she allegedly committed by which she unduly influenced her co-worker and subordinates, of the dates when these act/s were committed, and of the names of the co-workers and/or subordinates affected by her alleged actions.

The specification of these facts and matters is necessary in order to fully apprise her of **all** of the charges against her and enable her to present evidence in her defense. St. Vincent's failure to make this crucial specification in the notice to explain and in the termination letter clearly deprived Zaida of due process.

In light of these findings, we find the NLRC in grave abuse of its discretion in affirming the LA's ruling as it declared that St. Vincent complied with the due process requirements.


Specifically, the NLRC capriciously and whimsically exercised its judgment by using the wrong considerations and by failing to consider all relevant facts and evidence presented by the parties, as well as the totality of the surrounding circumstances, as it upheld Zaida's dismissal. Consequently, we find the CA in grave error as it affirmed the NLRC's ruling; the CA reversibly erred in failing to recognize the grave abuse of discretion which the NLRC committed in concluding that Zaida's dismissal was valid.

WHEREFORE, in light of these considerations, we hereby **GRANT** the petition. We **REVERSE** and **SET ASIDE** the decision dated February 27, 2012 and the resolution dated July 11, 2012 of the Court of Appeals in CA-G.R. SP No. 118576. We declare petitioner Zaida R. Inocente as illegally dismissed.

SO ORDERED.


ARTURO D. BRION
Associate Justice

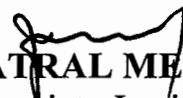
WE CONCUR:



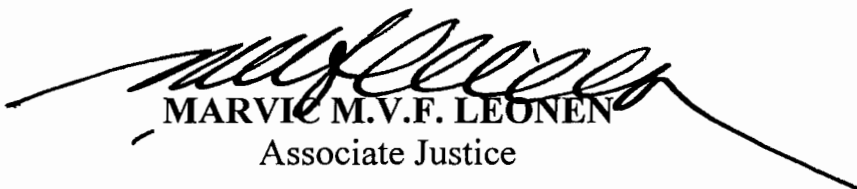
ANTONIO T. CARPIO
Associate Justice
Chairperson

(On Leave)

MARIANO C. DEL CASTILLO
Associate Justice



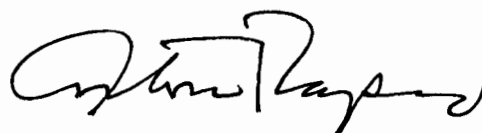
JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
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

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