



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

**INTERADENT ZAHNTECHNIK
 PHILIPPINES, INC., BERNARDINO
 G. BANTEGUI, JR. and SONIA J.
 GRANDEA,**

Petitioners,

- versus -

REBECCA F. SIMBILLO,
Respondent.

G.R. No. 207315

Present:

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

Promulgated:
 23 NOV 2016

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DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ assails the January 4, 2013 Decision² and May 24, 2013 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 120474, which set aside the March 24, 2011⁴ and May 19, 2011⁵ Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC No. 12-003076-10. The NLRC affirmed the October 29, 2010 Decision⁶ of the Labor Arbiter declaring respondent Rebecca F. Simbillo's (Simbillo) dismissal by petitioners Interadent Zahntechnik Philippines, Inc. (Interadent) and its officers Bernardino G. Bantegui, Jr. (Bantegui) and Sonia J. Grandea (Grande), as President and Human Resource & Organizational Development Manager, respectively, valid on the ground of loss of trust and confidence.

Antecedent Facts

Simbillo worked at Interadent as a rank-and-file employee from May 2, 2004 up to March 2006. In April 2008, she was rehired by Interadent as its

¹ *Rollo*, pp. 9-45.
² *CA rollo*, pp. 752-773; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr.
³ *Id.* at 875-877.
⁴ NLRC records, Vol. 1, pp. 765-777; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino and Napoleon M. Menese.
⁵ *Id.* at 821-822.
⁶ *Id.* at 354-373; penned by Labor Arbiter Aliman D. Mangandog.

Accounting Manager. On April 16, 2010, she was promoted to the position of Finance and Accounting Manager. She was also Interadent's Treasurer upon being elected by the Board of Directors on March 31, 2010.

On July 23, 2010, Interadent sought a company-wide implementation of the following security measures: body frisking and bag/personal items inspection of all employees upon ingress and egress of office, disconnection of all USB ports and prohibition of cellular phone usage.⁷ The immediate implementation of these security procedures was brought about by an alleged leakage of security information uncovered by Interadent's external auditors.

On July 28, 2010, upon the directive of Bantegui, all network and internet connections in Interadent's Accounting Department were removed and disabled. Simbillo's electronic mail (email) account was likewise suspended.⁸

On July 29, 2010, petitioners served Simbillo a Memorandum⁹ (Notice to Explain) requiring her to submit a written explanation and to attend an administrative hearing on August 2, 2010, regarding a message she posted on her Facebook account "referring to company concerns with the Bureau of Internal Revenue (BIR) and insulting statements against a co-worker." In the Notice to Explain, Simbillo was reminded that as Treasurer, as well as Finance and Accounting Manager, she should observe the highest degree of confidentiality in handling sensitive information. She was preventively suspended for seven days effective July 29, 2010 to August 6, 2010.

On the following day, Simbillo, through counsel, wrote a reply-letter¹⁰ arguing that she was already constructively dismissed even prior to her receipt of the Notice to Explain considering the discriminatory acts committed by petitioners starting July 23, 2010 when certain security procedures were directed exclusively and solely against her. Simbillo claimed that the Notice to Explain was defective and was only used to disguise the intent to dismiss her; hence there was no need for her to submit an answer or attend the hearing. Simbillo further asserted that she committed no violation of any rule or law relative to the message she posted on her personal and private Facebook account that would justify any disciplinary action.

In a letter¹¹ dated August 6, 2010, petitioners extended Simbillo's suspension up to August 25, 2010 in view of her failure to submit a written

⁷ See Minutes of Administration Meeting conducted by Interadent on July 23, 2010, id. at 65.

⁸ See Network Systems Administrator and the Administrative Manager Incident Report for "security breach" dated August 2, 2010, id. at 69.

⁹ Id. at 70 and 174.

¹⁰ Id. at 71-85 and 175-189.

¹¹ Id. at 190.

explanation and to attend the scheduled hearing. In a reply-letter¹² dated August 9, 2010, Simbillo reiterated her claim of constructive dismissal and that there was no need for her to answer and attend the hearing.

On August 9, 2010, Simbillo filed with the Labor Arbiter a Complaint¹³ for constructive illegal dismissal, non-payment of service incentive leave pay, 13th month pay, illegal suspension, claims for moral and exemplary damages and attorney's fees against petitioners.

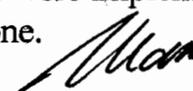
On August 24, 2010, petitioners issued a Second Notice¹⁴ informing Simbillo of her termination from service effective August 25, 2010 on the ground of loss of trust and confidence. Petitioners found Simbillo to have disclosed sensitive and confidential information when she posted on her Facebook account on July 15, 2010, the following:

Sana maisip din nila na ang kompanya kailangan ng mga taong di tulad nila, nagtatrabaho at di puro #\$,% ang pinaggagagawa, na kapag super demotivated na yung tao nayun baka iwan narin nya ang kawawang kumpanya na pinagpepyestahan ng mga b_i_r_. Wala na ngang credibility wala pang conscience, portraying so respectable and so religious pa. Hay naku talaga, nakakasuka, puro nalang animus lucrandi ang laman ng isip.*¹⁵

Parties' Respective Positions

Simbillo asserted that her dismissal was without just cause or compliance with procedural due process since the alleged loss of trust and confidence was based on self-serving allegations and mere speculation. She averred that the Facebook entry cannot support the charge of breach of trust since it did not mention Interadent or any of its personnel. She maintained that the message actually pertained to a friend's predicament in another company. She explained that the term "*ng mga b_i_r_*" in the Facebook message was short for "*bwitre*" and certainly did not refer to the BIR. She claimed that the sentiments that she expressed did not refer to herself or her work. She denied having been penalized for a past infraction which involved disclosure of confidential information.

Petitioners, for their part, denied Simbillo's claim of constructive dismissal for absence of proof. They asserted that the security measures were implemented company-wide without favoring or discriminating against anyone.



¹² Id. at 86-92 and 191-197.

¹³ Id. at 1-3.

¹⁴ Id. at 93-96 and 198-201.

¹⁵ Id. at 66.

Moreover, Simbillo was terminated for a valid and just cause and with compliance with procedural due process. As a managerial and confidential employee of Interadent, the highest degree of professionalism and confidentiality was expected of Simbillo and the presence of the basis for the loss of the trust and confidence reposed upon her has warranted her dismissal. Petitioners posited that Simbillo's Facebook message implying that the BIR is "feasting on" the company was derogatory because it compromised the company's reputation, making it vulnerable to ridicule and suspicion particularly in its dealings with government agencies. Such act violated the company's Code of Conduct as well as the Code of Ethics for Professional Accountants. Furthermore, Simbillo's second infraction of divulging sensitive and confidential financial information has merited the penalty of termination.

Petitioners maintained that they observed due process by serving Simbillo both the Notice to Explain and the Second Notice of Termination. Simbillo was afforded the opportunity to answer but instead waived her chance to do so by opting not to submit an answer and attend the hearing.

Ruling of the Labor Arbiter

In a Decision¹⁶ dated October 29, 2010, the Labor Arbiter ruled that Simbillo was not constructively dismissed because she failed to prove her claim of discrimination. The security measures were implemented as part of management prerogative to preserve the integrity of Interadent's network system and encompassed all employees as gleaned from a poster¹⁷ Simbillo herself submitted. The Labor Arbiter sustained Simbillo's preventive suspension since her continued presence during investigation posed an imminent threat to the company's confidential information and records.

The Labor Arbiter also ruled that Simbillo was validly dismissed. He held that there was no need for an actual leakage of confidential information for Simbillo to be held accountable; her mere laxity and carelessness in posting a statement on her Facebook account that exposed the company to ridicule already rendered her unworthy of the trust and confidence reposed on her. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, we uphold the legality of the dismissal of complainant. No pronouncement as to costs.¹⁸



¹⁶ Id. at 354-373.

¹⁷ Id. at 172.

¹⁸ Id. at 372.

Ruling of the National Labor Relations Commission

In a Resolution¹⁹ dated March 24, 2011, the NLRC affirmed the ruling of the Labor Arbiter that Simbillo was not constructively dismissed but was validly dismissed for loss of trust and confidence. The NLRC held that the Facebook entry was “indeed alarming” as it compromised Interadent’s reputation and was sufficient basis for the finding of willful breach of trust. It also ruled that Simbillo was not denied due process and that she was the one who did not avail herself of the opportunity to explain her side. The dispositive portion of the NLRC ruling reads as follows:

WHEREFORE, premises considered, the appeal is hereby DISMISSED,
and the appealed decision AFFIRMED.

SO ORDERED.²⁰

Simbillo filed a Motion for Reconsideration which was, however, denied in the NLRC Resolution²¹ dated May 19, 2011.

Ruling of the Court of Appeals

Aggrieved, Simbillo filed a Petition for *Certiorari*²² before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction in upholding the legality of her dismissal.

The CA, in a Decision²³ dated January 4, 2013, found merit in Simbillo’s Petition. It ruled that to constitute a valid cause for dismissal, the breach of trust should be willful and intentional, which petitioners failed to prove in this case. It rejected petitioners’ allegation that Simbillo divulged confidential company information. It noted that the Facebook entry did not contain any corporate record or confidential information but was merely “a vague expression of feelings or opinion towards a person or entity, which was not even identified with certainty.”²⁴ It pointed out that the term “*b_i_r_*” in the entry cannot be construed as the acronym “B.I.R.” or the Bureau of Internal Revenue. Finding no willful breach of trust, the CA held that Simbillo’s dismissal was illegal and ordered the payment of her separation pay in lieu of reinstatement due to strained relations of the parties plus backwages. The dispositive portion of the CA Decision reads:

¹⁹ Id. at 765-777.

²⁰ Id. at 777.

²¹ Id. at 821-822.

²² CA rollo, pp. 3-56.

²³ Id. at 752-773.

²⁴ Id. at 771.

WHEREFORE, the instant petition of GRANTED. The Resolutions dated March 24, 2011 and May 19, 2011 of the National Labor Relations Commission, are hereby SET ASIDE. Finding private respondent InteraDent Zahntechnik Philippines, Inc. to have dismissed petitioner Rebecca Simbillo without valid or just cause, InteraDent is hereby ordered to pay her a separation pay in lieu of reinstatement, of one (1) month salary for every year of service plus full backwages, inclusive of allowances and other benefits or their monetary equivalent from the time her compensation was withheld until the finality of this decision.

SO ORDERED.²⁵

Petitioners filed a Motion for Reconsideration but was denied by the CA in its Resolution²⁶ dated May 24, 2013.

Hence, petitioners filed this Petition for Review on *Certiorari*²⁷ and a Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction²⁸ to restrain the implementation of the CA Decision and Resolution.

Issues

Petitioners raise the question on whether the CA may reverse the factual declarations of both the Labor Arbiter and the NLRC that there was substantial evidence of willful and intentional breach of trust. According to petitioners, the CA has no power to revisit the findings of fact of the NLRC by making the following erroneous interpretations in its Decision: a) that the Facebook entry “does not contain any corporate record or confidential information;” b) that the entry is “[a]t worst, x x x a vague expression of feelings or opinion towards a person or entity, which was not even identified with certainty;”²⁹ and (c) that the term “*b_i_r_*” “does not, in any way, represent the acronym ‘B.I.R.’ or Bureau of Internal Revenue.”³⁰ In essence, they insist that, on account of such Facebook post, Simbillo has failed to observe the degree of cautiousness expected of a manager like herself and therefore may be dismissed on the ground of loss of trust and confidence.

Our Ruling

The Petition lacks merit.



²⁵ Id. at 772-773.

²⁶ Id. at 875-877.

²⁷ *Rollo*, pp. 9-45.

²⁸ Id. at 918-927.

²⁹ *CA rollo*, p. 771.

³⁰ Id. at 771-772.

As a rule, factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect but also finality because of the special knowledge and expertise gained by these agencies from handling matters under their specialized jurisdiction.³¹ However, well-settled is the rule that for want of substantial basis, in fact or in law, these factual findings cannot be given the stamp of finality and conclusiveness normally accorded to it.³² Hence, the CA can review the factual findings or legal conclusions of the NLRC and “is not proscribed from ‘examining evidence anew to determine whether the factual findings of the NLRC are supported by the evidence presented and the conclusions derived therefrom accurately ascertained’.”³³ In the exercise of its power to review decisions of the NLRC, the CA can make its own factual determination when it finds that the NLRC gravely abused its discretion in overlooking or disregarding the evidence which are material to the controversy.³⁴ In the instant case, the Court agrees with the CA that the conclusions arrived at by the Labor Arbiter and the NLRC are manifestly erroneous because the evidence does not support their findings.

As a managerial employee, the existence of a basis for believing that Simbillo has breached the trust of petitioners justifies her dismissal.³⁵ However, to be a valid ground, loss of trust and confidence must be based on willful breach of trust, that is, done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.³⁶

It bears emphasizing that the right of an employer to dismiss its employees on the ground of loss of trust and confidence must not be exercised arbitrarily. For loss of trust and confidence to be a valid ground for dismissal, it must be substantial and founded on clearly established facts. Loss of confidence must not be used as a subterfuge for causes which are improper, illegal or unjustified; it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith. Because of its subjective nature, this Court has been very scrutinizing in cases of dismissal based on loss of trust and confidence because the same can easily be concocted by an abusive employer. x x x³⁷

In this case, the act alleged to have caused the loss of trust and confidence of petitioners in Simbillo was her Facebook post which supposedly suggests that Interadent was being “feasted on” by the BIR and also contains insulting statements against a co-worker and hence has compromised the reputation of the company. According to petitioners, there was disclosure of confidential information that gives the impression that Interadent is under investigation by the BIR for irregular transactions. However, we agree with the CA’s observation that

³¹ *General Milling Corporation v. Viajar*, 702 Phil. 532, 540 (2013).

³² *Vicente v. Court of Appeals (Former 17th Div.)*, 557 Phil. 777, 784 (2007).

³³ *Phil. Journalists, Inc. v. National Labor Relations Commission*, 532 Phil. 531, 549 (2006).

³⁴ *Pepsi-Cola Products Philippines Inc. v. Molon*, 704 Phil. 120, 133-134 (2013).

³⁵ *Gana v. National Labor Relations Commission*, 577 Phil. 344, 351 (2008).

³⁶ *Surigao del Norte Electric Cooperative v. National Labor Relations Commission*, 368 Phil. 537, 553 (1999).

³⁷ *The Coca-Cola Export Corporation v. Gacayan*, 653 Phil. 45, 66 (2010).

the Facebook entry did not contain any corporate record or any confidential information. Otherwise stated, there was really no actual leakage of information. No company information or corporate record was divulged by Simbillo.

Simbillo's failure to substantiate her claim that the Facebook entry was posted for a friend who consulted her on a predicament she has with her company and that the term "b i r" represents "*bwitre*" will not weaken her case against petitioners. It must be emphasized at this point that in illegal dismissal cases, the burden of proof is upon the employer to show that the employee's dismissal was for a valid cause.³⁸ "The employer's case succeeds or fails on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them."³⁹ The Facebook entry did not mention any specific name of employer/company/ government agency or person. Contrary to petitioners' insistence, the intended subject matter was not clearly identifiable. As acknowledged by petitioners themselves, Simbillo's Facebook account contained a list of her former and present employers. If anything, the entry would merely merit some suspicion on the part of Interadent being the present employer, but it would be far-fetched to conclude that Interadent may be involved in anomalous transactions with the BIR. Clearly, petitioners' theory was based on mere speculations.

If at all, Simbillo can only be said to have acted "carelessly, thoughtlessly, heedlessly or inadvertently" in making such a comment on Facebook; however, such would not amount to loss of trust and confidence as to justify the termination of her employment. When the breach of trust or loss of confidence conjectured upon is not borne by clearly established facts, as in this case, such dismissal on the ground of loss of trust and confidence cannot be upheld.

Petitioners' contention that Simbillo's second offense of divulging confidential company information merits her termination deserves scant consideration. Other than self-serving allegations of petitioners, there was no concrete proof that Simbillo had a past infraction involving disclosure of confidential information of the company. If indeed Simbillo has been found guilty for not being trustworthy due to an incident that happened in July 2009 as alleged by petitioners, she should not have been promoted to a higher position as Finance and Accounting Manager in April 2010 and elected as Treasurer in March 2010. Moreover, she was given salary and merit increases for the period covering June 2009-May 2010,⁴⁰ which is an indication of her high performance rating.

³⁸ *Lopez v. Bodega City (Video-Disco Kitchen of the Phils.)*, 558 Phil. 666, 674 (2007).

³⁹ *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, 687 Phil. 351, 369 (2012).

⁴⁰ See Table for Merit Increases for the period June 2009-May 2010, NLRC records, Vol. 1, p. 171.

All told, we find no reversible error on the CA in finding that Simbillo was illegally dismissed. The allegation of loss of trust and confidence was not supported by substantial evidence, hence, we find Simbillo's dismissal unjustified. A lighter penalty would have sufficed for Simbillo's laxity and carelessness. As this Court has held, termination of employment is a drastic measure reserved for the most serious of offenses.⁴¹

WHEREFORE, the Petition is **DENIED**. The January 4, 2013 Decision and May 24, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 120474 are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

⁴¹ *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, supra note 39 at 371.

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

