



SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**THE PENINSULA MANILA
and SONJA VODUSEK,**
Petitioners,

G.R. No. 225586

Members:

CARPIO, *Chairperson*
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

- versus -

EDWIN A. JARA,
Respondent.

Promulgated:

29 JUL 2019

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DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari seeks to set aside the Decision¹ dated January 25, 2016 and Resolution dated July 5, 2016 of the Court of Appeals in CA-G.R. SP No. 131276, finding respondent's dismissal illegal and awarding him backwages and other monetary claims.

¹ Penned by Associate Justice Francisco P. Acosta with Associate Justice Noel G. Tijam (now a retired member of the Court) and Associate Justice Eduardo B. Peralta, Jr., concurring, *rollo*, pp. 37-45,

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Factual Antecedents

Respondent Edwin Jara worked at petitioner The Peninsula Manila from 2002 until his dismissal in 2011. He became its captain waiter in 2009. The termination of Jara's services spawned from the incident which happened on July 22, 2011. Assigned then to the closing shift of respondent's buffet restaurant *Escolta*, Jara was tasked to tally the actual cash count with the cash transaction receipts and match the same with the data in the micros system, a touch-screen computer system which records all transactions in a particular outlet in the hotel, including cash and credit card payments.

On said date, around 11:45 in the evening, Jara discovered a discrepancy between the actual cash on hand and cash transaction receipts. He found that there was an error in the entries for cash settlement of Table 32 -- the sales receipt reflected payment of ₱7,113.08. In the official receipt of the cash register, however, the payment reflected was only ₱613.00, while in the tape receipt (transaction receipt), the amount of ₱7,113.08 was reflected as payment. Due to the discrepancy, Jara had an overage of ₱6,500.00 cash. Assistant Supervisor Michelle Jardines, tried to correct the error but there was still an excess cash on hand. Consequently, Jara informed his supervisor Jimmy Tabamo of his failure to balance the actual cash on hand and the transaction receipts. Per Tabamo's incident report,² he instructed Jara to double check all his cash transactions and inform him if the problem about the account balances would persist. By 12:30 in the morning, Tabamo allegedly asked Jara if the cash transactions had already been reconciled. Jara answered in the affirmative, submitted his report, and remitted the cash collections. In truth, however, Jara was unable to reconcile the excess cash on hand with the cash transaction receipts but he did not turn over the excess cash of ₱6,500.00 and kept the same in his office locker. What Jara did to remedy the discrepancy was post the ₱613.00 amount appearing on the tape receipt, instead of the entire ₱7,113.08 appearing in the sales receipt. This way, the cash count tallied with the data posted in the micros system.

The following day, July 23, was Jara's birthday so he did not report for work. He, however, dined at the *Escolta*. On July 24, Jara again did not report for work because it was his day-off. When he reported for work on July 25, he informed the hotel's internal auditor about the overage of ₱6,500.00. The latter advised Jara to surrender the excess cash to his supervisor. Instead of complying with this directive, Jara turned over the money to the captain waitress instead, for safekeeping in the safety deposit box.

On July 27, 2011, petitioner issued a Memorandum to Explain, requiring Jara to explain why he should not be sanctioned for dishonesty for: (1) failing to promptly inform his supervisor of the overage of ₱6,500.00; (2) for misrepresenting that he had already reconciled the cash transaction

² Rollo, p. 72.



records; and (3) falsifying the tape receipt to be able to balance his cash settlement report.

In his written explanation, Jara stated that he posted the ₱613.00 payment because he thought that there was only a micros error due to the tax exemption on the original check of Table 32. Jara, however, admitted that he kept the overage of ₱6,500.00 in his office locker and failed to inform his supervisor of such overage.

An administrative hearing was held on August 11, 2011. By Memorandum dated September 28, 2011, Jara was informed of his termination for misappropriation or falsification of hotel receipts and dishonesty in violation of the Hotel's Code of Discipline. Consequently, Jara filed a complaint for illegal dismissal against respondent.

Labor Arbiter's Ruling

By Decision³ dated March 30, 2012, Labor Arbiter Renaldo O. Hernandez found Jara to have been illegally dismissed. Respondent was ordered to reinstate Jara and pay him full backwages, proportionate 13th month pay, accrued service charges, and other monetary benefits under the existing CBA. The labor arbiter found that Jara was not motivated by any dishonest intention and his mistake was due to a lapse in judgment.

NLRC'S Ruling

On appeal, the NLRC reversed.⁴ It found the dismissal valid, resulting from Jara's dishonesty and misrepresentation.

Court of Appeals' Ruling

On petition for certiorari, the Court of Appeals reversed.⁵ It held that Jara's lapses cannot be considered grave, let alone, indicative of intentional or willful breach of his employer's trust.

Petitioner's motion for reconsideration was denied under Resolution⁶ dated July 5, 2016.

³ *Id.* at 346-356.

⁴ Decision dated March 27, 2013, penned by Presiding Commissioner Alex A. Lopez with Commissioner Gregorio O. Bilog III and Commissioner Pablo C. Espiritu, Jr., concurring; *rollo*, pp. 155-165.

⁵ Decision dated January 25, 2016, penned by Associate Justice Francisco P. Acosta, with Associate Justice Noel G. Tijam (now a retired member of the Court) and Associate Justice Eduardo B. Peralta, Jr., concurring, *rollo*, pp. 37-45.

⁶ *Rollo*, pp. 47-48.

The Present Petition

Petitioner now faults the Court of Appeals for ruling that Jara had been illegally dismissed. It asserts that the Court of Appeals seriously erred in its finding that Jara's actions only amounted to a lapse in judgment and could not be considered a grave, intentional, or willful breach of his employer's trust. Petitioner emphasizes that, as employer, it possesses wide latitude of discretion in terminating employees who perform functions requiring the employer's trust and confidence but who had breached such trust or had given reason for the employer to distrust him/her.

In his Comment, Jara reiterated that to be validly dismissed based on Article 282 (now Article 296) of the Labor Code, the employee involved must hold a position of trust and confidence. Jara claims that his position as captain waiter is classified as *rank and file Level 8-A* under the existing CBA, not a position of trust and confidence, thus, he could not be held liable under Article 282 of the Labor Code.

Further, Jara denies having wilfully committed any wrongful act and stands by his defense of good faith and utmost honesty. He maintains that he never took away the overage of ₱6,500.00 but kept it in his locker with full intent to turn it over to respondent on his next working day.

ISSUE

Was Jara illegally dismissed?

RULING

It is a fundamental rule that the Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own factual determination. This finds support in the well settled rule that factual findings of administrative or quasi-judicial bodies, including labor tribunals are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence⁷. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court or quasi-judicial agency, as in this case.⁸

After a judicious review of the records, the Court is constrained to reverse the Court of Appeals' factual findings and legal conclusion.

⁷ *Central Azucarera de Bais and Antonio Steven Chan v. Heirs of Zuelo Apostol*, G. R. 215314, March 14, 2018 (citation omitted).

⁸ See *Philippine Plaza Holdings, Inc., v. Episcopo*, 705 Phil. 210, 216 (2013).

Article 297 (formerly Article 282) of the Labor Code enumerates the just causes for termination of employment, *viz*:

Art. 297. Termination by employer. – An employee 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.

For dismissal due to cause under subsection (c), certain requirements must be complied with, *viz*: (1) the employee concerned must be holding a position of trust and confidence and (2) there must be an act that would justify the loss of trust and confidence.⁹

Jara argues that he cannot be dismissed on this ground because he does not hold a position of trust and confidence as he is a mere rank-and-file employee.

The argument is specious.

As correctly pointed out by the Court of Appeals, there are two (2) classes of positions of trust. The first class consists of managerial employees, or those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. While the second class consists of cashiers, auditors, property custodians, etc. or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.¹⁰

As for the first requirement, Jara indisputably comes within the second class of employees as he is tasked to handle significant amounts of money from sales in petitioners' restaurant *Escolta*. Jara cannot claim otherwise for he would not be entrusted with the duty to balance the sales transactions and

⁹ *Id.* at 217.

¹⁰ See *Hormillosa v. Coca-Cola Bottlers Phils., Inc.*, 719 Phil. 421, 436 (2013), (citation omitted).

actual cash on hand from restaurant sales if he did not have the trust of the management.

We now determine if Jara's actions justified petitioners' loss of trust and confidence in him.

To begin with, Jara never denied that upon his failure to balance the cash transaction receipts and cash on hand, he remedied the discrepancy by posting only the ₱613.00 payment, not the ₱7,113.08 actually paid by the customer and kept the excess of ₱6,500.00 in his office locker. He merely justified his actions by saying that he believed there was only a micros system error and that he did not bring home the excess money with him anyway and turned it over when he reported for work two days later.

We are not convinced.

Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.¹¹ Here, record bears significant details pointing to the willfulness of Jara's action showing the breach of the trust reposed in him by petitioner. That due to the irreconcilable cash count and transaction receipts, Jara deliberately made it appear that the same tallied and even misrepresented such fact to his supervisor. To be able to do this, Jara tampered with the transaction and sales receipts to come up with a balanced cash sales record at the end of his shift. This is pure dishonesty and clearly a violation of the trust reposed in him by his employer.

By willful, it is meant that the action was voluntary and intentional. To be sure, Jara never claimed that he was forced to do what he did. He committed the dishonest act of his own free will and despite knowledge that he may face liability therefor, even the extreme penalty of losing his job. He maintains that he kept the money in his office locker because in a previous similar incident involving a hotel employee, the employee was excused for keeping the money and turning it over only afterwards. As pointed out by petitioner, however, the employee involved in that incident was exculpated by the Court of Appeals because his supervisor had knowledge of the excess cash on hand and was even the one who actually instructed the captain waiter to safekeep the overage in the meantime. In Jara's case, there was no such instruction. On the contrary, the supervisor himself was completely unaware that Jara did not remit the complete cash sales for the day and had even kept the money in his locker. It is of no moment that Jara did not actually cart away the money or misappropriated it. The breach of respondent's trust occurred at the precise moment that Jara tampered with the sales record and misrepresented to his supervisor that he was able to balance the cash transactions with the cash on hand. Keeping of the money in Jara's office locker was just a result of his dishonest act.

¹¹ *Bristol Myers Squibb (Phils.) Inc., v. Baban*, G.R. No. 167449, 594 Phil. 620, 628 (2008).

More, Jara did not immediately report the overage which he kept in his custody. He waited for two days before finally informing respondent's internal auditor about the incident. This casts doubt on Jara's real intention and compromised his alleged good faith. Notably, he was in the hotel the day after the incident in question for he dined at the Escolta to celebrate his birthday. And on the following day was his scheduled day off from work. He, thus, had, enough time to report to his supervisor about the unreconciled cash sales record. He did not. He cannot bank on his length of service and supposed pristine track record with the company to save the day for him. On the contrary, as a senior employee, Jara should have been an example to the hotel's younger staff members for honesty and integrity. Jara failed in this respect.

We are mindful of the fact that loss of confidence as a ground for dismissal is prone to abuse because of its subjective nature. It is necessary that the loss of confidence must be founded on clearly established facts sufficient to warrant the employee's separation from work.¹² Hence, when the breach of trust or reason for the loss of confidence is clearly borne by the records, as in this case, the right of the employer to dismiss an employee based on this ground must be upheld.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated January 25, 2016 and Resolution dated July 5, 2016 of the Court of Appeals in CA-G.R. SP No. 131276 are **REVERSED AND SET ASIDE**. The Decision of the National Labor Relations Commission dated March 27, 2013, finding respondent Edwin Jara's dismissal valid, is **REINSTATED**.

SO ORDERED.



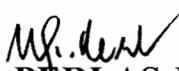
AMY C. LAZARO-JAVIER
Associate Justice

¹² *Distribution & Control Products, Inc. v. Santos*, G. R. No. 212616, July 10, 2017, 830 SCRA 452, 461-462.

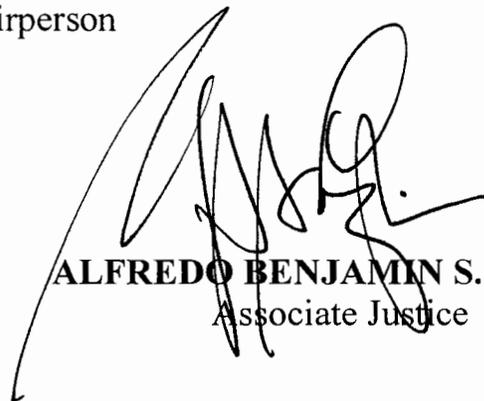
WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice

ATTESTATION

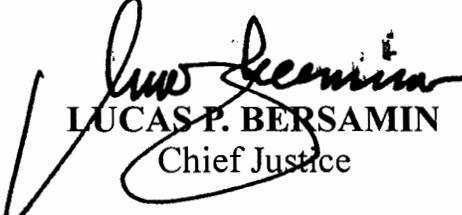
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division,



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above 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.


LUCAS P. BERSAMIN
Chief Justice

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