Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COCA-COLA FEMSA PHILIPPINES, INC., (formerly known as COCA-COLA BOTTLERS PHILS., INC.), Petitioner,	**G.R. No. 226089**
	Present:
	PERALTA, *C.J.* [*], *Chairperson,* CAGUIOA,[**] REYES, J. JR., LAZARO-JAVIER, and LOPEZ, *JJ.*
– versus –	
JESSE L. ALPUERTO, Respondent.	**Promulgated:** MAR 04 2020

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DECISION

REYES, J. JR., *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated March 14, 2016 and the Resolution[2] dated July 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139155.

Factual Antecedents

Jesse L. Alpuerto (respondent) worked for Coca-Cola Bottlers Phils., Inc. (petitioner) as a Finance Clerk, and was assigned at petitioner's warehouse and sales office in San Fernando, Pampanga. He was positioned at the gates of the warehouse and his duties, among others, involved goods receipt inventory, full goods verification at the office's gate, encoding and

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[*] On official business.

[**] Designated Acting Chairperson per S.O. No. 2776 dated February 27, 2020.

[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justice Edwin D. Sorongon and Associate Justice Marie Christine Azcarraga-Jacob concurring; *rollo*, pp. 61-70.

[2] Id. at 72.

recording duties of assets that get in and out of said warehouse.[3] He oversaw that all levels of control and procedures were in order to ensure accuracy and timely input of data that tracks the location, quantity, condition, maintenance status of all managed assets.[4] Petitioner also averred that respondent was specifically tasked, among others, to do the following:

> • Performs physical checking of goods and all items/objects for accuracy of cost, sales and volume records at assigned location ensuring that it is in accordance with the proper processes and procedures;
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> • Performs real-time encoding of all assets moving in and out of the gates, and ensures the recording and reporting of all non-trade assets received and transferred out of the designated gate;
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> • Issues and processes claim memo of all Driver's shortages that make-up for lost or damaged inventory;
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> • Provides the raw inputs of financial data and information in each location for roll-up to plant and company financials;
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> • Ensures that all goods, supplies and materials received and dispatched are in order and complete according to manifests and delivery receipts;
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> • Responsible for proper physical checking and recording of input or data/information per Company procedures during specific assigned locations and times;
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> • Also handles the monitoring and directing of internal and external deliveries and movement of assets to various parts of the grounds or buildings;
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> • Prevents unauthorized removal of company property or products and ensures the complete system input of all assets entering and leaving; and
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> • Counts truck inventory and keeps accurate records of finished goods transported out of the facility for sales delivery or distribution to another warehouse. Receives finished goods into inventory and maintains appropriate records.[5]

Respondent had been petitioner's employee for 11 years.

On March 12, 2012 at 6:20 p.m., respondent, who was then on leave, arrived at petitioner's warehouse together with his family to pick up nine cases of 237 ml Coke Zero products that were allegedly classified as bad orders (BOs) which they intend to take to their trip to Batangas. He took out the nine cases of soft drinks and replaced them with empty bottles.[6] Respondent alleged that Redel Padua (Padua), the site Operations Manager of The Redsystems Company, Inc. (TRCI), told him that it was alright to

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[3] Id. at 61.
[4] Id. at 263.
[5] Id. at 120; *see* also LA Decision dated June 17, 2014; id. at 196-197.
[6] Id. at 263.

drink the said soft drinks. TRCI is petitioner's independent contractor for logistics and warehousing. The event that transpired above was noted in the guard's logbook.

Later, petitioner issued a Notice to Explain[7] dated August 15, 2012 requiring respondent to explain why he should not be subjected to disciplinary action or dismissed for violation of petitioner's 2010 Employee's Code of Disciplinary Rules and Regulations (Red Book)[8] and the Code of Business Conduct (COBC),[9] particularly theft or unauthorized taking of funds or property which may carry the penalty of discharge and criminal prosecution.[10] The charge was based on the record of the security guard stationed at the warehouse.

On August 22, 2012, respondent gave an explanation[11] where he admitted that he took the Coke Zero products and explained that they were already classified as BOs subject to condemnation since their expiry dates were either December 23, 2011 or February 22, 2012. He also claimed that he was the only one being charged with theft when everyone was benefiting from the BOs, and he believed that it was alright to take them since everyone was allowed to consume them.

A hearing[12] was held on December 4, 2012, where respondent elaborated that before the incident, he already solicited for BOs and such was granted by the checker. Respondent claimed that Richard Guamos (Guamos), an inventory analyst of TRCI, also allegedly told him and other employees that such bad orders were considered as empties. Respondent elaborated that he had to bring bottles because the checker said that he should bring replacements before he can get the BOs since the bottles still have peso value. Respondent said that since it was alright with the "big bosses," he believed that he did not need to get approval from his superiors.

In an Inter-Office Memorandum[13] dated January 8, 2013, petitioner dismissed respondent for theft of company products, serious misconduct and loss of trust and confidence. Petitioner explained that the respondent's taking of the Coke Zero products and appropriating them for his personal use deprived them of the opportunity to write them off as tax deductions for expenses. Respondent's 11 years of service was taken as an aggravating circumstance since his long stay in the position should be taken against him since he knows very well that every movement should be followed by documentation and that he failed to ask permission from his superiors.

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7 Id. at 121.
8 Id. at 116-118.
9 Id. at 113-115.
10 Section 20 of the Red Book.
11 *Rollo*, p. 122.
12 Id. at 126-132.
13 Id. at 133-135.

On January 21, 2013, respondent filed for illegal dismissal and unfair labor practices (ULP) against petitioner and its former finance manager, Roberto Luistro (Luistro) and the plant's asset and inventory manager, Jovita Carbelledo (Carbelledo). Respondent prayed for payment of back wages, reinstatement, benefits and other damages. Respondent presented the testimonies of seven employees including a security guard (Alvin G. Cabrera) who claimed to have heard Padua saying that it was alright to consume the subject soft drinks.

Ruling of the Labor Arbiter

The Labor Arbiter[14] (LA) dismissed the complaint and upheld the legality of respondent's dismissal. The LA found as credible the statements of Guamos, who denied directing anyone to re-classify any of petitioner's products or property for recording purposes, and Padua, who denied giving permission to respondent to take petitioner's products out of the warehouse without consent from superiors and without proper documentation.[15] The LA noted that respondent failed to disprove the said statements. Moreover, respondent's admission that he failed to observe the procedure and that it was an error of judgment was construed to be an admission of theft.[16]

The LA also dismissed the charge of ULP for failure to present proof that petitioner interfered with respondent's right to self-organization.[17] Finally, the LA ordered that Luistro and Carbelledo be dropped from the case for failure to present evidence of their direct participation in respondent's dismissal.[18]

The dispositive portion of the Decision[19] dated June 17, 2014 reads:

> WHEREFORE, premises considered, a DECISION is hereby rendered DISMISSING this case with prejudice for lack of merit.
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> All other money claims, damages and attorney's fees of the [respondent] as raised in his complaint are likewise ordered DISMISSED with prejudice for lack of merit.
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> x x x x
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> SO ORDERED.[20]

Respondent elevated the case to the NLRC.

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14 Acting Executive Labor Arbiter Mariano L. Bactin.
15 *Rollo*, p. 201.
16 Id.
17 Id. at 204.
18 Id.
19 Id. at 193-206.
20 Id. at 204-206.

Ruling of the NLRC

In a Decision[21] dated September 30, 2014, the NLRC denied respondent's appeal and affirmed the LA's ruling. The NLRC held that respondent failed to prove the authenticity and due execution of the Inventory Write-Off Form (IWOF) which he presented to prove that the Coke Zero products which were taken were already expired. The NLRC opined that while administrative and quasi-judicial bodies are not bound by technical rules of procedure, this should not be construed as a license to disregard certain fundamental evidentiary rules,[22] and that the evidence presented must at least have a modicum of admissibility to be given some probative value.[23] Furthermore, even assuming that the IWOF is admissible in evidence, it failed to establish that the Coke Zero products enumerated therein were the same with the ones taken by respondent.[24]

The NLRC also found that the statements of Cabrera as well as respondent's co-employees do not support his claim that the Coke Zero products were already considered as BOs and that their taking was done with the permission of Padua and Guamos. The statements reveal that the permission given was to drink the Coke Zero 240 ml. or 8 ounce products and not to take them outside the premises. On this score, the NLRC also noted that the Coke Zero products which were allowed to be consumed were different from the ones taken by respondent (Coke Zero 237 ml.).[25] Finally, the NLRC noted that if indeed the Coke Zero products taken by respondent were already expired, it would have posed a serious health risk and petitioner's reputation as manufacturer of non-alcoholic beverages would be seriously damaged if said products were to be consumed by the public.[26]

Respondent filed a Motion for Reconsideration (MR) but the same was denied in a Resolution[27] dated November 19, 2014. Respondent then filed a Petition for *Certiorari* under Rule 65 to the CA.

Ruling of the CA

In its assailed Decision, the CA reversed the NLRC Decision. On the respondent's non-compliance with Section 3, Rule 46 of the Rules of Court for failure to attach material portions of the record, i.e. the complaint and petitioner's rejoinder, the CA held that an outright dismissal is not mandatory and that respondent was able to submit all the material portions of the record necessary to resolve the petition. At any rate, a dismissal based

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21 Penned by Commissioner Joseph Gerard E. Mabilog, Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves E. Vivar-De Castro; id. at 261-277.
22 Id. at 268.
23 Id. at 269.
24 Id. at 272.
25 Id. at 272-275.
26 Id. at 276.
27 Id. at 302-303.

on this ground would be hollow considering that petitioner already attached said portions of the record to its own pleadings before the CA.[28]

On the merits, the CA agreed with the NLRC in not considering the IWOF but ruled that respondent's argument that the Coke Zeros in question were already expired was amply supported by evidence on record. First, petitioner itself repeatedly referred to the Coke Zeros as BOs that would be written-off in its notice of dismissal to respondent. The CA held that this supports respondent's claim that they already expired on December 23, 2011 and February 22, 2012 – a claim which petitioner has not categorically denied. Furthermore, although the subject Coke Zero products were described as full goods, the CA took it to mean that the bottles still contained soft drinks as opposed to empty bottles.[29]

The CA noted that while the LA gave more weight to the denials made by Guamos and Padua in giving permission to take out the Coke Zero products, the NLRC gave more weight to the statements of respondent's co-employees that they were given permission to drink them. While the CA agreed with the NLRC on this point, it arrived at a different conclusion that the products taken by respondent were not different from the ones permitted to be consumed, considering that 8 ounces (which was allowed to be consumed) is equivalent to 236.5882 ml or 237 ml (which was taken by respondent) when rounded-off.[30]

The CA also held that respondent's act was not attended by malice as he relied on the approval of Padua and Guamos, whom he regarded as TRCI's "big bosses," believing that such was sufficient and that he was under the impression that he can take it out since it was approved for consumption. The CA also found the following circumstances that would negate ill motive and bad faith on respondent's part in taking the said BOs: (1) he asked the checker a day before he took them if he can have some bad orders; (2) he brought his family; (3) he replaced the old bottles with new bottles; (4) he picked up the beverages despite knowing that the security guard will note it down; (5) the beverages taken were for his family trip in Batangas; and (6) he readily admitted to the taking when he was required to explain.[31]

The CA construed the charge of theft to be akin to theft under Article 308 of the Revised Penal Code (RPC) since criminal prosecution, aside from dismissal, is also possible as stated in the Red Book. Thus, the charge against respondent was akin to the crime of theft where intent has to be proved. Thus, respondent's act which was done in good faith cannot be regarded as theft.[32]

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28 Id. at 64.
29 Id. at 65-66.
30 Id. at 66.
31 Id. at 66-67.
32 Id. at 67-68.

The CA, however, held that respondent's act was indicative of lack of prudence as he was careless in relying solely on the permission of the TRCI superiors in order to take out the Coke Zeros, which was an improper procedure. However, while such carelessness should be punished, the penalty for such carelessness should be commensurate with the gravity of the offense. Taking into account respondent's 11 years of service without evidence that his employment record was previously tarnished, and the fact that that the value of the products he took was ₱1,215.00 only while his monthly salary at the time of his dismissal was ₱20,800.00, the CA concluded that a penalty of suspension for one month is reasonable.[33] The CA also held that petitioner's officers, Robert Luistro and Jovita Carbelledo, should not be held liable in the absence of evidence that they acted maliciously or in bad faith in dismissing respondent.[34]

The dispositive of the Decision dated March 14, 2016 reads:

> **WHEREFORE**, the petition is **GRANTED.** The assailed decision and resolution dated November 19, [2014] of the NLRC in NLRC LAC NO. 07-00185-14 are set aside. Respondent Coca Cola Bottlers Philippines, Incorporated is hereby **ORDERED** to reinstate Alpuerto to his former or equivalent position without loss of seniority rights, benefits, and privileges and to pay backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from January 8, 2013, the date of Alpuerto's dismissal, up to the time of his reinstatement, with a deduction for the one-month suspension.
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> The Computation and Examination Unit of the NLRC is hereby ordered to compute said award of back wages, benefits and allowances.
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> **SO ORDERED.**[35]

Petitioner filed a Motion for Reconsideration but the same was denied in a Resolution[36] dated July 19, 2016.

Hence, the present Petition based on the following ground:

> WITH ALL DUE RESPECT, THE COURT OF APPEALS GRAVELY ERRED IN RENDERING THE QUESTIONED DECISION AND QUESTIONED RESOLUTION WHEN IT FAILED TO APPLY THE LAW AND THE PERTINENT RULINGS OF THIS HONORABLE COURT IN RULING THAT [RESPONDENT] WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.[37]

Ruling of the Court

Petitioner argues that a review of the factual and legal findings of the CA is warranted in this case considering that it was in conflict with the

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33 Id. at 68.
34 Id. at 69.
35 Id.
36 Id. at 72.
37 Id. at 28.

findings of the LA and the NLRC[38] and that the CA gravely erred in finding that respondent was illegally dismissed from employment.[39] Finally, petitioner states that in the event this Court sustains the finding that respondent's dismissal was too harsh, it should not be made to pay respondent backwages as it was in good faith in dismissing respondent.[40]

Respondent, on the other hand, prays that the petition be dismissed for failure to raise a question of law.[41] In particular, respondent argues that the matters of whether his act was done in good faith or constitutes theft, of whether it constitutes unlawful taking of company property, and of whether it constitutes serious misconduct as well as willful breach of trust, are factual in nature.[42]

In *Century Iron Works, Inc. v. Bañas,*[43] the Court differentiated between a question of fact and a question of law in this manner:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
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> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[44] (Citations omitted)

In the present case, there is no dispute that respondent took out nine cases of Coke Zeros from petitioner's warehouse, relying on the permission supposedly given by Guamos and Padua. The crucial question that this Court must resolve, therefore, is whether said act by respondent constitutes a just cause for termination under Article 282 (now Article 297[45]) of the Labor Code. Stated differently, the question is whether respondent's dismissal was warranted (as what the LA and the NLRC concluded) or was too harsh for the infraction he committed (as found by the CA). To our mind, this question is one of law, for "[w]hen there is no dispute as to the facts, the question of whether or not the conclusion drawn from these facts is correct is a question of law.[46]

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38 *See* Petition for Review on *Certiorari*, id. at 29-31; *see* also petitioner's Reply to respondent's Comment, id. at 504-507.

39 Id. at 29-31.

40 Id. at 42-43, 515-519.

41 Id. at 496.

42 Id.

43 711 Phil. 586 (2013).

44 Id. at 585-586.

45 Renumbered per Department of Labor and Employment (DOLE) Department Advisory No. 1, s. 2015.

46 *Heirs of Nicolas S. Cabigas v. Limbaco*, 670 Phil. 274, 288 (2011).

We now resolve the main issue.

Respondent's dismissal was too harsh a penalty for the infraction he committed.

Respondent was dismissed by petitioner on the ground of theft, serious misconduct, and willful breach of trust and confidence.[47] Section 20 of the Red Book provides:

> Section 20: Theft or unauthorized taking of property or funds of the Company, or that of co-employees or third persons within Company premises.
>
> First Offense- Discharge[48]

On the other hand, the COBC provides:

> "Theft of Company assets- whether physical theft such as unauthorized removal of Company product, equipment or information, or theft through embezzlement or intentional misreporting of time or expenses-**may result in termination and criminal prosecution**[49] x x x (Emphasis supplied)

To recall, the CA, quoting these provisions, concluded that there must be malice or intent to gain in order for respondent to be dismissed from employment because the theft or unauthorized taking of property under the Red Book and COBC is akin to theft as defined under the RPC, since the commission of said acts may also lead to criminal prosecution. Thus, the CA held that respondent cannot be said to have committed theft or unauthorized taking of company property since his act of taking out the Coke Zero products was done in good faith, as he relied on the permission given by Padua and Guamos.

We agree with the CA that respondent's dismissal was too harsh a penalty for the infraction he committed. Thus, such dismissal is invalid. While petitioner's company rules provide for the penalty of dismissal in case of theft or unauthorized taking of company property, "such cannot preclude the State from inquiring whether the strict and rigid application or interpretation thereof would be harsh to the employee."[50]

Article 282 (now Article 297) of the Labor Code enumerates the just causes for termination:

> Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

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47 *Rollo*, p. 135.
48 Id. at 117.
49 Id. at 115.
50 *Farrol v. Court of Appeals*, G.R. No. 133259, February 10, 2000, 325 SCRA 331, 340.

> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> b. Gross and habitual neglect by the employee of his duties;
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> c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> 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 representatives; and
>
> e. Other causes analogous to the foregoing.

In *Caltex Philippines, Inc. v. Agad*,[51] it was held that theft of company property is akin to serious misconduct or willful disobedience by the employee of the lawful orders of his employer in connection with his work, which is a just cause for termination of employment.[52] In *Nagkakaisang Lakas Ng Manggagawa sa Keihin v. Keihin Philippines Corp.*,[53] the Court laid down what constitutes misconduct to justify dismissal:

> Misconduct is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." "For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."[54] (Citations omitted)

Taking into consideration the particular circumstances of this case, the Court is of the view that respondent's act of taking company property without compliance with the proper procedure may not be considered as tantamount to serious misconduct to warrant dismissal. As aptly found by the CA, the following circumstances negate a finding that respondent was impelled by a wrongful intent: (1) he asked the checker a day before he took them if he can have some bad orders; (2) he brought his family with him when they took the soft drinks; (3) he replaced the old bottles with new bottles; (4) he picked up the beverages despite knowing that the security guard will note it down; (5) the beverages taken were for his family trip in Batangas; and (6) he readily admitted to the taking when he was required to explain.[55] Surely, if respondent's taking was driven by a wrongful intent, he would not have taken the Coke Zeros in this case knowing very well that other people would have easily noticed what he was doing. Hence, rather than being impelled by wrongful intent, the Court finds that respondent's act was a mere exercise of bad judgment, considering that he believed that the

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51 633 Phil. 216 (2010).

52 Id. at 233.

53 641 Phil. 300 (2010).

54 Id. at 310. Under Sec. 5.2 (a), Rule I-A of DOLE Department Order No. 147-15, s. 2015, the requisites for serious misconduct to be a valid ground for termination, citing several decisions of this Court, are the following: (1) there must be a misconduct; (2) the misconduct must be of such grave and aggravated character; (3) it must relate to the performance of the employee's duties; and (4) there must be showing that the employee becomes unfit to continue working for the employer.

55 *Rollo*, pp. 66-67.

verbal permission given by Padua and Guamos to drink the Coke Zero products were sufficient for him to be able to take them out for the family trip.

As regards loss of trust and confidence, in *Bravo v. Urios College,*[56] the Court discussed the parameters when such may be invoked as a valid ground for dismissal, to wit:

> A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two (2) conditions.
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> First, the employee whose services are to be terminated must occupy a position of trust and confidence.
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> There are two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees. Managerial employees are considered to occupy positions of trust and confidence because they are "entrusted with confidential and delicate matters." On the other hand, fiduciary rank-and-file employees refer to those employees, who, "in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property." Examples of fiduciary rank-and-file employees are "cashiers, auditors, property custodians," selling tellers, and sales managers. It must be emphasized, however, that the nature and scope of work and not the job title or designation determine whether an employee holds a position of trust and confidence.
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> The second condition that must be satisfied is the presence of some basis for the loss of trust and confidence. This means that "the employer must establish the existence of an act justifying the loss of trust and confidence." Otherwise, employees will be left at the mercy of their employers.
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> Different rules apply in determining whether loss of trust and confidence may validly be used as a justification in termination cases. Managerial employees are treated differently than fiduciary rank-and-file employees. In *Caoile v. National Labor Relations Commission:*
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> > [W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein

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[56] 810 Phil. 603 (2017).

> renders him unworthy of the trust and confidence demanded by his position.
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> Although a less stringent degree of proof is required in termination cases involving managerial employees, employers may not invoke the ground of loss of trust and confidence arbitrarily. The prerogative of employers in dismissing a managerial employee "must be exercised without abuse of discretion."[57] (Citations omitted)

As to the first requisite, the question of whether an employee "occupied a position of trust and confidence, or was routinely charged with the care and custody of the employer's money or property" is factual.[58] Notably, while the LA and the NLRC upheld the validity of respondent's dismissal for causes invoked by petitioner (including lost of trust and confidence or willful breach of trust and confidence), it did not discuss in detail whether respondent's position as Finance Clerk is one of trust and confidence. The CA, on the other hand, also did not discuss this particular point and instead focused the discussion on the taking of the Coke Zero products. Nevertheless, respondent does not appear to dispute the petitioner's assertion that the position of Finance Clerk is one of trust and confidence. From the pleadings submitted by the parties as well as the findings of the labor tribunals and the CA as to the nature of the respondent's work and functions as a Finance Clerk, this Court concludes that respondent occupied a position of trust and confidence. As mentioned, he was positioned at the gates of the warehouse and his duties, among others, involved goods receipt inventory, full goods verification at the office's gate, and encoding and recording duties of assets trafficked in and out of said warehouse. He also oversaw that all levels of control and procedures regarding company assets were in order. Furthermore, his specific tasks revealed that aside from conducting physical checking, inventory, and recording, he was also tasked with monitoring and directing the movements of assets to various locations and with safeguarding company assets from unauthorized removal.[59] In the case, however, respondent falls within the second class of positions of trust and confidence, namely, fiduciary rank-and-file employees, since in the course of his work, he regularly handled significant amounts of the employer's property and was entrusted with its care and protection.

As to the second requisite, respondent argues in his Comment to the present Petition that there can be no such breach, much less a willful one, when he acted in good faith when he took the Coke Zero products.[60] We find merit in respondent's assertion and hold that the second requisite for loss of trust and confidence is not present considering that from the circumstances of this case, the breach of trust was not willful. In *Inocente v. St. Vincent*

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57 Id. at 620-622.

58 *See Century Iron Works, Inc. v. Bañas*, supra note 43, at 586.

59 *See* supra note 5.

60 *Rollo*, p. 500.

Foundation For Children and Aging, Inc.,[61] we stated that the loss of trust and confidence must be through a willful breach thereof:

> 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 justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.
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> 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.
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> In *Vitarich Corp. v. NLRC*, 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. In short, there must be an actual breach of duty which must be established by substantial evidence.[62] (Citations omitted)

Although it is already not disputed that he failed to comply with the proper procedure for the taking out of the Coke Zeros, the circumstances of the case negate a finding that his infraction constitutes a willful breach of the trust reposed in him by petitioner. The Court finds that respondent's infraction was brought about by carelessness rather than by willful and intentional act of stealing from his employer. His failure to comply with proper procedures was brought about by his erroneous belief that the actions he had undertaken (such as securing permission from Padua and Guamos, whom he regarded as "big bosses") were enough for him to validly take the Coke Zeros in question.

Of course, this is not to say that respondent was entirely faultless in this case. As correctly held by the CA, while respondent committed an act which should not go unpunished, the penalty of dismissal was too harsh and disproportionate. Infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance, and the penalty must be commensurate with the act, conduct or omission imputed to the employee.[63] Hence, the Court holds that a lesser penalty would have been sufficient for the infraction he committed, taking also into consideration that he had no previous derogatory record in his 11 years in petitioner's employ. While this Court is aware that there is jurisprudence[64] to the effect that "in cases of breach of trust and loss of confidence, the length of time, if

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61 G.R. No. 202621, June 22, 2016, 794 SCRA 299.
62 Id. at 328-329.
63 *Farrol v. Court of Appeals*, supra note 50, at 339.
64 *See Matis v. Manila Electric Co*, 795 Phil. 319 (2016).

considered at all, shall be taken against the employee, x x x"[65] for '[u]nlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain,"[66] such must be understood to mean that when loss of trust and confidence has been duly established, length of service may be considered as an aggravating circumstance instead. Such is not applicable in this case since as already discussed, the second requisite for loss of trust and confidence is lacking.

Backwages and reinstatement

Petitioner prays, in the alternative, that in case respondent's dismissal be declared illegal, it should not be made liable to pay backwages for they were in good faith in terminating respondent's employment. Furthermore, they pray that they should just be allowed to pay separation pay in lieu of reinstatement, since reinstatement is no longer feasible considering the length of time that respondent has been dismissed, that he occupied a position of trust and confidence, and reinstatement would no longer serve the best interest of the parties.

We find no merit to both of petitioner's alternative prayers.

It is true that in *Integrated Microelectronics, Inc. v. Pionilla*,[67] the Court recognized an exception to the general rule that backwages are to be paid to an illegally dismissed employee. The Court held therein that reinstatement without backwages may be ordered on account of the following: (a) the fact that dismissal of the employee would be too harsh of a penalty; and (b) that the employer was in good faith in terminating the employee.[68] Said ruling was applied in *Universal Robina Sugar Milling Corp. v. Ablay*[69] and *Holcim Philippines, Inc. v. Obra*.[70] However, it must be emphasized that under the parameters set forth in *Integrated Microelectronics*, the denial of backwages was deemed to be the penalty sufficient for the infraction committed by the employee instead of dismissal from employment.

While it may be argued that the two above-mentioned requisites[71] are present in this case, the Court finds no compelling reason to disturb the CA's finding that suspension for one month would be the more reasonable and commensurate penalty under the circumstances. Hence, to impose a one-month suspension and delete the award of backwages in its entirety at the same time would amount to respondent being penalized twice for the same

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65 Id. at 325.
66 Id.
67 G.R. No. 200222, August 28, 2013, 704 SCRA 362.
68 Id. at 367.
69 G.R. No. 218172, March 16, 2016, 787 SCRA 593.
70 792 Phil. 594 (2016).
71 Notably, as to the second requisite, the CA did not award moral and exemplary damages in favor of respondent upon a finding that the latter's dismissal was not attended with bad faith.

infraction. Thus, instead of deleting the award of backwages in its entirety, the Court affirms the CA in awarding backwages but with deduction corresponding to the suspension for one month, with modification that said monetary award shall earn legal interest of 6% per annum from finality of this Decision until full satisfaction thereof.[72]

Furthermore, the Court cannot sustain petitioner's other alternative prayer as regards the payment of separation pay in lieu of reinstatement. Considering that payment of separation pay is an exception to the general rule that an employee who was illegally dismissed should be reinstated,[73] we cannot apply such exception on the basis of petitioner's bare assertion that reinstatement would no longer serve the best interest of the parties. In fact, on the side of the respondent, he has reiterated his prayer for reinstatement in his Memorandum of Appeal[74] and MR[75] before the NLRC, his Petition for *Certiorari*[76] before the CA, and in his Comment[77] to the present Petition where he prayed that the same be dismissed (thus, he is in effect praying for this Court to affirm the CA ruling which ordered his reinstatement).

In sum, the Court finds that respondent's dismissal was too harsh a penalty for the infraction he committed. Hence, the CA was correct in finding that the NLRC committed grave abuse of discretion in upholding the validity of respondent's dismissal.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated March 14, 2016 and the Resolution dated July 19, 2016 of the Court of Appeals in CA-G.R. SP No. 139155 are hereby **AFFIRMED with MODIFICATION** that the monetary award made therein shall earn legal interest of 6% per annum reckoned from the finality of this Decision until full satisfaction thereof.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

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72 *See Claret School of Quezon City v. Sinday*, G.R. No. 226358, October 9, 2019.
73 *See* Art. 279 (now Art. 294) of the Labor Code.
74 *Rollo*, p. 229.
75 Id. at 285.
76 Id. at 320.
77 Id. at 501.

WE CONCUR:

(On Official Business)
DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Acting Chief Justice