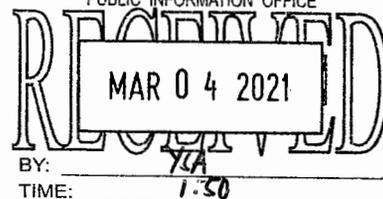




Republic of the Philippines  
**Supreme Court**  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 15, 2020, which reads as follows:*

**“G.R. No. 213942 (Everkeen Marketing, Incorporated/ Wong Yuk Kam/ Waiman Yip, Petitioners, v. Milo Mondia, Arnel Solizar, and Fely Gregorio, Respondents).** – This Petition for Review on *Certiorari*<sup>1</sup> seeks to reverse and set aside the Decision<sup>2</sup> dated 23 August 2013 and Resolution<sup>3</sup> dated 24 July 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 04673. The CA affirmed with modification the National Labor Relations Commission (NLRC) Decision, which upheld the Labor Arbiter’s (LA) Decision declaring that respondents Milo<sup>4</sup> Mondia (Mondia), Arnel Solizar (Solizar), and Fely Gregorio (Gregorio) (collectively, respondents) were not illegally dismissed from their employment with petitioner Everkeen Marketing, Incorporated (petitioner).

**Antecedents**

Petitioner is a wholesaler and distributor of goods and merchandise. Gregorio narrated that she was hired by petitioner on 16 May 2001 as grocery checker, assigned to check the groceries or merchandise ordered by its customers or agents. On the other hand, Mondia and Solizar were hired by petitioner on 16 May 2001 and 20 March 1997, respectively, as delivery helpers tasked to assist in loading, unloading, and delivering groceries or merchandise.<sup>5</sup>

<sup>1</sup> *Rollo*, pp. 41-81.

<sup>2</sup> *Id.* at 10-22; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Edgardo L. delos Santos (now a Member of this Court) and Maria Elisa Sempio Diy of the Court of Appeals, Cebu City.

<sup>3</sup> *Id.* at 25-30; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Edgardo L. delos Santos (now a Member of this Court) and Maria Luisa C. Quijano-Padilla of the Court of Appeals, Cebu City.

<sup>4</sup> Nilo, in some parts of the record.

<sup>5</sup> *Rollo*, pp. 49 and 361.

July 15, 2020

Sometime in 2005, Roselyn Alegro (Alegro), petitioner's merchandise agent, wrote a letter implicating respondents in the theft and excess loading of stocks.<sup>6</sup> Apparently, order slips of customers were being duplicated. The duplicate/fictitious order slips contained additional items not requested by the customer, then snuck out of petitioner's warehouse.<sup>7</sup> Gregorio, allegedly, checked, signed, and verified the duplicate/fictitious order slips.<sup>8</sup>

Petitioner then terminated Mondia and Solizar's employment on 18 September 2005,<sup>9</sup> while Gregorio's employment was terminated on 25 October 2005.<sup>10</sup>

Consequently, on 03 November 2005, respondents filed a Complaint<sup>11</sup> for illegal dismissal, underpayment of wages, non-payment of allowances, service incentive leave pay, 13<sup>th</sup> month pay, damages, attorney's fees, and refund of provident fund contributions against petitioner and its managers, Wong Yuk Kam and Waiman Yip.

For its part, petitioner averred that Gregorio was not an employee of petitioner but of Everfast Transport and Services (Everfast), a sole proprietorship owned by Mark Gomez, engaged in hauling and transporting merchandise and commodities.<sup>12</sup> Petitioner insisted that Gregorio's dismissal was valid on the ground of loss of trust and confidence. On the other hand, petitioner insisted that Mondia and Solizar were neither its employees nor Everfast's. They were allegedly *cargadors* who were paid on the basis of their output and reported for work only when there was a need for loading and unloading of goods and merchandise.<sup>13</sup>

### Ruling of the LA

In his Decision<sup>14</sup> dated 26 February 2008, the LA dismissed the complaint for lack of merit. The LA ruled that respondents were not petitioner's employees and, consequently, could not have been illegally dismissed from employment, thus:

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<sup>6</sup> Id. at 11-12 and 361.

<sup>7</sup> Id. at 242-243.

<sup>8</sup> Id. at 50.

<sup>9</sup> Id. at 372 and 374, respectively.

<sup>10</sup> Id. at 52 and 370-371.

<sup>11</sup> Id. at 11.

<sup>12</sup> Id. at 48-49

<sup>13</sup> Id. at 54.

<sup>14</sup> Id. at 196-204; penned by Executive Labor Arbiter Danilo C. Acosta.

All told, since it was fully established and proven that there was no employer-employee relationship that exists between complainants and respondents, the claim for illegal dismissal cannot be sustained. An indispensable precondition of illegal dismissal is the prior existence of an employer-employee relationship. This being the case, the monetary claim of the complainants would naturally fail as it has no leg to stand on.

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING (sic) the instant case for lack of merit.

SO ORDERED.<sup>15</sup>

Aggrieved, respondents filed an appeal with the NLRC.<sup>16</sup>

### Ruling of the NLRC

In its Decision<sup>17</sup> dated 20 February 2009, the NLRC affirmed with modification the decision of the LA, to wit:

WHEREFORE, the decision the (sic) of the Labor Arbiter is hereby **AFFIRMED** with **MODIFICATION** that appellant Gregorio is an employee of appellee Everkeen Mktg. Inc.

SO ORDERED.<sup>18</sup>

The NLRC found that except for Mondia and Solizar's sworn affidavits, there was no other evidence to corroborate their claims that they were employees of petitioner.<sup>19</sup>

On the other hand, the NLRC ruled that Gregorio was petitioner's employee. It held that, if Gregorio had indeed worked for Everfast, petitioner could have secured copies of the payroll records of Everfast to prove that Gregorio was employed with the latter company.<sup>20</sup>

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<sup>15</sup> Id. at 203-204.

<sup>16</sup> Id. at 239.

<sup>17</sup> Id. at 239-245; penned by Commissioner Oscar S. Uy and concurred in by Presiding Commissioner Violeta O. Bantug and Commissioner Aurelio D. Menzon.

<sup>18</sup> Id. at 244.

<sup>19</sup> Id. at 241.

<sup>20</sup> Id. at 242.

Dissatisfied with the findings of the NLRC, respondents filed a motion for reconsideration, which the NLRC denied through its Resolution<sup>21</sup> dated 10 July 2009. Respondents, thereafter, sought recourse with the CA by filing a petition for *certiorari*.<sup>22</sup>

### Ruling of the CA

In its Decision<sup>23</sup> dated 23 August 2013, the CA granted respondents' petition. The dispositive portion thereof reads:

WHEREFORE, the instant petition for *certiorari* is GRANTED. The Decision dated February 20, 2009 and the Resolution dated July 10, 2009 of the National Labor Relations Commission, Fourth Division, in NLRC Case No. VAC-10-000664-08, are AFFIRMED with MODIFICATION, as follows:

1. Petitioners Milo Mondia and Arnel Solizar are declared regular employees of private respondent Everkee Marketing, Inc.;
2. Petitioners Fely Gregorio, Milo Mondia and Arnel Solizar are entitled to full backwages from the date they were illegally dismissed on October 25, 2005, September 18, 2005 and September 18, 2005, respectively, until finality of this decision;
3. Petitioners are all entitled to separation pay in lieu of reinstatement which is equivalent to one month salary for every year of service;
4. Petitioners are entitled to wage differential based on the applicable wage order;
5. Petitioners are entitled to 13<sup>th</sup> month pay and service incentive leave pay; and
6. Petitioners' prayer for attorney's fees equivalent to 10% of their total monetary awards is granted.

Let this case be remanded to the Labor Arbiter for proper computation of petitioners' backwages, separation pay, wage differential, 13<sup>th</sup> month pay, service incentive leave pay and attorney's fees in accordance with this Decision, as expeditiously as possible.

**SO ORDERED.**<sup>24</sup>

<sup>21</sup> Id. at 260-261.

<sup>22</sup> Id. at 263-277.

<sup>23</sup> Id. at 10-22.

<sup>24</sup> Id. at 21-22.

The CA explained that the repeated and continuous hiring of Mondia and Solizar showed that they were doing activities indispensable to petitioner's business. They are thus considered regular employees of petitioner and entitled to security of tenure.<sup>25</sup>

Respondents subsequently moved for reconsideration, but the CA denied their motion in its Resolution<sup>26</sup> dated 24 July 2014. Hence, respondents filed the instant petition before this Court.

### Issues

The issues in this case are:

- (1) whether or not the CA correctly ruled that respondent Gregorio does not occupy a position of trust and confidence;
- (2) whether or not respondents Mondia and Solizar are regular employees of petitioner; and
- (3) whether or not all three respondents were illegally dismissed from employment.

### Ruling of the Court

The petition is without merit.

It is well established that the Court is not a trier of facts. As a rule, the function of the Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions.<sup>27</sup> The present case falls within a recognized exception because the findings of fact of the LA, NLRC, and CA are conflicting.<sup>28</sup>

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<sup>25</sup> Id. at 18.

<sup>26</sup> Id. at 25-30.

<sup>27</sup> *Moral v. Momentum Properties Management Corporation*, G.R. No. 226240, 06 March 2019.

<sup>28</sup> Id.

*Gregorio could not be dismissed  
for loss of trust and confidence*

Article 297 (c)<sup>29</sup> of the Labor Code allows an employer to terminate the services of an employee on the ground of loss of trust and confidence. There are two requisites for this ground: (1) the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected, and (2) the employer must present clear and convincing proof of an actual breach of duty committed by the employee by establishing the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest.<sup>30</sup> The betrayal of this trust is the essence of the offense for which an employee is penalized.<sup>31</sup>

The aforestated requisites are absent in this case.

Anent the first requisite, it should be pointed out that Gregorio was a grocery checker.<sup>32</sup> Her functions included checking or confirming whether or not the picker correctly prepared the groceries or merchandise listed in the order slip of a customer and, if correct, sign and approve the order slip before passing it to the encoder for the issuance of an invoice receipt. She was not a managerial employee, as defined under Article 219 (m)<sup>33</sup> of the Labor Code, since she was not vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign, or discipline employees. Undoubtedly, Gregorio was a rank-and-file employee. The question now is whether or not she was a fiduciary rank-and-file employee.

A fiduciary rank-and-file employee includes those who, in the normal and routine exercise of their functions, regularly handle significant amounts

<sup>29</sup> ART. 297. [282] Termination by Employer. -- An employer may terminate an employment for any of the following causes:

x x x

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

x x x

<sup>30</sup> *University of Manila v. Pinera*, G.R. No. 227550, 14 August 2019.

<sup>31</sup> *Cocoplans, Inc. v. Villapando*, G.R. No. 183129, 30 May 2016, 785 Phil. 734-754.

<sup>32</sup> *Rollo*, p. 15.

<sup>33</sup> Article 219. [212] Definitions. -- x x x

x x x

(m) "Managerial employee" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. X x x All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.

of money or property and are thus classified as occupying positions of trust and confidence. Cashiers, auditors, and property custodians are some of the employees in this class.<sup>34</sup> From the description given above of Gregorio's tasks as grocery checker, it would appear that the position was not one imbued with trust and confidence. While Gregorio dealt with goods and merchandise of great value, her task was routinary and mechanical. Her handling of the merchandise was confined to making sure that the items sent to customers corresponded to the order forms.

Anent the second requisite, even assuming that Gregorio occupied a position of trust and confidence, it was not sufficiently established that she participated in the preparation and eventual approval of the duplicate/fictitious order slips of two (2) customers. With respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of actual participation in the accident. Mere uncorroborated assertions and accusations by the employer are not sufficient to establish an employee's breach of duty.<sup>35</sup>

In this case, Alegro's letter accusing respondents of wrongdoing cannot be given credence because it was not notarized. Notarization may seem to be an inconsequential requirement considering that the LA and the NLRC are not strictly bound by technical rules of evidence. However, the requirement that the direct testimony can be contained in an affidavit is to ensure that the affiant swore under oath before an administering officer that the statements in the affidavit are true. The affiant would then be aware that he or she can be charged criminally for perjury for untruthful statements.

In addition, Alegro was not summoned to testify as to the contents of her letter.<sup>36</sup> The letter, then, cannot be accepted as her direct testimony. There is no way for the LA to test the veracity of her statements. Neither did petitioner present any other evidence to corroborate Alegro's claims. As such, the allegations in Alegro's letter are just that – allegations, not substantiated by any proof. Hence, the letter cannot be considered as evidence of respondents' guilt.

<sup>34</sup> *Bluer than Blue Joint Ventures Co. v. Esteban*, G.R. No. 192582, 07 April 2014; *University of Manila v. Pinera*, G.R. No. 227550, 14 August 2019.

<sup>35</sup> *Del Monte Fresh Produce (Phil.), Inc. v. Betonio*, G.R. No. 223485, 04 December 2019.

<sup>36</sup> *Naranjo v. Biomedica Health Care, Inc.*, G.R. No. 193789, 19 September, 2012, 695 Phil. 551-576.

In fine, petitioners failed to present sufficient evidence to show that Gregorio committed acts that would warrant her dismissal for loss of trust and confidence.

*Mondia and Solizar are regular employees and were illegally dismissed*

A regular employee is an employee who may either be (1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or (2) has rendered at least one (1) year of service, whether or not such service is continuous or broken, with respect to the activity for which he is employed and his employment continues as long as such activity exists.<sup>37</sup>

Based on this definition, Mondia and Solizar are regular employees. Not only have they worked as delivery helpers, performing tasks necessary and desirable in petitioner's usual business or trade, but they have been performing these same tasks for four (4) years and eight (8) years, respectively. Even if the Court subscribes to petitioner's contention that Mondia and Solizar worked at their own pleasure,<sup>38</sup> the law still considers them regular employees because they had been performing the same tasks for more than one (1) year. While length of time may not be the controlling test to determine if one is a regular employee, it becomes significant when they are hired to perform tasks which are necessary and indispensable to the usual business or trade of the employer.<sup>39</sup>

As regular employees, Mondia and Solizar are entitled to security of tenure. It was incumbent upon petitioners to show that Mondia and Solizar were dismissed for just or valid cause, and following due process requirements mandated by law. In illegal dismissal cases, the burden of proof is upon the employer to prove that the employee's termination is for a just and valid cause.<sup>40</sup> Petitioners, however, failed to discharge their burden. Mondia and Solizar were unceremoniously dismissed without just and valid cause and without the observance of due process.

<sup>37</sup> *Abuda v. L. Natividad Poultry Farms*, G.R. No. 200712, 04 July 2018.

<sup>38</sup> *Rollo*, p. 54.

<sup>39</sup> *Geraldo v. The Bill Sender Corp.*, G.R. No. 222219, 03 October 2018.

<sup>40</sup> *Id.*

*Gregorio, Mondia, and Solizar  
are entitled to backwages,  
separation pay, among others*

Having established that respondents were all illegally dismissed from employment, they are entitled to backwages and reinstatement. They should be paid full backwages from the time of their illegal dismissal, *i.e.*, 18 September 2005 for Mondia and Solizar, and 25 October 2005 for Gregorio, until the finality of this Decision. By reason of the lapse of more than ten (10) years since the filing of the illegal dismissal case on 03 November 2005, the Court deems it more practical and in the best interest of the parties to award separation pay to Gregorio, Mondia, and Solizar, in lieu of reinstatement.<sup>41</sup> Hence, respondents are entitled to separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months considered as one (1) whole year.<sup>42</sup>

As to the other monetary awards, the Court finds that the CA correctly granted them, based on the foregoing discussion of their legal and factual bases. In accordance with prevailing jurisprudence, a legal interest of six percent (6%) per annum shall be imposed on all the monetary grants from the finality of this Decision until paid in full.<sup>43</sup>

*Imperfect appeal before the  
NLRC*

Finally, petitioners argue that respondents' appeal before the NLRC was not perfected because there was no notice of appeal and proof of payment of the required appeal fee.<sup>44</sup> Petitioners aver that the CA erred in not dismissing the petition for *certiorari* outright due to the imperfect appeal.

In its Resolution<sup>45</sup> dated 24 July 2014, the CA noted that even though petitioners had already raised said issues before the NLRC, the latter merely brushed this argument aside and proceeded to resolve the case on the merits. Remarkably, petitioners did not raise this issue when the NLRC gave due course to the appeal. They are, thus, presumed to have accepted the NLRC's jurisdiction to take cognizance of the appeal.<sup>46</sup> Further, it is well settled that

<sup>41</sup> *Lingat v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 205688, 04 July 2018.

<sup>42</sup> *Skyway O & M Corp. v. Reinante*, G.R. No. 222233, 28 August 2019.

<sup>43</sup> *Lingat v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 205688, 04 July 2018.

<sup>44</sup> *Rollo*, p. 28.

<sup>45</sup> *Id.* at 25-30.

<sup>46</sup> *Id.* at 29.

the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases.<sup>47</sup>

**WHEREFORE**, the foregoing premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated 23 August 2013 and Resolution dated 24 July 2014 rendered by the Court of Appeals in CA-G.R. SP No. 04673 are **AFFIRMED** with **MODIFICATION**:

1. Respondents Milo Mondia and Arnel Solizar are declared regular employees of petitioner Everkeen Marketing, Inc.

2. Petitioner Everkeen Marketing, Inc. is **ORDERED** to pay respondents Fely Gregorio, Milo Mondia, and Arnel Solizar:

- (a) full backwages from the date they were illegally dismissed until finality of this Resolution;
- (b) separation pay, in lieu of reinstatement, equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months considered as one (1) whole year;
- (c) wage differential based on the applicable wage order;
- (d) 13<sup>th</sup> month pay and service incentive leave pay; and
- (e) attorney's fees equivalent to ten percent (10%) of the total monetary awards.

In consonance with prevailing jurisprudence, the monetary judgment due to respondents shall earn legal interest at the rate of six percent (6%) per annum from finality of this Resolution until fully satisfied.

Let this case be remanded to the Labor Arbiter for proper computation of respondents' backwages, separation pay, wage differential, 13<sup>th</sup> month pay, service incentive leave pay, and attorney's fees in accordance with this Resolution, as expeditiously as possible.

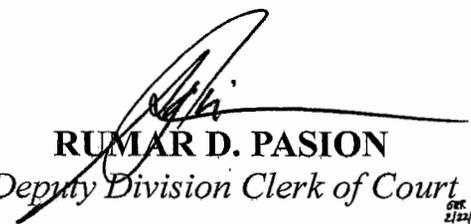
<sup>47</sup> *Reyes v. Global Beer Below Zero, Inc.*, G.R. No. 222816, 04 October 2017, 819 Phil. 483-500.

**SO ORDERED.”**

By authority of the Court:

**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*

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**G.R. No. 213942**

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