

## SECOND DIVISION

[ G.R. NO. 148410, January 17, 2005 ]

**VICENTE C. ETCUBAN, JR., PETITIONER, VS. SULPICIO LINES, INC., RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

The stakes are high in a position imbued with trust, and for petitioner Vicente C. Etcuban, Jr., the loss of trust in him by his employer cost him his job after 16 years of service. He cries that the penalty was too harsh for an unproved and petty infraction. Upon the other hand, his employer avers that it acted well within its rights in terminating the petitioner's services after the investigation revealed that the latter failed to live up to the trust and confidence expected of him as Chief Purser. The Labor Arbiter and the National Labor Relations Commission (NLRC) agreed with the petitioner, while the Court of Appeals ruled for the employer.

#### The Antecedents

Respondent Sulpicio Lines, Inc. is a domestic corporation engaged in the business domestic shipping. Among its fleet of inter-island vessels was the M/V Surigao Princess, plying the Cebu-Cagayan de Oro-Jagna-Bohol route.<sup>[1]</sup>

The petitioner was employed by the respondent on January 30, 1978 until his dismissal on June 10, 1994 for loss of trust and confidence.<sup>[2]</sup> At the time of his dismissal, the petitioner was the Chief Purser of the M/V Surigao Princess receiving a monthly salary of P5,000.00.<sup>[3]</sup> As the Chief Purser, the petitioner handled the funds of the vessel and was the custodian of all the passage tickets and bills of lading.<sup>[4]</sup> It was his responsibility, among other things, to issue passage tickets and to receive payments from the customers of the respondent, as well as to issue the corresponding official receipts therefor.<sup>[5]</sup> He was also tasked to disburse the salaries of the crewmen of the vessel.<sup>[6]</sup>

Sometime in the last week of May 1994, the newly designated *jefe de viaje*<sup>[7]</sup> of the M/V Surigao Princess, in a surprise examination, discovered that several yellow passenger's duplicate original<sup>[8]</sup> of yet to be sold or unissued passage tickets already contained the amount of P88.00 – the fare for adult passengers for the Cagayan de Oro to Jagna, Bohol route. He noticed that three other original copies which made up the full set did not bear the same impression, although they were supposed to have been prepared at the same time. Acting on what appeared to be a strong evidence of short-changing the company, the *jefe de viaje* dug deeper on what he uncovered. As expected, he found inordinate amount of ticket issuances for children at half the fare of P44.00 in Voyage 434 of the vessel.<sup>[9]</sup> When word of the anomaly reached the respondent, it waited for the petitioner to return to Cebu City

in the hope of shedding more light on the matter.

On May 30, 1994, shortly after disembarking from the M/V Surigao Princess at the port of Cebu, the petitioner received a memorandum of even date from Personnel Officer Artemio F. Añiga relative to the irregularity in the "alleged involvement in anomaly of ticket issuance," instructing him to forthwith report to the main office and to explain in writing why no disciplinary action should be meted on him or to submit himself to an investigation. The memorandum warned the petitioner that his failure to comply with the aforementioned instructions would be construed as a waiver of his right to be heard. It also informed the petitioner of his immediate preventive suspension until further notice.<sup>[10]</sup> The petitioner, however, refused to acknowledge receipt of the memorandum which was personally served on him,<sup>[11]</sup> prompting the respondent to mail the same, and which the petitioner received days later.<sup>[12]</sup>

Meanwhile, upon his arrival at the office, the petitioner was questioned by Mr. Carlo S. Go, Senior Executive Vice-President and General Manager of respondent. Thereafter, petitioner was preliminarily investigated by Mr. Añiga wherein his statements were taken down.<sup>[13]</sup> After the initial investigation, the petitioner was told to sign its minutes but he adamantly refused, claiming the same to be "self-incriminatory."<sup>[14]</sup> The next day, the petitioner was replaced by Mr. Felix Almonicar as the Chief Purser of the M/V Surigao Princess.<sup>[15]</sup> As a result of his replacement, the petitioner thought he was fired from his job.

Barely a week after the petitioner's preventive suspension and pending his administrative investigation, he filed a complaint against the respondent for illegal dismissal, non-payment of overtime pay, 13<sup>th</sup> month pay and other monetary benefits with the NLRC, Regional Arbitration Branch No. VII, Cebu City. The case was docketed as NLRC No. RAB-VII-06-0607-84. The petitioner alleged that the ground for his dismissal, *i.e.*, loss of trust and confidence, was ill-motivated and without factual basis. He did not deny that the anomalous tickets were in his possession, but denied that he was guilty of any wrongdoing. He dismissed the handwriting on the tickets as his, and claimed that he was singled out for the dismissal. He averred that the "trumped-up" charge was a clever scheme resorted to by his employer so it could avoid paying him monetary benefits, considering that he was with the company for more than sixteen (16) years. He argued that assuming that it was he who wrote those entries in the tickets, the fact remains that they were still unissued; hence, no money went to his pocket and no material prejudice was caused to the respondent. According to the petitioner, he would not jeopardize his livelihood for something as miniscule as P88.00. He prayed not for reinstatement but for separation pay, monetary benefits plus damages.<sup>[16]</sup>

On June 9, 1994, the respondent received its summons.<sup>[17]</sup> Short of pre-empting its administrative investigation, coupled with the petitioner's obstinate refusal to submit to further investigation, the respondent decided to terminate the petitioner's employment for loss of trust and confidence in connection with passage tickets nos. 636742-636748.<sup>[18]</sup> A copy of the notice of termination<sup>[19]</sup> dated June 10, 1994 was sent by mail to the petitioner.

After hearing on the merits, Labor Arbiter Ernesto F. Carreon rendered his Decision

dated March 13, 1995, finding the petitioner's dismissal illegal. He ruled that the respondent failed to substantiate and prove that the petitioner committed any wrongdoing. He found the evidence of impression on the tickets inadequate, considering that the petitioner was not the only person in the vessel handling or issuing the passage tickets. According to the Labor Arbiter, the anomalous entries on the unissued tickets could not be attributed entirely to the petitioner; thus, there was no reason for the respondent to lose its trust and confidence on the petitioner.

[20] The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Sulpicio Lines, Inc., to pay the complainant Vicente C. Etcuban, Jr. the following :

1.	Separation pay -----	P80,480.00
	-----	
2.	Backwages -----	40,703.23
	-----	
3.	Proportionate 13th Month	<u>2,235.50</u>
	Pay -----	
		P123,418.73
		vvvvvvvvvvvvvv

The other claims are dismissed for lack of merit.

SO ORDERED.[21]

Both parties appealed to the NLRC, 4<sup>th</sup> Division, Cebu City. In its appeal, the respondent insisted that the dismissal was justified.[22] The petitioner, on the other hand, questioned the computation of his backwages, besides reiterating his claim for moral damages.[23]

On February 21, 1996, a Decision[24] was rendered by the NLRC affirming the challenged decision with the modification that the backwages to be paid to the petitioner shall be reckoned from the time of his actual dismissal on June 10, 1994, up to the issuance of the writ of execution on the finality of the decision, but not to exceed five (5) years. In fixing the additional backwages, the NLRC concluded that the respondent has "the open recourse to the Supreme Court" which could "prolong his (petitioner's) agony." The decretal part of the decision reads:

WHEREFORE, premises considered, the assailed decision is MODIFIED with respect to the monetary awards. The award of backwages shall be computed from the date of the actual dismissal or 10 June 1994 up to the issuance of the Writ of Execution on the finality of the decision in this case but not to exceed five (5) years. The backwages shall include the corresponding 13th month pay and leave (sick and vacation) benefits for the whole period covered.

SO ORDERED.[25]

In affirming the decision of the Labor Arbiter, the NLRC ruled as follows –

We do not find the allegedly highly irregular condition of the tickets valid reason to even suspend, much less terminate the complainant-appellant for loss of trust and confidence. **It has not been established by clear and competent evidence that the alleged irregular condition of the tickets was attributable to the complainant or to other members of the team of inspectors who have equal access to the tickets.** This is vital in view of the complainant's denial to have committed the same. **Moreover, there is no showing at all on record that the respondent suffered damage as a consequence of the existence of these tickets** with entry of the rate or cost of transportation from Cagayan de Oro City to Jagna, Bohol, or that the complainant has benefited from the same. To establish loss of confidence, the employer must have reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position, and makes him absolutely unfit to continue with his employment.

With more reason, we do not find valid loss of confidence to warrant dismissal the alleged "stabbing the back" by the complainant-appellant of the respondent-appellant by the mere filing of the case. This act of the complainant-appellant is not a misconduct. It is a valid recourse to the instrumentality of the government that can give him ample protection and labor justice especially when he felt that his 16 years of service is being threatened.<sup>[26]</sup>

The respondent filed a motion for reconsideration<sup>[27]</sup> which was denied by the NLRC in a Resolution<sup>[28]</sup> promulgated on April 15, 1996. It stressed its finding that the petitioner's alleged breach of trust was not sufficiently established by the evidence on record. It further ruled that the petitioner's indefinite suspension from work amounted to his constructive dismissal.<sup>[29]</sup>

On June 14, 1996, the respondent filed a petition for *certiorari*<sup>[30]</sup> with this Court, ascribing to the NLRC, among others, grave abuse of discretion when it ruled that the preventive suspension of the petitioner was tantamount to constructive dismissal. Following the pronouncement in *St. Martin Funeral Home v. NLRC*,<sup>[31]</sup> the petition was referred to the Court of Appeals for its appropriate action and disposition.<sup>[32]</sup>

On December 28, 2000, the Court of Appeals reversed and set aside the NLRC decision.<sup>[33]</sup> It ruled that there was valid and just cause for the petitioner's dismissal, as there was sufficient basis for loss of trust and confidence on him. The appellate court amplified that in cases of dismissal for loss of trust and confidence, it is not required that there is proof beyond reasonable doubt. It ratiocinated, thus:

The office of a purser involves a high degree of trust and confidence. Private respondent had access to company funds as it was his sensitive duty to issue tickets and accept payments from the passengers of the vessel. When the passenger copies of unissued tickets in his custody were written with the amount of P88.00 while the other copies were clean, this already constituted culpable tampering of the tickets. This

Court is fully aware of the standard operating procedure that tickets should be accomplished only at the time of their issuance and that the duplicate or triplicate copies should contain exact carbon impressions of the entries in the original copies. It was then highly anomalous that the original copies of the tickets were already written with the amount of P88.00 when they were still unissued. More so, because the amount of P88.00 were not duplicated in the other copies of the tickets. There was a clear case of *tampering* of the unissued tickets in private respondent's possession. This clearly was intended to facilitate the anomaly of entering in the duplicate copies an amount different if not lower than what is stated in the original copy and remitting to the petitioner the lower amount.

Complainant was the custodian of the tickets with the authority to issue the same. The tampered tickets were in his possession. As such, it was therefore reasonable and logical for petitioner to conclude if not certain a well-grounded moral conviction that private respondent Etcuban committed the tampering. Even if it is allowed that another person committed the tampering, private respondent was still culpable as the tampered tickets were found in his possession and the same could not have been done without his conformity or negligence. His possession of the tickets with unexplained written entries in the passenger copies of the unissued tickets was by itself sufficient basis enough to prove respondent's culpability. He was the custodian of the tickets and he should be culpable for any violation of the integrity of the tickets. On this score, this Court agrees with petitioner that the anomalous entries in the tickets in his custody was sufficient basis for petitioner to lose trust and confidence on private respondent.

In cases of dismissal for loss of trust and confidence, it is not required that there is proof beyond reasonable doubt. It is sufficient that there is sufficient basis for loss of trust and confidence.<sup>[34]</sup>

...

In the instant case, this Court holds that there was sufficient basis for petitioner to lose trust and confidence in private respondent so as to justify his termination. It may be pertinent to note that private respondent's overall conduct is inconsistent with innocence. Private respondent did not wait for the result of petitioner's investigation and filed a complaint for illegal dismissal despite private respondent's admission that he was merely placed under preventive suspension. Preventive suspension is allowed under Section 3, Rule XIV of the Implementing Rules of the Labor Code. While it is true that no penalty should be attached to an employee's recourse to the NLRC, his immediate filing of the case in the light of the discovery of the anomalous tickets only betrays his culpability.

It bears emphasis that private respondent's position as purser was highly sensitive. As such, he must demonstrate utmost honesty and fidelity to the trust reposed in him. On its part, petitioner was well within its prerogative to require from its purser a high degree of uprightness and