

## **SIXTH DIVISION[\*]**

**[ CA-G.R. SP NO. 117905, February 25, 2015 ]**

### **PHILIPPINE PIZZA, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MA. AURORA ESPIRITU, RESPONDENTS.**

#### **D E C I S I O N**

##### **PERALTA, JR., E. B., J.:**

Via Rule 65 of the 1997 Rules of Civil Procedure, petitioner Philippine Pizza, Inc. utilized the current recourse<sup>[1]</sup> to impute upon public respondent wanton exercise of discretion when it adjudged petitioner liable for nominal damages for P50,000.00 per its Decision<sup>[2]</sup> on August 12, 2010 and the subsequent Resolution<sup>[3]</sup> on November 12, 2010 in NLRC NCR Case No. 00-03-03694-09 (NLRC LAC No. 01-000095-10).

Based on acknowledged facts, private respondent Ma. Aurora A. Espiritu (Espiritu) was hired by petitioner on July 8, 1996 and was stationed as Manager of petitioner's Commissary Department-Supply Chain Management Division, with a monthly salary of P47,357.00, inclusive of allowances.

Between August to September, 2008, the Human Resource Division of petitioner received several letter-complaints from petitioner's suppliers about Espiritu's behavior. These reports alluded to Espiritu's behavior in using her position as Commissary Head to obtain commissions and enter into business agreements with petitioner's suppliers for her own benefit.

On October 13, 2008, a Memorandum<sup>[4]</sup> was brought to the attention of Espiritu and she was informed of the charges against her for "serious misconduct", "fraud or willful breach of trust" and for "conflict of interest". Concomitant with the notice was the 30 day preventive suspension with a directive to explain her side and to attend the administrative inquiry on October 22, 2008 at 2:00 in the afternoon.

Espiritu's letter-reply<sup>[5]</sup> refuted all the charges against her and she requested for copies of documents and other evidence.

The Human Resource Department furnished Espiritu with the requested copies of but she remained under preventive suspension.<sup>[6]</sup>

During the scheduled administrative inquiry, Espiritu requested for an extension to file her Answer and to reset the administrative inquiry, but such request was denied and the inquiry proceeded.

Later, Espiritu filed her Answer and on November 14, 2008, another formal

investigation was conducted and Espiritu was assisted by her counsel. On even date, when Espiritu requested the investigating committee if she could present her witness on December 5, 2008, the investigating committee suggested that Espiritu's witness could just submit a sworn statement and the committee shall deliberate if there is a necessity to convene for another meeting.

In the meantime, Espiritu was reinstated in the payroll on November 13, 2008 after she served her preventive suspension but she was not permitted to assume her official functions after the 30 day suspension.

On February 26, 2009, to Espiritu's surprise, her salary was withheld and per information she gathered, she learned that she was terminated from work.

Hence, Espiritu promptly filed a Complaint<sup>[7]</sup> against petitioner for illegal termination of her employment which was disputed by petitioner.

Petitioner reiterated that based on the Complaint<sup>[8]</sup> instituted by Helen San Juan of Trevi's International Corporation (Trevi's), it conducted an investigation which only confirmed that Espiritu transacted with petitioner's suppliers like Trevi's and Tactical Solution.

Pursuant to the findings of the investigating committee, Espiritu's termination was recommended due to conflict of interest, serious misconduct and willful breach of trust and confidence under Article 282 (a) and (c) of the Labor Code.<sup>[9]</sup> Relative to the aspect of termination, petitioner averred that it issued the Notice of Termination<sup>[10]</sup> which was sent *via* a registered mail.<sup>[11]</sup>

On November 11, 2009, the Labor Arbiter dismissed Espiritu's Complaint but awarded P50,000.00 as nominal damages for violation of Espiritu's right to statutory due process.<sup>[12]</sup> Thereafter, the NLRC agreed with the Labor Arbiter.

Basically, the controversy in this case was the legality of Espiritu's termination from employment.

It is fundamental axiom in labor law that a valid termination of employment presupposes the existence of a just or authorized cause after due notice and hearing.<sup>[13]</sup>

Undoubtedly, Espiritu was dismissed for serious misconduct, inclusive of loss of confidence and trust. Under Article 282<sup>[14]</sup> of the Labor Code, serious misconduct and loss of trust and confidence are just causes for dismissal of an employee.

Misconduct is defined as improper and wrongful conduct. It is 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. Of course, ordinary misconduct would not justify the termination of the services of an employee. The law is explicit that the misconduct should be serious. It is settled that in order for misconduct to be serious, it must be of such grave and aggravated character and not merely trivial or unimportant. As amplified by jurisprudence, the misconduct must (1) be serious; (2) relate to the performance of the employee's

duties; and (3) show that the employee has become unfit to continue working for the employer.<sup>[15]</sup>

On the other hand, loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as custody, handling, care and protection of the employer's property and funds.<sup>[16]</sup>

Moreover, as a valid basis for termination, the employer must consider these parameters: (1) 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 may 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 an earlier action taken in bad faith.<sup>[17]</sup>

Furthermore, an employer has a prerogative and wider latitude of discretion in dismissing a managerial employee or personnel. The employer is not required to present proof beyond reasonable doubt. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer would suffice for employee's termination.<sup>[18]</sup>

A review of the facts revealed that Espiritu was employed as Manager and headed the Commissary Department-Supply Chain Management Division of petitioner. She was tasked to supervise the purchase of petitioner's supplies for petitioner's operation. In essence, Espiritu was assigned to transact with prospective suppliers of petitioner and made recommendations for the approval/purchase of the products offered by prospective suppliers.

Clearly, Espiritu was holding a managerial position since she possessed the authority to act in the interest of her employer and such authority was not merely routinary or clerical but required the use of independent judgment.<sup>[19]</sup> Necessarily, trust and confidence was reposed upon Espiritu by petitioner.

We, too, are in accord with the conclusion reached by the Labor Arbiter and the NLRC in regard to petitioner's commission of serious misconduct and breach of trust and confidence from petitioner.

With reference to substantial evidence against Espiritu's dismissal from employment, it was premised on the complaint letter of Ms. Helen San Juan of Trevi's;<sup>[20]</sup> Dealer Agreement between Trevi's and Espiritu's husband Leodi Mar Espiritu and delivery receipts;<sup>[21]</sup> personal checks issued by Espirtu in favor of Trevi's;<sup>[22]</sup> letter of Rudy Lim of Trevi's confirming the Dealer Agreement of Espiritu with Trevi's;<sup>[23]</sup> letter of Helen Reyes of Trevi's canceling the Dealer Agreement;<sup>[24]</sup> an incident report pertaining to the purchase of Espiritu of 175 kgs. or 6 bags of onions from Mark Kim Tiu of Tactical Solutions;<sup>[25]</sup> notarized joint affidavit of Helen San Juan and Mauro Rabuco of Trevi's;<sup>[26]</sup> and notarized joint affidavit of Mark Kim Tiu and Rondee Tan;<sup>[27]</sup> and the result<sup>[28]</sup> of the investigation which disclosed that Espiritu used her position as head of the commissary and transacted with petitioner's supplier's and prospective suppliers for her personal gain and her non-observance of the procedure