

SECOND DIVISION

[G.R. No. 228449, December 06, 2017]

**GRACE R. ALUAG, PETITIONER, V. BIR MULTI-PURPOSE
COOPERATIVE, NORMA L. LIPANA, AND ESTELITA V. DATU,
RESPONDENTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated August 25, 2016 and the Resolution^[3] dated November 9, 2016 of the Court of Appeals (CA) in CA-GR. SP No. 144608, which reversed the Decision^[4] dated October 16, 2014 and the Resolution^[5] dated December 29, 2015 of the National Labor Relations Commission (NLRC), and accordingly, reinstated the Decision^[6] dated May 26, 2014 of the Labor Arbiter (LA) finding petitioner Grace R. Aluag (Aluag) to have been validly dismissed from service by respondent BIR Multi-Purpose Cooperative (BIRMPCC).

The Facts

This case arose from a complaint^[7] for, *inter alia*, illegal dismissal filed by Aluag against BIRMPCC and its officers, respondents Norma L. Lipana and Estelita V. Datu (respondents). Aluag alleged that she was employed as BIRMPCC's cashier from November 16, 1994 until her termination on October 31, 2013.^[8] Her duties, among others, were to receive remittances and payments, deposit all collections daily, record fixed deposits, determine cash positions, issue checks for loans, collect cash receipts, and perform such other duties that the general manager may assign to her.^[9] She claimed that from the time of her employment, she was tasked to give only verbal weekly reports on BIRMPCC's funds until 2010 when she was required to put them into writing. In 2011, BIRMPCC's loan processors started accepting post-dated checks with the prior approval of the general manager, who then was Gerardo Flores (Flores).^[10] She added that in July 2013, upon Flores' instruction, she submitted a report of bounced checks and deposited the remaining checks in her possession.^[11]

On July 16, 2013 or ten (10) days before she gave birth, Aluag received a letter^[12] from BIRMPCC's Board of Directors temporarily relieving her from her position pending an investigation against her and two (2) loan processors involving several suspicious loans, requiring her to submit an answer within ten (10) days.^[13] She complied only after she gave birth or on July 29, 2013, wherein she admitted that she: (a) was tasked to have all collections deposited everyday; (b) received verified post-dated checks for safekeeping and deposit to the bank when due; and (c) opted not to deposit matured checks upon request of the debtors.^[14] She then went on a maternity leave from July 30 to September 30, 2013, during which period, she received another letter from BIRMPCC preventively suspending her from August 1 to

October 31, 2013.^[15] Claiming that the suspension was illegal, she filed a complaint for illegal suspension with the NLRC. While the case was pending, Aluag received another letter^[16] dated October 31, 2013 terminating her employment; hence, she amended the complaint to one for illegal dismissal.^[17]

For their part, respondents averred that Aluag was legally dismissed on the ground of loss of trust and confidence. They narrated that while reviewing loan documents in June 2013, they found rampant violations of BIRMP's by-laws, rules, and regulations. When they interviewed Aluag, the latter admitted the infractions, but claimed that Flores had full knowledge of them.^[18] Thereafter, respondents sent letters to Aluag and other concerned employees to explain why no charges should be filed against them and, later on, placed them under preventive suspension. To validate the extent of the irregularities and financial damage, they engaged the services of an external accountant who, in her report, observed that the cashier failed to regularly report post-dated checks received and did not observe proper monitoring of the checks' due dates to be deposited. The accountant also pointed out that some checks were not deposited at all.^[19] In light of the foregoing, BIRMP terminated Aluag's employment effective November 1, 2013 on the ground of loss of trust and confidence for the following infractions: (a) acceptance of accommodation checks; (b) failure to deposit checks on due dates, pursuant to a member/debtor's request; (c) not reporting to the manager those checks with no sufficient funds or which accounts had already closed; and (d) failure to act upon returned checks.^[20]

The LA Ruling

In a Decision^[21] dated May 26, 2014, the LA dismissed the complaint for illegal dismissal for lack of merit. Nonetheless, it ordered BIRMP to pay Aluag the amounts of P15,416.48 and P3,557.65, representing her 13th month pay and service incentive leave pay for the year 2013, respectively.^[22]

The LA found that as a company cashier, Aluag held a position of trust and confidence. Thus, her commission of various infractions, which substantially contributed damages to BIRMP's financial position in the amount of P35,526,599.77, constituted sufficient basis for loss of trust and confidence.^[23] Further, the LA found that BIRMP accorded Aluag her procedural due process rights, as two (2) notices were accordingly served on her, namely: (a) the written notice containing a statement of the cause of her dismissal, in order to afford her an opportunity to be heard and defend herself; and (b) the written notice of dismissal dated October 31, 2013, stating clearly the reasons therefor.^[24] The foregoing notwithstanding, the LA still ordered BIRMP to pay Aluag her 13th month pay and service incentive leave pay for 2013, absent any showing that the latter had already paid the same.^[25]

Aggrieved, Aluag appealed^[26] to the NLRC.

The NLRC Ruling

In a Decision^[27] dated October 16, 2014, the NLRC reversed the LA ruling, and found Aluag to have been illegally dismissed. Accordingly, it ordered BIRMP to pay Aluag the amounts of P250,187.18 as backwages, P370,000.00 as separation pay,

P15,416.48 as 13th month pay, P3,557.65 as service incentive leave pay, and ten percent (10%) of the total monetary awards as attorney's fees.^[28]

Contrary to the LA's findings, the NLRC found that Aluag's perceived infractions were insufficient to dismiss her on the ground of loss of trust and confidence because they were not violations of her ministerial duties as cashier.^[29] *First*, she merely received the accommodation checks which were previously verified by the loan processors and approved by the general manager. The NLRC noted that Aluag was neither clothed with the authority to inquire into the validity of the checks nor authorized to exercise discretion in receiving them.^[30] *Second*, Aluag's tasks did not include depositing the checks and no evidence was presented to show that the general manager assigned this task to her. The NLRC added that no evidence was presented to prove that the non-deposit of checks was due to debtors' requests.^[31] *Third*, Aluag did submit a report on dishonored checks to the general manager upon his request. The NLRC observed that this function is not among the routine duties of a cashier.^[32] *Fourth*, the NLRC stated that acting upon returned or dishonored checks is not among Aluag's duties, but is a discretionary function of the general manager.^[33] As regards the external accountant's report, the NLRC added that regular submission of reports and monitoring of the checks' status are not part of Aluag's routine responsibilities.^[34]

Respondents moved for reconsideration,^[35] which was denied in a Resolution^[36] dated December 29, 2015. Dissatisfied, respondents filed a petition for *certiorari*^[37] before the CA.

The CA Ruling

In a Decision^[38] dated August 25, 2016, the CA reversed and set aside the NLRC ruling and reinstated that of the LA. It held that Aluag was validly dismissed on the grounds of serious misconduct and loss of trust and confidence, which were applicable because she served as a cashier - a position requiring trust and confidence.^[39] The CA rejected Aluag's argument that she was not liable for the charges levelled against her as these were beyond her duties as a cashier. It explained that Aluag could have been more circumspect by refusing to accept accommodation checks which appear to be unfunded based on BIRMP's records, and denying to issue checks after verifying that the loan applicant still had unpaid loans with BIRMP. Most importantly, she is tasked to deposit the checks on their due dates, which she failed to do.^[40] Thus, the CA concluded that it would already be inimical to BIRMP's interests should it be compelled to keep Aluag within its employ.^[41]

Further, the CA held that BIRMP complied with the two (2)-notice rule, as the evidence show that Aluag was properly notified of the charges against her to enable her to respond thereto, and of her eventual termination from service.^[42]

Aluag moved for reconsideration,^[43] but was denied in a Resolution^[44] dated November 9, 2016; hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly reversed and set aside the NLRC ruling, and accordingly held that BIRMPC had just cause to terminate Aluag's employment.

The Court's Ruling

The petition is without merit.

I.

At the outset, the Court notes that, as aptly pointed out by respondents in their Comment,^[45] Aluag failed to serve a copy of the instant petition to the CA as required by Section 3, Rule 45 of the Rules of Court.^[46] Resultantly, the CA issued a Resolution^[47] dated March 24, 2017 stating that its Decision had become final and executory on December 17, 2016, and, consequently, the Entry of Judgment^[48] was issued in due course. While Aluag filed a Motion and Manifestation^[49] dated June 13, 2017 before the CA explaining that the aforesaid omission was merely due to inadvertence and praying that the Entry of Judgment be set aside, records are bereft of any showing that the CA acted on the same.

Sections 3 and 5 of Rule 45, in relation to Section 5 (d) of Rule 56,^[50] of the Rules of Court, and item 2 of Revised Circular No. 1-88^[51] require a proof of service to the lower court concerned to be attached to the petition filed before the Court. The first two (2) provisions read:

Sec. 3. Docket and other lawful fees; proof of service of petition. - Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of P500.00 for costs at the time of the filing of the petition. **Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.**

Sec. 5. Dismissal or denial of petition. - **The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**

x x x x (Emphases supplied)

In the present case, Aluag failed to serve a copy of the petition to the CA, thereby giving the Court sufficient ground to deny her petition. Her omission even led to the CA's issuance of the resolution declaring the finality of its Decision. Verily, Aluag's procedural mishap is a sufficient ground for the dismissal of her petition, especially since the rules themselves expressly say so.^[52] "Time and again, it has been held that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost,"^[53] as in this case.

In any event, the Court deems it appropriate to address the issue anent the validity of Aluag's dismissal so as to finally resolve the main controversy at hand.

II.

Preliminarily, "the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."^[54]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."^[55]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."^[56]

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC, as the latter tribunal's finding that BIRMPG illegally dismissed Aluag patently deviates from the evidence on record, as well as settled legal principles of labor law.

A valid dismissal necessitates compliance with both substantive and procedural due process requirements. Substantive due process mandates that an employee may be dismissed based only on just or authorized causes under the Labor Code. On the other hand, procedural due process requires the employer to comply with the requirements of notice and hearing before effecting the dismissal."^[57]

In the present case, BIRMPG alleged that Aluag's employment was terminated on the ground of loss of trust and confidence under Article 297 (c) (formerly Article 282 [c])^[58] of the Labor Code. The requisites for the existence of such ground are as follows: (a) the employee concerned holds a position of trust and confidence; and (b) he performs an act that would justify such loss of trust and confidence."^[59]

Anent the first requisite, case law instructs that "[t]here are two (2) classes of positions of trust: *first*, managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and *second*, fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence."^[60]