

## FIRST DIVISION

[ G.R. No. 158583, September 10, 2014 ]

**ROSALIE L. GARGOLES, PETITIONER, VS. REYLITA S. DEL ROSARIO, DOING BUSINESS UNDER THE NAME AND STYLE JAY ANNE'S ONE HOUR PHOTO SHOP, RESPONDENT.**

### DECISION

#### **BERSAMIN, J.:**

An act of dishonesty by an employee who has been put in charge of the employer's money and property amounts to breach of the trust reposed by the employer, and normally leads to loss of confidence in her. Such dishonesty comes within the just and valid causes for the termination of her employment under Article 282 of the *Labor Code*.

#### **Antecedents**

On February 20, 1992, the petitioner started working as an "all-around employee" acting as "cashier, sales clerk, xerox operator, janitress, photo printer, and messenger/delivery person" at Jay-Anne's One Hour Photo Shop, the proprietress of which was respondent Reylita S. Del Rosario.<sup>[1]</sup> On March 28, 1998, the petitioner received a letter terminating her employment for dishonesty. As a result, she lodged a complaint for illegal dismissal, seeking her reinstatement and backwages.

To answer the complaint for illegal dismissal, Del Rosario laid out the reason for the termination of the petitioner in her position paper, as follows:

Through incisive sleuthing, records inspection and investigation in the second week of March, 1998, it was discovered that complainant, tampered with the daily printer's production reports/sales which[, ] as consequence thereof, the total number of prints made for the day was podded [sic] and erroneously reported thru double entries of the same job envelope and one (1) twin check number for every fresh role [sic] of film for photo-developing and printing or even recopying; it was on the same entry with two (2) twin check numbers instead of just one (1) number of the same job envelope that complainant pocketed and appropriated for her own benefit and gain the cash value or cash equivalent of the excessive or padded daily total of number of prints made and erroneously reported to the respondent store damage and prejudice amounting to P11,305.00 computed at 2,207 prints x P5.00 per print during the period December 1, 1997 to March 25, 1998 x x x.<sup>[2]</sup>

In his decision dated August 23, 1999, Labor Arbiter Cresencio G. Ramos, Jr.

dismissed the petitioner's complaint for lack of merit.<sup>[3]</sup>

On August 31, 2000, the National Labor Relations Commission (NLRC) promulgated its resolution affirming the decision of the Labor Arbiter.<sup>[4]</sup>

The petitioner sought reconsideration, but the NLRC denied her motion to that effect.<sup>[5]</sup>

On July 23, 2001, the petitioner commenced her special civil action for *certiorari* in the Court of Appeals (CA), alleging in her petition that the NLRC had committed grave abuse of discretion in finding that there had been just cause for her dismissal, and that Del Rosario had complied with the requirements of procedural due process.

On September 27, 2002, the CA promulgated its decision,<sup>[6]</sup> disposing:

IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby AFFIRMED, insofar as its declaration that petitioner was dismissed from employment with a just cause. However, private respondent, having violated petitioner's right to due process, it is ordered to pay the petitioner the sum of P5,000.00, as indemnity. No cost.

SO ORDERED.

On May 13, 2003, the CA denied the petitioner's motion for reconsideration.<sup>[7]</sup>

### **Issues**

Hence, the petitioner appeals, asserting that the CA erred in finding her dismissal from employment to have been upon just cause; that there was no substantial evidence showing the existence of just cause for her dismissal; and that because the CA held that she had been deprived of her right to due process, its finding of the existence of just cause for her dismissal was not based on facts but on speculation and assumption.<sup>[8]</sup>

### **Ruling**

The petition lacks merit.

The just and valid causes for the dismissal of an employee, as enumerated in Article 282 of the *Labor Code*, include: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with her work; (b) gross and habitual neglect by the employee of her duties; (c) **fraud or willful breach by the employee of the trust reposed in her by her employer or duly authorized representative**; (d) commission of a crime or offense by the employee against the person of her employer or any immediate member of her family or her duly authorized representative; and (e) other causes analogous to the foregoing.

In his decision, which the NLRC affirmed for being correct, the Labor Arbiter

relevantly concluded as follows:

After going over the evidence adduced by the respondent in support of its averments and principal defense, this Office finds the same to be reasonably sufficient to arrive at the conclusion that complainant was indeed guilty of the act(s) of dishonesty imputed upon her. Certainly, ***the aforesaid dishonest act(s) committed by the complainant logically triggered an erosion of the trust reposed upon him [sic] by his*** [sic] employer and jurisprudence is explicit on the point that when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.<sup>[9]</sup> (Emphasis supplied)

The dishonesty imputed to the petitioner included the making of double entries in the production reports and thereby enriching herself by pocketing the extra cash generated from the double entries. Contrary to her assertion that there was no substantial evidence to justify her dismissal, the production reports containing the double entries were presented as evidence; and her double entries were confirmed in the affidavit executed by Redelito Caranay, Jr., her co-employee. As such, the finding of the just cause for her dismissal did not emanate from mere speculation, suspicion or assumption.

The petitioner casts doubt on the affidavit of Caranay, Jr. by stating that he was only forced to execute the affidavit in view of his being under the control and moral domination of the respondent.<sup>[10]</sup> The Court cannot sustain her, however, considering that she did not present evidence either to discredit his execution of the affidavit or to show his ill will or malice towards her.

The petitioner argues that she did not need to dispute the charge of dishonesty or theft of her employer's funds because she had the presumption of innocence in her favor.<sup>[11]</sup>

The argument is untenable. It is true that every person is entitled to be presumed innocent of wrongdoing. The objective of the presumption has been to lay the burden of proof on the shoulders of the allexer of wrongdoing. The presumption extends to the petitioner and to every other employee charged with any wrongdoing that may cause them to be sanctioned, including being dismissed from employment. But the presumption, which is disputable, by no means excuses the employee charged with wrongdoing from answering and defending herself once the presumption has been overcome by a showing to the contrary. The failure of the employee to rebut or disprove the proof of wrongdoing then establishes the charge against her.<sup>[12]</sup> This is especially true in a case for dismissal grounded on loss of confidence or breach of trust, in which the employer may proceed to dismiss the erring employee once the employer becomes morally convinced that she was guilty of a breach of trust and confidence.<sup>[13]</sup> Based on the record, the petitioner did not sufficiently contradict or rebut the charge of dishonesty.

On whether or not the respondent complied with the requirements of procedural due