

SECOND DIVISION

[G.R. No. 192306, July 15, 2013]

**JESSIE G. MARTINEZ, PETITIONER, VS. CENTRAL PANGASINAN
ELECTRIC COOPERATIVE, INC. (CENPELCO), RESPONDENT.**

R E S O L U T I O N

PERLAS-BERNABE, J.:

Assailed in this Petition for Review on *Certiorari*^[1] is the December 23, 2009 Decision^[2] and April 27, 2010 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 106466, which affirmed the February 29, 2008 Decision^[4] and September 15, 2008 Resolution^[5] of the National Labor Relations Commission (NLRC), declaring *inter alia* that respondent Central Pangasinan Electric Cooperative, Inc.'s (CENPELCO) dismissal of petitioner Jessie G. Martinez (Martinez) based on the ground of loss of trust and confidence was valid.

The Facts

In 1991, CENPELCO employed Martinez on a contractual basis and in 1993, was subsequently regularized as a billing clerk at the former's main office in San Carlos City, Pangasinan. On January 7, 2002, CENPELCO gave Martinez the position of teller at Area VI in Malasiqui, Pangasinan.^[6]

On April 26, 2002, CENPELCO's Internal Audit Department (IAD) conducted a cash count audit at its Area VI.^[7] Josefina Mandapat (Mandapat), the IAD Officer-in-Charge, analyzed the audit results and concluded that there was an error in the count of Benjamin Madriaga (Madriaga), cashier for Area VI, regarding the breakdown of collection turned over by Martinez for April 23, 2002.^[8] Specifically, Madriaga erroneously recorded that Martinez remitted 390 pieces of P500-bills, instead of the correct number which was just 290, and issued a handwritten temporary receipt for P406,130.31 instead of P360,447.13. Upon noting that Madriaga issued Official Receipts Nos. 77365-77367 for the amount of P360,447.13^[9] with corresponding remittance stubs for Martinez's April 23, 2002 collections, Mandapat concluded that Martinez's overage for the same day in the amount of P45,682.58 is questionable.^[10] Further, Mandapat noted that on April 25, 2002, Martinez committed a shortage in the amount of P44,846.77,^[11] considering that the latter's total accountability for the said date is in the amount of P212,258.56 but his actual cash count^[12] only amounted to P167,411.79.

In view of such audit, Mandapat recommended that Madriaga and Martinez be made to explain why no disciplinary action should be taken against them. Thus, on May 15, 2002, Martinez filed his letter-explanation, explaining that he submitted his collections and remittance stubs to Madriaga who was the one tasked to make the

report thereon and who may have mishandled the proper listing and tallying of the money collected vis-à-vis the collection stubs.^[13] He further admitted the existence of such shortage and tried to offset the same with his alleged overage on April 23, 2002.^[14]

On June 30 2002, the Company's Grievance Committee, which was commissioned to investigate the charges imputed to Martinez, submitted its report recommending Martinez's termination from employment as well as the filing of the appropriate case in court. On November 26, 2002, Martinez was dismissed from service, prompting him to file a complaint^[15] for illegal dismissal with money claims for 13th month pay, service incentive leave pay and allowances, as well as moral and exemplary damages.^[16]

The Labor Arbiter Ruling

In a Decision^[17] dated December 1, 2004, the Labor Arbiter (LA) ruled Martinez's dismissal illegal, ordering his reinstatement without loss of seniority rights and for CENPELCO to pay him backwages and other benefits due to a regular employee, 13th month pay, the cash equivalent of his leave credits, and ten percent (10%) of the total monetary award as attorney's fees. He found that CENPELCO failed to discharge the onus to prove that Martinez's dismissal was for a just cause. Thus, the LA opined that there is no ascribable offense against Martinez which may constitute the charges of misappropriation and loss of confidence against him.^[18]

Aggrieved, CENPELCO appealed to the NLRC.^[19]

The NLRC Ruling

In its Decision^[20] dated February 29, 2008, the NLRC reversed the LA's ruling, declaring Martinez's dismissal valid but nevertheless, upheld the award for 13th month pay and cash equivalent of leave credits. It found that a closer scrutiny of the audit report reveals that on April 25, 2002, Martinez indeed had a shortage in the amount of P44,846.77, which he himself admitted in his letter-explanation dated May 15, 2002. Further, Martinez was not able to account for such shortage and instead, tried to offset the same with his April 23, 2002 overage in the amount of P45,682.58.

Martinez moved for reconsideration but was denied in the NLRC's Resolution^[21] dated September 15, 2008.

Dissatisfied, Martinez filed a Petition for *Certiorari*^[22] dated December 2, 2008 with the CA.

The CA Ruling

In its Decision^[23] dated December 23, 2009, the CA affirmed the NLRC's ruling. The CA held that the anomalies charged against Martinez are duly substantiated as such finding is supported by an audit report issued after Mandapat conducted a cash count audit on the collections and remittances made by the former. It echoed the

NLRC's finding that Martinez cannot offset his April 25, 2002 shortage with his April 23, 2002 overage because the latter is dubious and that the practice of offsetting shortages with overages is highly improper.^[24]

Aggrieved, Martinez moved for reconsideration but was denied in the CA's Resolution^[25] dated April 27, 2010.

Hence, this Petition.

The Issue Before the Court

The sole issue raised for the Court's resolution is whether Martinez's dismissal on the ground of loss of trust and confidence is valid.

The Court's Ruling

The petition is bereft of merit.

To validly dismiss an employee on the ground of loss of trust and confidence under Article 296(c) (formerly Article 282[c]) of the Labor Code,^[26] the following guidelines must be observed: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.^[27]

Anent the first requisite, it is noteworthy to mention that there are two classes of positions of trust, namely: (1) 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 (2) 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.^[28] Being an employee tasked to collect payments and remit the same to CENPELCO, Martinez belongs to the latter class and thus, occupies a position of trust and confidence.

Anent the second requisite, the audit report conducted on Martinez's cash count revealed that he had a shortage in the amount of P44,846.77 in his remittance for April 25, 2002. When asked to explain such shortage, Martinez not only admitted the same but even tried to exculpate himself from liability by attempting to offset said shortage with his alleged overage on April 23, 2002 in the amount of P45,682.58. The Court agrees with the CA that this practice should never be countenanced because it would allow the employees to patch up inaccuracies or even their own wrongdoings and thus, the true revenues or losses of the company will never be correctly identified.^[29] Verily, this irregular practice would be detrimental to the interests of the employer whose bread and butter depends solely on realized profits.^[30] Perforce, Martinez's failure to properly account for his shortage of such a significant amount is enough reason for CENPELCO to lose trust and confidence in him.