

EN BANC

[G.R. No. 153569, January 24, 2012]

LOLITA S. CONCEPCION, PETITIONER, VS. MINEX IMPORT CORPORATION/MINERAMA CORPORATION, KENNETH MEYERS, SYLVIA P. MARIANO, AND VINA MARIANO, RESPONDENTS.

DECISION

BERSAMIN, J.:

The employer may validly dismiss for loss of trust and confidence an employee who commits an act of fraud prejudicial to the interest of the employer. Neither a criminal prosecution nor a conviction beyond reasonable doubt for the crime is a requisite for the validity of the dismissal. Nonetheless, the dismissal for a just or lawful cause must still be made upon compliance with the requirements of due process under the Labor Code; otherwise, the employer is liable to pay nominal damages as indemnity to the dismissed employee.

Antecedents

Respondent Minex Import-Export Corporation (Minex) engaged in the retail of semi-precious stones, selling them in kiosks or stalls installed in various shopping centers within Metro Manila. It employed the petitioner initially as a salesgirl,^[1] rotating her assignment among nearly all its outlets. It made her a supervisor in July 1997, but did not grant her any salary increase. On October 23, 1997, respondent Vina Mariano, an Assistant Manager of Minex, assigned the petitioner to the SM Harrison Plaza kiosk with the instruction to hold the keys of the kiosk. Working under her supervision there were salesgirls Cristina Calung and Lida Baquilar.

On November 9, 1997, a Sunday, the petitioner and her salesgirls had sales of crystal items totaling P39,194.50. At the close of business that day, they conducted a cash-count of their sales proceeds, including those from the preceding Friday and Saturday, and determined their total for the three days to be P50,912.00. The petitioner wrapped the amount in a plastic bag and deposited it in the drawer of the locked wooden cabinet of the kiosk.

At about 9:30 am of November 10, 1997, the petitioner phoned Vina Mariano to report that the P50,912.00 was missing, explaining how she and her salesgirls had placed the wrapped amount at the bottom of the cabinet the night before, and how she had found upon reporting to work that morning that the contents of the cabinet were in disarray and the money already missing.

Later, while the petitioner was giving a detailed statement on the theft to the security investigator of Harrison Plaza, Vina and Sylvia Mariano, her superiors, arrived with a policeman who immediately placed the petitioner under arrest and brought her to Precinct 9 of the Malate Police Station. There, the police investigated

her. She was detained for a day, from 11:30 am of November 10, 1997 until 11:30 am of November 11, 1997, being released only because the inquest prosecutor instructed so.

On November 12, 1997, the petitioner complained against the respondents for illegal dismissal in the Department of Labor and Employment.

On November 14, 1997, Minex, through Vina, filed a complaint for qualified theft against the petitioner in the Office of the City Prosecutor in Manila.

To the charge of qualified theft, the petitioner insisted on her innocence, reiterating that on November 9, 1997 she, together with Calung and Baquilar, had first counted the cash before placing it in a plastic bag that she deposited inside the drawer of the cabinet with the knowledge of Calung and Baquilar. She explained that on that night Baquilar had left for home ahead, leaving her and Calung to close the kiosk at around 8:00 pm; that at exactly 8:01 pm she proceeded to SM Department Store in Harrison Plaza to wait for her friends whom she had previously walked with to the LRT station; that she noticed upon arriving at the kiosk the next morning that the cabinet that they had positioned to block the entrance of the kiosk had been slightly moved; and that she then discovered upon opening the cabinet that its contents, including the cash, were already missing.

Calung executed a *sinumpaang salaysay*, however, averring that she had left the petitioner alone in the kiosk in the night of November 9, 1997 because the latter had still to change her clothes; and that that was the first time that the petitioner had ever asked to be left behind, for they had previously left the kiosk together.

Vina declared that the petitioner did not call the office of Minex for the pick-up of the P39,194.50 cash sales on Sunday, November 9, 1997, in violation of the standard operating procedure (SOP) requiring cash proceeds exceeding P10,000.00 to be reported for pick-up if the amount could not be deposited in the bank.

After the preliminary investigation, the Assistant Prosecutor rendered a resolution dated February 4, 1998 finding probable cause for qualified theft and recommending the filing of an information against the petitioner.^[2] Thus, she was charged with qualified theft in the Regional Trial Court (RTC) in Manila, docketed as Criminal Case No. 98-165426.

The petitioner appealed by petition for review to the Department of Justice (DOJ), but the DOJ Secretary denied her petition for review on July 4, 2001.^[3]

As to the petitioner's complaint for illegal dismissal, Labor Arbiter Jose G. de Vera rendered his decision dated December 15, 1998, viz:^[4]

WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of the complainant and against the respondents declaring the dismissal of the latter from work illegal and ordering her reinstatement to her former work position with full backwages counted from November 10, 1997 until her actual reinstatement without loss of seniority or other employees' rights and benefits.

Respondents are likewise ordered to pay complainant her monetary claims above as well as moral damages of P50,000.00 and exemplary damages of P20,000.00.

Lastly, respondents are liable to pay ten percent (10%) of the total award as and by way of payment of attorney's fees.

SO ORDERED.

On appeal by the respondents, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter on December 28, 2000, declaring that the petitioner had not been dismissed, but had abandoned her job after being found to have stolen the proceeds of the sales; and holding that even if she had been dismissed, her dismissal would be justifiable for loss of trust and confidence in the light of the finding of probable cause by the DOJ and the City Prosecutor and the filing of the information for qualified theft against her.^[5]

The NLRC deleted the awards of backwages, service incentive leave pay, holiday pay and 13th month pay, moral and exemplary damages and attorney's fees, opining that the petitioner would be entitled to an award of damages only when the dismissal was shown to be effected in bad faith or fraud or was an act oppressive to labor, or was done in a manner contrary to good morals, good customs, or public policy.^[6]

After the NLRC denied her motion for reconsideration on March 16, 2001, the petitioner challenged the reversal by the NLRC in the Court of Appeals (CA) on *certiorari*, claiming that the NLRC thereby committed grave abuse of discretion amounting to excess of jurisdiction for finding that there had been lawful cause to dismiss her; and insisting that the NLRC relied on mere suspicions and surmises, disregarding not only her explanations that, if considered, would have warranted a judgment in her favor but even the findings and disquisitions of the Labor Arbiter, which were in full accord with pertinent case law.

On December 20, 2001,^[7] however, the CA sustained the NLRC mainly because of the DOJ Secretary's finding of probable cause for qualified theft, holding:

With the finding of probable cause not only by the Investigating Prosecutor but by the Secretary of Justice no less, it cannot be validly claimed, as the Petitioner does, in her Petition at bench, that there is no lawful cause for her dismissal. The felony of qualified theft involves moral turpitude.

"Respondent cannot use social justice to shield wrongdoing. He occupied a position of trust and confidence. Petitioner relied on him to protect the properties of the company. Respondent betrayed this trust when he ordered the subject lamp posts to be delivered to the Adelfa Homeowners' Association. The offense he committed involves moral

turpitude. Indeed, a City Prosecutor found probable cause to file an information for qualified theft against him.” (United South Dockhandlers, Inc., versus NLRC, et al., 267 SCRA 401, at page 407, supra)

Admittedly, there is no direct evidence that the Petitioner took the money from the drawer in the cabinet in the Kiosk. But direct evidence that the Petitioner took the money is not required for the Petitioner to be lawfully dismissed for the loss of the money of the Private Respondent corporation. If circumstantial evidence is sufficient on which to anchor a judgment of conviction in criminal cases under Section 4, Rule 133 of the Revised Rules of Evidence, there is no cogent reason why circumstantial evidence is not sufficient on which to anchor a factual basis for the dismissal of the Petitioner for loss of confidence.

IN THE LIGHT OF ALL THE FOREGOING, the Petition at bench is denied due course and is hereby DISMISSED.

SO ORDERED.

On May 13, 2002, the CA denied the petitioner’s motion for reconsideration.^[8]

Issues

In her appeal, the petitioner submits that:

THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS NO ILLEGAL DISMISSAL IN THE CASE AT BAR, PARTICULARLY IN FINDING THAT:

A. THERE WAS JUST CAUSE FOR HER DISMISSAL, AND

B. RESPONDENT NEED NOT AFFORD THE PETITIONER DUE PROCESS TO PETITIONER.

Ruling

The petition lacks merit.

The decisive issue for resolution is whether or not the petitioner was terminated for a just and valid cause.

To dismiss an employee, the law requires the existence of a just and valid cause. Article 282 of the *Labor Code* enumerates the *just* causes for termination by the employer: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter’s representative in connection with the employee’s work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer

or his duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing.

The NLRC held that the termination of the petitioner was due to loss of trust and confidence. Sustaining the NLRC, the CA stated:

With the finding of probable cause not only by the investigating prosecutor but by the Secretary of Justice no less, it cannot be validly claimed, as the Petitioner does, in her Petition at bench, that there is no lawful cause for her dismissal xxx.

xxx

Admittedly, there is no direct evidence that the Petitioner took the money from the drawer in the cabinet in the Kiosk. But direct evidence that the Petitioner took the money is not required for the Petitioner to be lawfully dismissed for the loss of the money of the Private Respondent corporation. If circumstantial evidence is sufficient on which to anchor a judgment of conviction in criminal cases under Section 4, Rule 133 of the Revised Rules of Evidence, there is no cogent reason why circumstantial evidence is not sufficient on which to anchor a factual basis for the dismissal of the Petitioner for loss of confidence.^[9]

The petitioner still argues, however, that there was no evidence at all upon which Minex could validly dismiss her considering that she had not yet been found guilty beyond reasonable doubt of the crime of qualified theft.

The petitioner's argument is not novel. It has been raised and rejected many times before on the basis that neither conviction beyond reasonable doubt for a crime against the employer nor acquittal after criminal prosecution was indispensable. Nor was a formal charge in court for the acts prejudicial to the interest of the employer a pre-requisite for a valid dismissal.

In its 1941 ruling in *National Labor Union, Inc. v. Standard Vacuum Oil Company*,^[10] the Court expressly stated thus:

xxx **The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer. If there is sufficient evidence to show that the employee has been guilty of a breach of trust, or that his employer has ample reason to distrust him, it cannot justly deny to the employer the authority to dismiss such employee.** All that is incumbent upon the Court of Industrial Relations (now National Labor Relations Commission) to determine is whether the proposed dismissal is for just cause xxx. **It is not necessary for said court to find that an employee has been guilty of a crime beyond reasonable doubt in order to authorize his dismissal.** (Emphasis supplied)