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SECOND DIVISION

[G.R. No. 173012, June 13, 2012]

DOLORES T. ESGUERRA, PETITIONER, VS. VALLE VERDE COUNTRY CLUB, INC. AND ERNESTO VILLALUNA, RESPONDENTS.

D E C I S I O N

BRION, J.:

Before this Court is a petition for review on *certiorari,*[1] filed by petitioner Dolores T. Esguerra (*Esguerra*), from the February 7, 2006 decision[2] and the June 2, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 85012, ruling that Esguerra had been validly dismissed from her employment with respondent Valle Verde Country Club, Inc. (*Valle Verde*). Valle Verde terminated Esguerra's employment for loss of trust and confidence in the custody of cash sales.

FACTUAL BACKGROUND

On April 1, 1978, Valle Verde hired Esguerra as Head Food Checker. In 1999, she was promoted to Cost Control Supervisor.[4]

On January 15, 2000, the Couples for Christ held a seminar at the country club. Esguerra was tasked to oversee the seminar held in the two function rooms – the *Ballroom* and the *Tanay Room*. The arrangement was that the food shall be served in the form of pre-paid buffet, while the drinks shall be paid in a "pay as you order" basis.[5]

The Valle Verde Management found out the following day that only the proceeds from the Tanay Room had been remitted to the accounting department. There were also unauthorized charges of food on the account of Judge Rodolfo Bonifacio, one of the participants. To resolve the issue, Valle Verde conducted an investigation; the employees who were assigned in the two function rooms were summoned and made to explain, in writing, what had transpired.[6]

On March 6, 2000, Valle Verde sent a memorandum to Esguerra requiring her to show cause as to why no disciplinary action should be taken against her for the non-remittance of the *Ballroom's* sales. Esguerra was placed under preventive suspension with pay, pending investigation.[7]

In her letter-response, Esguerra denied having committed any misappropriation. She explained that it had been her daughter (who was assigned as a food checker) who lost the money.[8] To settle the matter, Esguerra paid the unaccounted amount as soon as her daughter informed her about it. Esguerra also explained the unauthorized charging of food on Judge Bonifacio's account. She alleged that Judge Bonifacio took pity on her and told her to take home some food and to charge it on

his account.

Valle Verde found Esguerra's explanation unsatisfactory and, on July 26, 2000, issued a second memorandum terminating Esguerra's employment.[9]

THE LABOR ARBITER'S RULING

Esguerra filed a complaint[10] with the National Labor Relations Commission (NLRC) for illegal dismissal. In her April 5, 2002 decision, Labor Arbiter Marita V. Padolina dismissed the complaint for lack of merit, but ordered Valle Verde to pay Esguerra 13th month pay in the amount of P2,016.66, rice subsidy in the amount of P1,100.00, and ten percent (10%) attorney's fees in the amount of P311.66.[11]

THE NLRC'S RULING

Esguerra appealed the case to the NLRC.[12] In its December 27, 2002 decision, the NLRC modified the decision and only awarded P143,000.00 as separation pay, equivalent to one-half (½) month for every year of service,[13] after taking into account Esguerra's long years of service and absence of previous derogatory records.

Esguerra filed a partial motion for reconsideration,[14] while Valle Verde filed its own motion for reconsideration.[15] In its March 31, 2004 resolution, the NLRC denied Esguerra's motion, but granted Valle Verde's motion. Thus, it set aside its December 27, 2002 decision and affirmed the April 5, 2002 decision of the labor arbiter.

THE CA RULING

Aggrieved, Esguerra elevated her case to the CA via a Rule 65 petition for *certiorari*. In its February 7, 2006 decision, the CA denied Esguerra's petition for *certiorari*. It found that the NLRC did not commit any grave abuse of discretion in finding that Esguerra was validly dismissed from employment for loss of trust and confidence, and that her length of service cannot be counted in her favor.

Esguerra filed the present petition after the CA denied[16] her motion for reconsideration.[17]

THE PETITION

Esguerra argues that the appellate court erred in ruling that she had been validly dismissed on the ground of loss of trust and confidence. She alleges that she was only a regular employee and did not occupy a supervisory position vested with trust and confidence. Esguerra also questions the manner of dismissal since Valle Verde failed to comply with procedural requirements.

THE ISSUE

The core issue boils down to whether the CA erred in affirming the NLRC's decision and resolution.

OUR RULING

The petition is without merit.

"Under the Labor Code, the requirements for the lawful dismissal of an employee are two-fold[:] the substantive and the procedural aspects. Not only must the dismissal be for a just or authorized cause, the rudimentary requirements of due process — notice and hearing — must, likewise, be observed x x x. Without the concurrence of the two, the termination would x x x be illegal[;] employment is a property right of which one cannot be deprived of without due process."[18]

There was valid notice and hearing

We fail to find any irregularities in the service of notice to Esguerra. The memorandum dated March 6, 2000[19] informed her of the charges, and clearly directed her to show cause, in writing, why no disciplinary action should be imposed against her. Esguerra's allegation that the notice was insufficient since it failed to contain any intention to terminate her is incorrect.

In *Perez v. Philippine Telegraph and Telephone Company,*[20] the Court underscored the significance of the two-notice rule in dismissing an employee:

> To meet the requirements of due process in the dismissal of an employee, an employer must ***furnish the worker with two written notices***: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee. [emphases and italics ours].[21]

Contrary to Esguerra's allegation, the law does not require that an intention to terminate one's employment should be included in the first notice. It is enough that employees are properly apprised of the charges brought against them so they can properly prepare their defenses; it is only during the second notice that the intention to terminate one's employment should be explicitly stated.

There is also no basis to question the absence of a proper hearing. In Perez, the Court provided the following guiding principles in connection with the hearing requirement in dismissal cases:

a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.
b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.