

SECOND DIVISION

[G.R. No. 147633, July 28, 2008]

**ALDEGUER & CO., INC./LOALDE BOUTIQUE, PETITIONER, VS.
HONEYLINE TOMBOC, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

In 1993, Aldeguer and Co., Inc./Loalde Boutique (petitioner), a corporation engaged in the retail and wholesale of Loalde brand products, hired Honeyline Tomboc (respondent).

Petitioner promoted respondent in 1996 as Officer-in-Charge (OIC) of its Loalde Ayala Boutique (Loalde Ayala) in the Ayala Center, Cebu City. As OIC, respondent had the following responsibilities:

1. Monitors daily the inventory status of the stocks per product line and per product class
2. Coordinate with the area manager with the following matters
 - a. stock requirement
 - b. maintenance of the boutique
 - c. new directives of the mall management
 - d. customer's problems
 - e. other boutique problems
3. Supervises the sales staff assigned in the respective boutiques
4. Implements the company rules and regulations
5. Checks the PR and deposit slips prepared by the cashier against the sales tally report
6. As per internal control, the OIC is not allowed to handle cashiering except [in] emergency cases which must have prior approval by the management. Keyholding of the cash drawer is the responsibility of the cashier.
7. Must at all times submit a written memo of any irregular incident that may occur inside the boutique or if there's any deviation [from] company policy due to circumstances.^[1]

After conducting an audit of sales in Loalde Ayala, petitioner concluded that respondent misappropriated P28,137.70^[2] which is a just cause for termination under Art. 282 of the Labor Code,^[3] and accordingly notified her on May 24, 1997

of the termination of her services effective June 24, 1997. Petitioner also notified her as follows:

Aside from these undeposited cash collections, there are reports submitted by three (3) cashiers who were assigned in the Loalde Boutique that you, being the OIC in the boutique meddles [sic] [with] the cash for deposit, and delaying [sic] such for more than three (3) days. This has prompted the management to believe that you were really using the money.^[4] (Underscoring supplied)

Respondent thereupon filed on June 25, 1997 a Complaint^[5] before the National Labor Relations Commission (NLRC) against petitioner for illegal dismissal, illegal salary deductions, underpayment of wages, non-payment of 13th month pay, and damages.

In her Position Paper,^[6] respondent gave the following version:

After being cleared of her accountabilities on May 19, 1997 by Nenita Pamisa (Nenita), the Accounting Manager of petitioner, she went on leave the following day, her application for the purpose having been earlier approved. On her report back for work, she received a memorandum^[7] dated May 24, 1997 informing her that effective May 25, 1997, she was no longer allowed to enter the premises of Loalde Ayala and that she should instead report to petitioner's Head Office at Mandaue City. Complying, she reported to the Head Office where she was assigned to fold and pile dresses in the stockroom.

In the same Position Paper, respondent posited that she was terminated from employment because she refused to sign a voucher acknowledging receipt of wage differentials which she did not in fact receive.^[8]

From the records, it is gathered that at the scheduled conciliation conference before the Labor Arbiter, petitioner sent no representative.^[9] And it twice failed to send any representative at the formal hearing of the case. Further, it failed to submit its position paper,^[10] drawing the Labor Arbiter to declare on February 5, 1998 the case submitted for decision on the basis of respondent's position paper.^[11] Petitioner was later to file the following day or on February 6, 1998 its position paper^[12] *cum* affidavits of Nenita, Kay Malagar (Kay), Jinky Diongson (Jinky), Joanne Bernaldez, and Jocelyn Martinez (Jocelyn),^[13] proffering the following version:

It is its policy to require a boutique-in-charge to conduct a "cash count . . . every end of the day or on the first hour of the following day after her day off [and a]ny collection for the day must be deposited without fail on the succeeding banking day."^[14]

On May 19, 1997, Nenita audited the sales of Loalde Ayala and discovered undeposited cash sales covered by six receipts detailed as follows:^[15]

Official Receipt Number	Date	Amount
6565	April 27, 1997	P 8,338.00

6582	May 6, 1997	5,542.50
6586	May 7, 1997	10,035.40
6801	May 11, 1997	12,090.00
6802	May 12, 1997	9,203.40
6803	May 13, 1997	6,844.30

When asked to explain, respondent claimed that the amounts were all deposits-in-transit, meaning, the bank had already picked up the amounts but had not yet returned the validated deposit slips.^[16]

Respondent having been scheduled to go on vacation leave starting May 20, 1997, she was asked to and did report for work on even date during which she conferred with Nenita and the General Boutique and Sales Manager Cora Anzano. At the conference, respondent maintained that the questioned amounts were already deposited in the bank. Petitioner's bank passbook did not, however, reflect the amounts covered by the last three above-indicated official receipts.^[17]

Investigation showed that deposits on May 13, 1997 (comprising the proceeds of sales for May 9, 11, and 12, 1997 which were Friday, Sunday, and election day, respectively) and May 14, 1997 were all check deposits, and that there were no cash deposits even if there were cash sales in the amount of P28,137.70 covering the said period.

On her scheduled return to work on May 24, 1997, respondent did not show up; hence, the issuance of the notice of her dismissal which was mailed to her on May 29, 1997.^[18]

Respondent committed other irregularities in the past. Thus, on February 24, 1997, she incurred a cash shortage of P46,491.35 and when made to account therefor, she claimed that a representative of Solidbank Mandaue picked up the amount on the morning of the same day. The bank denied her claim, however.

Verification with the bank revealed that the cash sales for February 15 and 16, 1997 were deposited only on February 25, 1997, and the cash sales for February 20-23, 1997 were deposited only on February 26, 1997.^[19] Respondent later explained that her deviation from petitioner's policy of requiring the deposit of the day's sale on the following banking day arose from the sudden change in the pick-up system of the bank.^[20]

On another occasion or on April 24, 1997, respondent instructed an employee, Jocelyn, to issue an official receipt for P4,307.25 antedated April 3, 1997, and another for P6,030.30 antedated April 18, 1997, to cover amounts which Loalde Ayala received on those dates and which were being traced by the head office.

Still on another occasion, respondent falsified the signature of the bank teller on deposit slips dated April 3, 1997 and April 18, 1997.

By Decision^[21] of March 16, 1998, Labor Arbiter Ernesto F. Carreon dismissed respondent's complaint.

The NLRC upheld^[22] the Labor Arbiter's Decision and denied respondent's Motion for Reconsideration,^[23] prompting her to file a Petition for Certiorari^[24] before the Court of Appeals.

By Decision^[25] of February 27, 2001, the Court of Appeals, concluding that respondent was illegally dismissed, **reversed** the NLRC decision and ordered her reinstatement with full payment of back wages and without loss of seniority rights.^[26]

In reversing the NLRC decision, the Court of Appeals found the Labor Arbiter to have "committed grave abuse of discretion when it admitted [herein petitioner's] Position Paper even if submitted almost two (2) months late, aggravated by the fact that said Position Paper was unverified and no copy thereof furnished [herein respondent]"^[27] (Underscoring partly in the original, partly supplied). And it found respondent to have been illegally dismissed.^[28] It further found that respondent was denied due process as she was not afforded a chance to refute the charge of misappropriation against her. Finally, it found the charge to be "a product of [respondent's] refusal . . . to sign a fictitious voucher."^[29]

Hence, the present petition^[30] faulting the Court of Appeals to have erred:

- I. x x x IN HOLDING THAT THE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ADMITTED HEREIN PETITIONER'S POSITION PAPER ONE DAY AFTER THE CASE WAS DEEMED SUBMITTED FOR DECISION.
- II. x x x IN BRUSHING ASIDE THE FINDINGS OF FACTS OF BOTH THE NLRC AND THE LABOR ARBITER WHICH HELD THE TERMINATION OF RESPONDENT VALID BASED ON SUBSTANTIAL EVIDENCE ON RECORD.
- III. x x x IN ORDERING THE REINSTATEMENT OF RESPONDENT TOMBOC AS SUBSTANTIAL EVIDENCE HAS ESTABLISHED THE JUST CAUSE FOR RESPONDENT'S DISMISSAL.
- IV. x x x IN HOLDING THAT PETITIONER FAILED TO COMPLY WITH PROCEDURAL DUE PROCESS IN DISMISSING THE RESPONDENT.
^[31] (Underscoring supplied)

The petition is impressed with merit.

A Labor Arbiter is mandated by law to use every reasonable means to ascertain the facts of each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process.^[32] Failure to submit a position paper on time is not a ground for striking it from the records.^[33] And lack of verification of petitioner's position paper is only a formal, not a jurisdictional, defect.^[34]

In finding the admission of the belatedly filed position paper of petitioner to have been attended with grave abuse of discretion, the Court of Appeals relied on, *inter*

alia, the following pronouncement in *Mañebo v. National Labor Relations Commission*:^[35]

x x x Firstly, while it is true that the Rules of the NLRC must be liberally construed and that the NLRC is not bound by the technicalities of law and procedure, the Labor Arbiters and the NLRC itself must not be the first to arbitrarily disregard specific provisions of the Rules which are precisely intended to assist the parties in obtaining just, expeditious, and inexpensive settlement of labor disputes. One such provision is Section 3, Rule V of the New Rules of Procedure of the NLRC which requires the submission of **verified** position papers **within fifteen days** from the date of the last conference, with **proof of service** thereof on the other parties. The position papers "shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's testimony." **After the submission thereof, the parties "shall . . . not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers,** affidavits, and other documents."^[36] (Emphasis and underscoring supplied)

In finding *Mañebo* to have been denied due process, this Court held:

[T]he Labor Arbiter gravely abused his discretion in disregarding the rule governing position papers by admitting the **Supplemental Position Paper and Memorandum, which was not even accompanied by proof of service to the petitioner or his counsel, and by taking into consideration, as basis for his decision, the alleged facts adduced therein and the documents attached thereto.**^[37] (Emphasis and underscoring supplied)

As partly reflected in the above-quoted portions of the decision in *Mañebo*, the Court noted that the labor arbiter principally based its decision on the facts alleged in, and documents attached to the therein respondent-employer's "Supplemental Position Paper and Memorandum," no copy of which was even furnished the petitioner-employee *Mañebo* to thus deny him due process.

In the case at bar, petitioner submitted its Position Paper on February 6, 1998 or a day after the labor arbiter considered the case submitted for decision. Unlike *Mañebo*, herein respondent was furnished a copy of petitioner's Position Paper on February 6, 1998.^[38] Between February 6, 1998 and March 16, 1998 when the labor arbiter promulgated its decision, respondent does not even appear to have rebutted petitioner's Position Paper.

From the recital of the facts of the case at bar then, respondent was not deprived of due process.

ON THE MERITS, petitioner has shown just cause for the termination of respondent's employment under Art. 282 of the Labor Code on the ground of "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."^[39]