

SECOND DIVISION

[G.R. NO. 161305, February 09, 2007]

**MILAGROS PANUNCILLO, PETITIONER, VS. CAP PHILIPPINES,
INC., RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Assailed via Petition for Review^[1] are the Decision dated May 16, 2003^[2] and Resolution dated November 17, 2003^[3] of the Court of Appeals in CA-G.R. SP No. 74665 which declared valid the dismissal of Milagros Panuncillo (petitioner) by CAP Philippines, Inc. (respondent).

Petitioner was hired on August 28, 1980 as Office Senior Clerk by respondent. At the time of her questioned separation from respondent on April 23, 1999, she was receiving a monthly salary of P16,180.60.

In order to secure the education of her son, petitioner procured an educational plan (the plan) from respondent which she had fully paid but which she later sold to Josefina Pernes (Josefina) for P37,000. Before the actual transfer of the plan could be effected, however, petitioner pledged it for P50,000 to John Chua who, however, sold it to Benito Bonghanoy. Bonghanoy in turn sold the plan to Gaudioso R. Uy for P60,000.

Having gotten wind of the transactions subsequent to her purchase of the plan, Josefina, by letter of February 10, 1999,^[4] informed respondent that petitioner had "swindled" her but that she was willing to settle the case amicably as long as petitioner pay the amount involved and the interest. She expressed her appreciation "if [respondent] could help her in anyway."

Acting on Josefina's letter, the Integrated Internal Audit Operations (IIAO) of respondent required petitioner to explain in writing why the plan had not been transferred to Josefina and was instead sold to another. Complying, petitioner proffered the following explanation:

Because of extreme need of money, I was constrained to sell my CAP plan of my son to J. Pernes last July, 1996, in the amount of Thirty Seven Thousand Pesos (P37,000.) The plan was not transferred right away because of lacking requirement on the part of the buyer (birth certificate). The birth certificate came a month later. While waiting for the birth certificate, again because of extreme need of money, I was tempted to pawned [sic] the plan, believing I can redeemed [sic] it later when the birth certificate will come.

Last year, I was already pressured by J. Pernes for the transfer of the

plan. But before hand, she already knew the present situation. I was trying to find means to redeemed [sic] the plan but to no avail. I cannot borrow anymore from my creditors because of outstanding loans which remains unpaid. As of the present, I am heavily debtladen and I don't know where to run.

I can't blame the person whom I pawned the plan if he had sold it. I can't redeemed [sic] it anymore. Everybody needs money and besides, I have given them my papers.

I admit, I had defrauded Ms. J. Pernes, but I didn't do it intentionally. At first, I believe I can redeem the plan hoping I can still borrow from somebody.

With my more than 18 years stay with the company, I don't have the intention of ruining my image as well as the company's. I think I am just a victim of circumstances.^[5] (Emphasis and underscoring supplied)

A show-cause memorandum^[6] dated February 23, 1999 was thereupon sent to petitioner, giving her 48 hours from receipt thereof to explain why she should not be disciplinarily dealt with. Petitioner did not comply, however.

The IIAO of respondent thus conducted an investigation on the matter. By Memorandum of April 5, 1999,^[7] the IIAO recommended that, among other things, administrative action should be taken against petitioner for violating Section 8.4 of respondent's Code of Discipline reading:

Committing or dealing any act or conniving with co-employees or anybody to defraud the company or customer/sales associates.

In the same memorandum, the IIAO reported other matters bearing on petitioner's duties as an employee, to wit:

OTHERS:

We also received a copy of demand letter of a certain Evelia Casquejo addressed to Ms. Panuncillo requiring the latter to pay the amount of P54,870.00 for the supposed transfer of the lapsed plan of Subscriber Corazon Lintag with SFA # 25-67-40-01-00392. Ms. Panuncillo received the payment of P25,000.00 and P29,870.00 on July 17, 1997 and July 18, 1997 respectively (**Exhibits L&M**).

Ms. Panuncillo verbally admitted that she was the one who sold the plan to Ms. Casquejo but with the authorization from Ms. Lintag. However, the transfer was not effected because she had misappropriated a portion of the money until the plan was terminated. Ms. Casquejo, however, did not file a complaint because Ms. Panuncillo executed a Special Power of Attorney authorizing the former to receive P68,000 of Ms. Panuncillo's retirement pay (**Exhibit N**).^[8] (Emphasis in the original; underscoring supplied))

On April 7, 1999, another show-cause memorandum was sent to petitioner by Renato M. Daquiz (Daquiz), First Vice President of respondent, giving her another 48 hours to explain why she should not be disciplinarily dealt with in connection with the complaints of Josefina and Evelia Casquejo (Evelia). Complying with the directive, petitioner, by letter of April 10, 1999, on top of reiterating her admission of having "defrauded" Josefina, admitted having received from Evelia the payment for a lapsed plan, thus:

With regards to [Evelia's] case, yes its [sic] true I had received the payment but it was accordingly given to the owner or Subscriber Ms. C. Lintag. The plan was not transferred because it was already forfeited and we, Ms. Lintag, [Evelia] and I already made settlement of the case.

I think I have violated Sec. 8.4 of the company's Code of Discipline. I admit it is my wrongdoing. I was only forced to do this because of extreme needs to pay for my debts. I am open for whatever disciplinary action that will be sanctioned againsts [sic] me. I hope it is not termination from my job. How can I pay for obligations if that will happen to me.

As for [Josefina], I have the greatest desire to pay for my indebtedness but my capability at the moment is nil. (space) I have been planning to retire early just to pay my obligations. That is why I had written to you last year inquiring tax exemption when retiring. I have been with the company for almost 19 years already and I never intend [sic] to smear its name as well as mine. I was only forced by circumstances. Although it hurts to leave CAP, I will be retiring on April 30, 1999.

x x x x^[9] (Emphasis and underscoring supplied)

Respondent thereupon terminated the services of petitioner by Memorandum dated April 20, 1999.^[10]

Petitioner sought reconsideration of her dismissal, by letter of April 23, 1999 addressed to Daquiz, imploring as follows:

. . . Please consider my retirement letter I sent to you. I would like to avail [of] the retirement benefit of the company. The proceeds of my retirement could help me pay some of my obligations as well as the needs of my family. My husband is jobless and I am the breadwinner of the family. If I will be terminated, I don't know what will happen to us.

Sir, I am enclosing the affidavit of Ms. Evelia Casquejo proving that we have already settled the case.

x x x x^[11] (Underscoring supplied)

Pending resolution of petitioner's motion for reconsideration, respondent received a letter dated April 28, 1999^[12] from one Gwendolyn N. Dinoro (Gwendolyn) who informed that she had been paying her "quarterly dues" through petitioner but found out that none had been remitted to respondent, on account of which she (Gwendolyn) was being penalized with interest charges.

Acting on petitioner's motion for reconsideration, Daquiz, by letter-memorandum of May 5, 1999, denied the same in this wise:

A review of your case was made per your request, and we note that **it was not just a single case but multiple cases**, that of Ms. Casquejo, Ms. Pernes, and newly reported Ms. Dinoro. Furthermore, the cases happened way back in July 1996 and 1997, and were just discovered recently. In addition, the misappropriation of money/or act to defraud the company or customer was deliberate and intentional. There were several payments received - over a period of time. While you plead for your retirement benefit to help you pay some of your obligations, as well as the need of your family (your husband being jobless and being the breadwinner), these thoughts should have crossed your mind before you committed the violations rather than now. To allow you to retire with benefits, is to tolerate and encourage others to do the same in the future, as it will be a precedent that will surely be invoked in similar situations in the future, as it will be a precedent that will surely be invoked in similar situations in the future. It is also unfair to others who do their jobs faithfully and honestly. **If we let you have your way, it will appear that we let you scot-free and even reward you with retirement - someone who deliberately violated trust and confidence of the company and customers.**

Premises considered, the decision to terminate your services for cause stays and the request for reconsideration is denied.

x x x x^[13] (Emphasis and underscoring supplied)

Petitioner thus filed a complaint^[14] for illegal dismissal, 13th month pay, service incentive leave pay, damages and attorney's fees against respondent.

The Labor Arbiter, while finding that the dismissal was for a valid cause, found the same too harsh. He thus ordered the reinstatement of petitioner to a position one rank lower than her previous position, and disposed as follows:

WHEREFORE, the foregoing considered, judgement [*sic*] is hereby rendered directing the respondent to pay complainant's 13th Month pay and Service Incentive Leave Pay for 1999 in proportionate amount computed as follows:

13th Month Pay

January 1, 1999 to April 1, 1999
= 3 months
= P16,180.60/12 mos. x 3 mos.
P4,045.14

Service Incentive Leave

= P16,180.60/26 days
= P622.30 per day x 5 days/12 months.
777.87

TOTAL -----P4,823.01

Plus P482.30 ten (10%) Attorney's Fees or a total aggregate amount of PESOS: FIVE THOUSAND THREE HUNDRED FIVE & 31/100 (P5,305.31).

Respondent is likewise, directed to reinstate the complainant to a position one rank lower without backwages.^[15] (Underscoring supplied)

On appeal, the National Labor Relations Commission (NLRC), by Decision of October 29, 2001, reversed that of the Labor Arbiter, it finding that petitioner's dismissal was illegal and accordingly ordering her reinstatement to her former position. Thus it disposed:

WHEREFORE, the Decision in the main case dated February 18, 2000 of the Labor Arbiter declaring the dismissal of the complainant valid, and his Order dated June 26, 2000 declaring the Motion to Declare Respondent-appellant in Contempt as prematurely filed and ordering the issuance of an alias writ of execution are hereby SET ASIDE, and a new one is rendered DECLARING the dismissal of the complainant illegal, and ORDERING the respondent, CAP PHILIPPINES, INCORPORATED, the following:

1. to reinstate the complainant MILAGROS B. PANUNCILLO to her former position without loss of seniority rights and with full backwages from the date her compensation was withheld from her on April 20, 1999 until her actual reinstatement;
2. to pay to the same complainant P4,045.14 as 13th month pay, and P777.89 as service incentive leave pay;
3. to pay to the same complainant moral damages of FIFTY THOUSAND PESOS (P50,000.00), and exemplary damages of another FIFTY THOUSAND PESOS (P50,000.00);
4. to pay attorney's fees equivalent to ten percent (10%) of the total award exclusive of moral and exemplary damages.

Further, the complainant's Motion to Declare Respondent in Contempt dated May 3, 2000 is denied and rendered moot by virtue of this Decision.

All other claims are dismissed for lack of merit.^[16] (Underscoring supplied)

In so deciding, the NLRC held that the transaction between petitioner and Josefina was private in character and, therefore, respondent did not suffer any damage, hence, it was error to apply Section 8.4 of respondent's Code of Discipline.

Respondent challenged the NLRC Decision before the appellate court via Petition for Certiorari.^[17] By Decision of May 16, 2003,^[18] the appellate court reversed the NLRC Decision and held that the dismissal was valid and that respondent complied