

FIRST DIVISION

[G.R. NO. 169299, June 16, 2006]

**EASTERN TELECOMMUNICATIONS PHILS., INC., PETITIONER, VS.
MARIA CHARINA DIAMSE, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the May 31, 2005 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 87125, which reversed and set aside the July 24, 2003 Decision^[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 033100-02, and the August 10, 2005 Resolution^[3] denying petitioner's motion for reconsideration.

The facts as culled from the records are as follows:

On January 3, 2001, respondent Ma. Charina Diamse, in her capacity as Head of Building Services of Eastern Telecommunications Philippines, Inc. (ETPI), requested a cash advance in the amount of P150,000.00 to defray the expenses for the renewal of ETPI's business permits. In accordance with ETPI's policy on cash advances, the requesting employee must liquidate the amount advanced within 15 days from the completion of the project or activity otherwise it would be automatically deducted from the employee's salary, benefits or any receivable. In addition, the requesting employee would be subjected to administrative penalties under ETPI's Code of Conduct.

Thereafter, the amount of P150,000.00 was credited to the Automated Teller Machine (ATM) payroll account of Diamse who made several payments for the renewal of the company's business permits. The records show that a total of P97,151.00 was paid and that the last payment was made on February 26, 2001.^[4]

However, Diamse failed to liquidate the cash advance within 15 days from said date.

On July 13, 2001, ETPI's Finance Department advised Diamse to liquidate the cash advance. On August 13, 2001, she submitted a liquidation report^[5] duly approved by her Immediate Supervising Executive (ISE), Godofredo Santos, but was refused by Glaire Alferez of petitioner's Finance Department for being late. Alferez informed Diamse that the entire amount of the cash advance will be automatically deducted from her monthly salary starting September 2001. The phrase "start salary deduction sept. 2001"^[6] was annotated in Diamse's unaccepted liquidation report.

At the same time, Alferez advised Diamse to file a request for reimbursement in the amount of P97,151.00 corresponding to the amount defrayed for the renewal of ETPI's business permits.

Subsequently, the Finance Department proceeded to make deductions and as of December 2001, a total of P23,000.00 was deducted from Diamse's monthly salary.

For her part, Diamse submitted a request for reimbursement^[7] on December 14, 2001 which was duly reviewed by her immediate supervisor and approved by the Vice President for Human Resources and Administration and by the Finance Department. On January 3, 2002, the amount of P97,151.00 was credited to Diamse's ATM payroll account.

It appears however that the Internal Audit Department (IAD) was not aware of the steps taken by the Finance Department because on January 2, 2002, the IAD conducted a spot audit on Diamse's ATM payroll account which showed a balance of P86,000.00. IAD required Diamse to withdraw P52,533.00 which is equivalent to the cash advance less payments made, and remit the same to ETPI.

On January 3, 2002, the IAD conducted another spot audit on Diamse's ATM payroll account from which it required Diamse to withdraw P74,462.82 which is the difference between the amount credited to Diamse's account (*i.e.*, P97,151.00) and the amounts previously deducted from her monthly payroll as of December 2001 (*i.e.*, P23,000.00). Like before, Diamse remitted the said amount to ETPI and was issued an official receipt.^[8]

The next day or on January 4, 2002, ETPI required Diamse to explain why she should not be disciplined for unauthorized diversion or application of company funds, and for acts of dishonesty, fraud, deceit and willful breach of trust. In her explanation,^[9] Diamse claimed that she submitted her liquidation report on August 13, 2001 but was refused by Alferez who informed her that starting September 2001, a certain amount would be deducted from her monthly salary to pay off the advances. She further claimed that she submitted a request for reimbursement on December 14, 2001 upon the advice of the Finance Department.

Finding her explanation unsatisfactory, ETPI dismissed Diamse from employment effective February 5, 2002. It found the delay in the liquidation of the cash advance for almost a year tantamount to unauthorized diversion or application of company funds, dishonesty, fraud, deceit and willful breach of trust.

On August 30, 2002, Labor Arbiter Geobel A. Bartolabac rendered a Decision^[10] finding ETPI liable for illegal dismissal. However, it was reversed on appeal by the NLRC which found Diamse's termination lawful and valid. On petition for certiorari, the Court of Appeals reversed the decision of NLRC, thus:

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED. The Decision of the National Labor Relations Commission dated July 24, 2003 is SET ASIDE.

The decision of the Labor Arbiter dated August 30, 2002 is REINSTATED and AFFIRMED subject to the MODIFICATION that petitioner be awarded separation pay equivalent to one month salary for every year of service in lieu of reinstatement and with full backwages based on her last stated salary, to be computed from the date of dismissal from the service up to the date of finality of this decision.

SO ORDERED.^[11]

Hence, this petition where ETPI assigns the following errors:

A.

THE COURT OF APPEALS ERRED IN FAILING TO EXPLAIN THE REASONS FOR ITS DECISION THAT RESPONDENT DIAMSE ACTED IN GOOD FAITH AND THAT HER INFRACTION DOES NOT WARRANT HER DISMISSAL.

B.

THE COURT OF APPEALS ERRED IN RULING THAT DIAMSE WAS ILLEGALLY DISMISSED. THE FACTS OF THE CASE AND RELEVANT JURISPRUDENCE JUSTIFY HER DISMISSAL BASED ON LOSS OF TRUST AND CONFIDENCE.^[12]

As a general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions,^[13] such as in this case where the findings of facts of the Labor Arbiter and the Court of Appeals vary from the NLRC's findings. After a review of the entire records of the case, we uphold the findings of the Court of Appeals that Diamse was illegally dismissed.

Time honored is the rule that in dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for a valid and just cause. In the case at bar, ETPI dismissed Diamse based on loss of trust and confidence.

However, to be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach and founded on clearly established facts.^[14] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion, otherwise, the employee would eternally remain at the mercy of the employer.^[15] The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee may be made to rest.^[16]

In the instant case, it is not disputed that Diamse occupied a position of trust and confidence because she was responsible for ETPI's inventory and supplies, including the renewal of its business permits, which necessarily meant that the property and money of ETPI was entrusted to her for proper care and disposition. It is, likewise, not disputed that Diamse made a cash advance in the amount of P150,000.00 on January 3, 2001 and that it was liquidated only on January 2, 2002. The pivotal issue, therefore, is whether under the circumstances, ETPI clearly and convincingly established the facts upon which loss of confidence in Diamse were made to rest.

ETPI principally asserts that the delay in the liquidation of the cash advance is sufficient basis for it to lose trust and confidence in Diamse. It claims that despite several reminders, Diamse failed to liquidate the cash advance within the prescribed period. ETPI posits that the delay in the liquidation of the cash advance was deliberate and malicious in order to conceal the misappropriation in the meantime.

ETPI's assertion lacks merit.

The mere delay in the liquidation of the cash advance cannot sustain a finding of loss of trust and confidence. ETPI merely suspected, without supporting proof, that Diamse misappropriated the funds. This certainly does not meet the requirement that loss of trust and confidence must be based on a willful breach and founded on clearly established facts. By itself, the delay in the liquidation of the cash advance does not clearly and convincingly establish that it was sought "intentionally, knowingly and purposely, without justifiable excuse" in order to provide a reasonable basis with which to conclude that the balance of the cash advance was misappropriated.

On the contrary, there are undisputed allegations by Diamse where she attributed the delay in the liquidation of the cash advance to her promotion as Head of Building Services. Her department was also relocated to another floor of ETPI's building sometime in March 2001 so that the documents were in disarray.^[17] Her duties were expanded as she was designated to head the Stores and Inventory Section which required her to again physically transfer from her office in the eighth floor to the upper basement of the building.^[18]

Undoubtedly, it cannot be presumed that Diamse misappropriated the funds because to do so would do violence to her right to security of tenure and the well-settled rule that the burden of proof is on the employer to establish the ground for dismissal.

Suspicion has never been a valid ground for dismissal and the employee's fate cannot, in justice, be hinged upon conjectures and surmises.^[19]

The evidence on record shows that Diamse was able to liquidate the cash advance and that the ensuing delay in its liquidation was attributable to ETPI.

Moreover, Diamse submitted her liquidation report which was refused by the Finance Department for being late. Instead, she was advised that the entire cash advance will be automatically deducted from her monthly salary. Diamse also filed a request for reimbursement on December 14, 2001 as suggested by the Finance Department.

The request for reimbursement was duly reviewed by her supervisor and approved by the Vice President for Human Resources and Administration.

We find Diamse's version of the events credible for the following reasons. First, the authenticity of the liquidation report has not been successfully rebutted by ETPI when it filed its reply^[20] and rejoinder^[21] before the Labor Arbiter. The first time that ETPI addressed the issue of the liquidation report was on appeal with the NLRC when it alleged in its memorandum of appeal^[22] dated September 30, 2002 that the subject liquidation report was not substantial evidence to prove the illegal dismissal of Diamse and that its authenticity and reliability was not proven.^[23] However, it failed to provide any specific basis for its generalized claims. Verily, upon presentation of the liquidation report^[24] in Diamse's position paper^[25] before the Labor Arbiter, ETPI should have immediately contested its authenticity if it really had grounds to do so by presenting rebuttal evidence. Furthermore, in its comment^[26] dated October 7, 2003 to Diamse's motion for reconsideration before the NLRC, ETPI no longer contested the authenticity of the said liquidation report but claimed instead that the same would not exculpate Diamse because it showed that she was