

EN BANC

[G.R. No. 114313, July 29, 1996]

**MGG MARINE SERVICES, INC. AND/OR DOROTEO C. GARLAN
AND CESAR ROTOLO, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSION AND ELIZABETH A. MOLINA,
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

To justify fully the dismissal of an employee, the employer -- as a rule -- must prove (a) that the termination was due to a just cause and (b) that the employee was afforded due process prior to dismissal. Does the violation by a comptroller-finance officer of explicit instructions from senior management on how the available liquid resources of the company are to be controlled and disbursed, such violation resulting in the collapse of the company's cash flow constitute loss of trust and confidence sufficient to justify termination of such management officer? Where the presence of just cause is shown, what is the consequence of the non-observance of due process? Is an internal audit sufficient compliance with the due process requirement? These are the questions that confronted this Court in resolving this petition for certiorari assailing the Resolution^[1] of the National Labor Relations Commission (NLRC),^[2] which affirmed *in toto* the decision of the Labor Arbiter^[3] dated December 21, 1992.

After due deliberation and consultation of the petition, the comments filed by the Solicitor General and the private respondent as well as the reply thereto, the Court gave due course to the petition and considered the case submitted for resolution, without requiring the parties to submit the memoranda.

The Facts

Private respondent was initially employed by the MGG Marine Services, Inc. (MGG) on July 1, 1988.

On March 25, 1990, the president of MGG, petitioner Doroteo C. Garlan, went to the United States for a brief sojourn. On March 1, 1990, before his departure, he appointed private respondent as comptroller and the over-all supervisor, concurrently with her then position as financial officer. As comptroller, private respondent was tasked to hold in trust for the company corporate funds to pay its obligations as authorized by the president and the board of directors. Petitioner Garlan instructed private respondent to pay the company's obligations as they fell due. Ma. Lourdes G. Unson, vice-president of MGG who also traveled to the United States, left with private respondent 79 prepared and pre-signed checks, 16 in blank and 63 with specific amounts on them, with corresponding vouchers containing the amount of debts due and the names of the creditors. Private respondent was specifically told to pay only the creditors mentioned in the cash vouchers and to

place on each of the 16 blank checks the amount stated in the corresponding check voucher. The said checks were made payable to private respondent, who upon withdrawal of the money from the bank, was to pay the same to the creditors.

At the time the aforementioned officers left for abroad, the company had about P1.5 million in its bank account. The total amount payable to the creditors as appearing in the check vouchers corresponding to the 16 blank checks was P224,131.50. All payments of the company were programmed in accordance with its plans and budget for the purpose of maintaining the optimal level of cash reserve.

When the corporate officers returned from their trip in June 1990, they were dismayed to learn that the company's deposits in the bank was reduced to only P5,720.00. It turned out that private respondent disobeyed the instructions given her not to pay more than what was specified in check vouchers. She increased the amounts she wrote on the blank checks so that instead of paying only P224,131.50 as budgeted, she withdrew from the bank an aggregate sum of P1,515,823.00. Likewise, she paid some creditors who were not specified in the cash vouchers. When the company had to pay an obligation of P15,000.00 on June 7, 1990, private respondent could only withdraw P5,720.00.

In her pleadings, private respondent did not give a satisfactory explanation as to why she violated the instruction given her except to claim that she did not profit by a single centavo from the withdrawals which she paid to company creditors.

MGG filed estafa charges against private respondent which were however dismissed.

On November 12, 1990, MGG terminated private respondent's employment for loss of trust and confidence. She then filed a complaint for illegal dismissal against MGG and its officers.

In a decision dated December 21, 1992, the Labor Arbiter held that: (1) the dismissal was illegal; (2) MGG should pay private respondent (a) separation pay equivalent to one month's salary for every year of service, it appearing that strained relations between the parties rendered reinstatement impractical; (b) thirteenth month pay in the amount of P16,083.32; (c) overtime pay in the amount of P21,977.52; (d) unpaid salary in the amount of P31,166.66; (e) moral damages in the amount of P50,000.00 for the "wrongful and malicious dismissal in bad faith"; and (f) attorney's fees.^[4]

The Labor Arbiter noted:

"In the case at bar, except for their bare self-serving allegation that the complainant had allegedly misappropriated corporate funds, no proof whatsoever was adduced by respondents and not even a scintilla of evidence was presented to show that the complainant had in fact defrauded the company to the tune of more than a million pesos. The complainant on the other hand successfully defended herself from said accusations by proving that she was in fact authorized to disburse the corporate funds in question for the purpose of settling the company's various accounts with its different creditors. Significantly, respondents made no claim at all that a single centavo went to the pocket of complainant. Moreover, the complaint for estafa filed against the

complainant was dismissed by Asst. City Prosecutor Eudoxia T. Gualberto in a resolution dated September 30, 1991 and a subsequent motion for reconsideration of said dismissal was denied by the City Prosecutor of Manila."^[5]

MGG appealed the Labor Arbiter's decision to NLRC. In a Resolution dated February 28, 1994, NLRC dismissed the appeal and affirmed *in toto* the appealed decision.

Hence this petition for certiorari.

The Issues

The issues in this case are:

- (1) Was there lawful cause for the dismissal of private respondent?
- (2) Did petitioners comply with the procedural requirements for valid dismissal? and
- (3) Were petitioners accorded due process at the hearing before the Labor Arbiter?

The First Issue:

Loss of Trust and Confidence in the Employee

MGG asserts that it was legally justified in dismissing private respondent on the ground of loss of trust and confidence.

We find that there is basis for MGG's loss of trust and confidence in private respondent, who does not deny that she entered on the blank checks amounts in excess of what had been provided for in the cash vouchers, and made payments to creditors other than those specified in said vouchers. In his decision, the Labor Arbiter said that the herein petitioners (respondents therein) filed a position paper explaining the basis of such loss of confidence and defining the damage wrought by private respondent Molina, thus:^[5a]

"For their part, respondents filed a position paper stating that from the time complainant was appointed as liquidation officer up to her designation as comptroller of the company, she was tasked to hold in trust corporate funds; that in March 1990 when respondent Doroteo Garlan left for the United States, complainant was instructed to take care of the financial requirements of the company and to disburse amounts payable to creditors as they became due and payable; that respondent corporation through its vice-president, Ma. Lourdes Unson prepared several check vouchers with the corresponding blank checks with the amounts reflected on the check vouchers; that said checks were made payable to complainant for her to facilitate the drawing of cash from the drawee banks so that cash vouchers would then be used in paying creditors; that complainant disbursed corporate funds not as instructed but with unexplained misappropriation or the blank checks that were supposed to have been filled up with amounts reflected on the corresponding check vouchers were intercolated (sic) with amounts different and more than she was instructed to place; that an audit was made and it was discovered that complainant was able to draw, with the

use of falsified checks the amount of P1,515,823.00, instead of the amount of P224,131.50 or an excess of P1,291,691.50, which amount remains unexplained up to the present; that complainant was asked to explain the over-drawing of corporate funds but she has failed and in fact refused to submit any explanations;"(Italics supplied)

This was buttressed by the affidavit of petitioners' witness Renato Jose O. Unson, who explained the limits of Molina's authority as well as the "cash flow" damage that her violations thereof caused the company: [5b]

"(7) Before MGG's senior management left for abroad last March 25, 1990, being a small company with limited resources, senior management set up a very strict budget so that its company obligations would be met and paid as they fell due. Molina was informed of the purpose of senior management in setting up a strict budget and implementation thru the issuance of various checks;

(8) Thus, several checks including eleven (11) blank checks with their corresponding check vouchers specifying the amount to be placed and the purpose for which the funds were to be used were left with Molina who enjoyed complete trust and confidence from senior management. Molina knew that she was under very strict and specific instructions to fill in the blank checks with amounts only in accordance with the corresponding check vouchers and to disburse said funds in accordance with the purpose indicated in the respective check voucher.

Thus Molina knew that she had no authority to fill in the blank checks with amounts different from that as instructed. She also knew that she had no authority to disburse funds to purposes different from that indicated in the individual check vouchers;

(9) All the time that senior management was abroad, senior management was constantly in touch with Molina thru overseas phone calls. In fact, during the first two weeks (from March 25, 1990) management called up Molina at least seven times.

Up to the time of arrival sometime June, 1990. Molina consistently informed senior management that everything was normal and that the business, its operations, funds; collections and accounts were in accordance with plans and the budget.

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(12) A corresponding company audit was conducted wherein Molina was further allowed to explain her actuations. It was then discovered that by taking advantage of the blank checks, she was able to withdraw amounts in excess of instructions.

In fact, within the short period from March 27, 1990 to April 6, 1990 (senior management left March 25, 1990) Molina withdrew close to P1,000,000.00 pesos in excess of that instructed her by already encashing six (6) of the blank checks with amounts in excess of those

instructed her.

MGG's funds, were so depleted that Molina on June 7, 1990, could not withdraw the amount she was authorized, that is, even if she was instructed to put the amount of P15,000.00 in the blank check, Molina only placed and withdrew the amount of P5,720.00 only;

In all, Molina without any authority whatsoever, by placing in the blank checks amounts in excess of what she was specifically instructed, withdrew about P1,282,411.00 thereby creating liability and causing damage and prejudice to MGG. It should be noted that these excess amounts were part of the unbudgeted and unappropriated corporate funds which only senior management had the right to withdraw or cause to withdraw;

(13) In short, Molina's authority was limited to the physical withdrawal of MGG's budgeted and appropriated funds from the bank as indicated in the checks/check vouchers and to disburse said funds in accordance with specific instructions given her;"

The above instructions of senior management were not denied by Molina in her testimony before said Arbiter:^[5c]

Q. - When they left for the U.S. did they leave you any vouchers?

Miss Molina

A. - They left me vouchers and my guideline (sic) are here (producing a list with the date therein -- March 27 consisting of 8 pages). They left me this one as my guidelines (sic) is supported by 79 checks, 16 blank checks and 63 with the amount.

Q. - And these 16 blank checks that you mentioned these were left with you with attached checks?

A. - Yes, sir.

Summing the prejudice caused by private respondent, petitioners allege as follows in their Petition^[6] before us:

"x x x While private respondent was authorized to withdraw from company coffers approximately P200,000.00, by filling-in the checks amounts in excess of those mentioned in the check vouchers, she was able to withdraw approximately P1.4 million thereby abruptly reducing the company's reserve funds by as much as P1.2 million (TSN, June 9, 1992, pp. 43- 44). Thus, when the senior officers returned from the United States, they were surprised to find out that the company's reserve funds have significantly dwindled to such an extent that private respondent 'on June 7, 1990, could not withdraw the amount she was authorized, that is, even if she was instructed to put the amount of P15,000.00 in blank check, Molina could only place and withdraw the amount of P5,720.00.' (par. 12, Affidavit of Atty. Unson dated March 26, 1992; Annex "D" hereof). Obviously, by June 7, 1990, the company's