

TWENTY-FIRST DIVISION

[CA-G.R. SP NO. 04605-MIN, March 27, 2014]

**NEW CITY COMMERCIAL CENTER, RUEL B. GUSTILLO, AND
FREDERICK AMIEL LASMARIAS, PETITIONERS, VS. NATIONAL
LABOR RELATIONS COMMISSION, 8TH DIVISION, AND ALICIA
O. CASTILLO, RESPONDENTS.**

D E C I S I O N

FRANCISCO, J.:

This is a Petition for Certiorari, ^[1] under Rule 65 of the Rules of Court, seeking to set aside the March 30, 2011 Resolution^[2] of the National Labor Relations Commission – Eighth Division, Cagayan de Oro City, in NLRC NO. MAC-01-011844-2011 affirming the Decision^[3] of the Labor Arbiter in NLRC Case No. RAB-XI-04-00451-10 for Illegal Dismissal.

The Facts of the Case

Herein private respondent Alicia Castillo is a regular employee of herein petitioner New City Commercial Center (NCCC) since February 19, 1988 until her termination on January 12, 2010. At the time of her termination, she was a Tenant Relations Officer with a monthly basic salary of P8,048.00 and a monthly allowance of P4,650.20 or a total gross of P12,698.20. As a Tenant Relations Officer, her duties were: a) to attend to prospective tenants/lessees who would like to occupy and lease commercial spaces at NCCC Malls or Shopping Centers in various parts of Davao City; b) to evaluate, process and recommend for approval applications of prospective tenants/lessees; c) to assist in the preparation of corresponding lease contracts; and d) to maintain good business relations with existing tenants/lessees.

^[4]

On December 9, 2009, herein petitioner Frederick Amiel Lasmarias, Corporate Leasing Officer, received a letter-inquiry from a certain Cherry Mae Bersabal, Operations Manager of Eden's Lechon, Atbp. (lessee at NCCC Mall) requesting for clarification on the rules in leasing of space with NCCC as she wondered why Castillo referred her to Pamela Abear when she signified her intention to lease a bigger space at NCCC Magsaysay Branch as well as in Calinan and Panacan Branch.^[5]

In her handwritten letter dated December 15, 2009, Abear stated that there was no discussion between her, Castillo and Bersabal pertaining to NCCC Panacan and Calinan Branches. Although Abear admitted that Bersabal is her client at NCCC Magsaysay Branch, she however stressed that Castillo had nothing to do with her transaction. Nor did Castillo receive any commission from her. She however revealed that Castillo owed her money.^[6]

On the basis of the gathered information and revelations, the NCCC charged Castillo with violations of existing company policy on leasing procedures and was required to

explain in writing why no administrative sanction should be meted against her. On December 16, 2009, Castillo submitted her explanation and denied the charges against her.^[7]

Thereafter, the Investigation Committee recommended Castillo's dismissal from service.^[8] Subsequently, in a memorandum dated January 11, 2010, Castillo was formally notified of her dismissal from service effective January 12, 2010 on the following grounds:

a) Your endorsement of Ms. Bersabal to the service of a third party when it was your job to cater prospect tenants' leasing concerns is a form of dishonesty, fraud or deceit against the company (Incidents against Xellie No. 22) as well as gross abuse of status, position or discretion of authority (Incidents Against Humby No. II) as this was a clear breach of established procedures.

b) Your loan of P6,000.00 from a third party who happens to be a business partner, with no agreed payment terms knowing that this may influence you (sic) decision making and without disclosure of the loan constitute (sic) an act violating the Conflict of Interest Policy (Incidents Against Xellie #23).^[9]

On April 19, 2010, Castillo filed a complaint for Illegal Dismissal against NCCC, Tek Sim Go (Group President), Ruel Gustillo (Director, LTS Malls & Entertainment), and Frederick Amiel Lasmarias before the NLRC, Regional Arbitration Branch No. XI, Davao City, docketed as NLRC Case No. RAB-XI-04-00451-10.^[10]

According to Castillo, she was suspended and eventually terminated without any valid ground or just cause. She argued that borrowing money from third person does not constitute valid cause for her termination as such is her personal obligation with the third person. She claimed that in her twenty-two (22) years in service, she has not committed any form of dishonesty, fraud or deceit against her employer much less committed any infraction of the law. She also claimed that her right to security of tenure and due process were violated for want of an independent formal investigation. She prayed for reinstatement and payment of backwages and if reinstatement is no longer feasible, payment of separation pay.

On the other hand, NCCC et al. maintained that Castillo's termination from service was for just cause and that the requirements of due process were duly complied with in effecting her dismissal. They asserted that a formal administrative hearing was conducted with the presence and participation of Castillo. Moreover, she was given notice to explain her side and thereafter, a notice of her dismissal. They also maintained that there is sufficient evidence for terminating the employment of Castillo on the basis of loss of trust and confidence. They contended that loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and greater fidelity to duty is expected. In the present case, they claimed that Castillo is a managerial employee since she was entrusted with confidence on delicate matters such as selection of mall tenants/lessees and maintaining good relations with them for the protection of the best interest of her employer. They added that Castillo's duty insofar as tenants-applicants are concerned is to see to it that they are politely attended to and their application are immediately and properly processed. They argued that in the present case, Castillo

needlessly referred the prospective tenants-applicants to an outsider to do the processing service, which was outrightly wrong and unauthorized. They posited that tenant Cherry Mae Bersabal admitted that Pamela Abear has packaged the processing work for a fee. They further alleged that Castillo's credit standing with Abear was enhanced since her referrals gave the latter a "good business."^[11]

On November 24, 2010, the Labor Arbiter rendered a Decision,^[12] the *fallo* of which reads-

WHEREFORE, FOREGOING PREMISES CONSIDERED, judgment is hereby rendered declaring complainant Castillo's penalty of dismissal as too harsh a penalty and thus unreasonable and unwarranted. The complainant's dismissal therefore is illegal.

Consequently, respondents are hereby ordered and directed to IMMEDIATELY REINSTATE complainant ALICIA O. CASTILLO to her former position without loss of seniority rights and her other benefits, and to pay her, her BACKWAGES computed from the time she was illegally dismissed on 12 January 2010 up to her actual reinstatement tentatively computed in the amount of One Hundred Twenty Nine Thousand Two Hundred Sixty Seven and 67/100 Pesos (P129,267.67) as shown in the separate computation sheet forming an integral part of the records of this case.

In addition, complainant is herein awarded attorney's fees equivalent to ten (10%) percent of the total monetary award in the amount of Twelve [T]housand Nine Hundred Twenty Six and 76/100 Pesos (P12,926.76).

All other claims not hereto awarded are considered denied for lack of merit.

SO ORDERED.^[13]

On appeal, respondent Commission affirmed *in toto* the November 24, 2010 Labor Arbiter Decision in its March 30, 2011 assailed Resolution.^[14]

In this recourse, petitioners NCCC, Ruel Gustillo and Frederick Amiel Lasmarias raise the following grounds:

I

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE ACTUATIONS OF PRIVATE RESPONDENT DID NOT CONSTITUTE WILLFUL BREACH OF TRUST.

II

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONERS FAILED TO PROVIDE SUBSTANTIAL EVIDENCE FOR PRIVATE RESPONDENT'S BREACH OF TRUST AND CONFIDENCE.

II