

## TWELFTH DIVISION

[ CA-G.R. SP. No. 100220, April 23, 2014 ]

**JOSEFA S. DANGUILAN, PETITIONER, V. THE HONORABLE  
NATIONAL LABOR RELATIONS COMMISSION AND PHILIPPINE  
PLAZA HOLDINGS, INC., RESPONDENTS.**

### D E C I S I O N

**ELBINIAS, J.:**

For disposition is a Petition for Certiorari<sup>[1]</sup> filed under Rule 65 of the Rules of Court. The Petition assails the Resolution<sup>[2]</sup> dated February 14, 2007 of public respondent National Labor Relations Commission ("public respondent NLRC" or "NLRC" for brevity) in NLRC-NCR 00-01-00607-05 (CA NO. 048039-06). The Petition also questions public respondent NLRC's Resolution<sup>[3]</sup> dated May 31, 2007, which denied petitioner's eventual Motion for Reconsideration<sup>[4]</sup>.

The antecedent facts are as follows:

Petitioner Josefa S. Danguilan ("petitioner" for brevity) was a Cashier<sup>[5]</sup> in the Cafe Plaza Restaurant<sup>[6]</sup> of private respondent Philippine Plaza Holdings, Inc. ("private respondent" for brevity).

The rest of the facts are those as stated in the Decision<sup>[7]</sup> of the Labor Arbiter dated December 29, 2005, which are as follows:

"xxx [Petitioner] **reiterated her argument** that the records are bereft of any clear of (*sic*) facts that constitute any such acts (serious misconduct, fraud gross dishonesty) attributable to her. In addition complainant (*petitioner here*) claims that **there is no substantial evidence to support the conclusion that she took and misappropriated money intended for the Hotel**. Finally, complainant (**petitioner**) claims that she was not confronted with the report of auditors.

**The hotel in its reply** pointed out as follows:

'The memorandum is very clear as to the particular act or omission of the complainant (*petitioner*). **Complainant (*petitioner*) was made to explain why a Starwood Privilege Discount Card was applied on a transaction where the customers did not give such a card.** The act resulted in the reduction of the amount settled and remitted to the hotel by PhP 805.74. In other words, instead of PhP 3,130.48 only PhP 2,324.60 went to the coffers of the Hotel  
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xxx the Hotel has sufficient testimonial and documentary evidence, which included that of the complainant (*petitioner*) to support the termination of her employment on grounds of serious misconduct, commission of fraud, gross dishonesty and gross violation of the Hotel's Code of Conduct against acts of dishonesty

As may be culled from the **testimonial and documentary evidence, which included** the explanation of the complainant (petitioner) and her testimony during **the administrative hearing the following facts are quite clear and undisputed, to wit:**

**i) On 01 September 2004, an SGV Group of independent auditors availed of the services of Cafe Plaza**

**ii) It was the complainant (*petitioner*), as cashier who settled the check in the amount of PhP 3,130.48 and received payment of PhP 3,200 from the service attendant, Luzviminda Andal.**

**iii) The independent auditors did not give to the service attendant any Starwood Privilege Discount Card but such discount was illegally and improperly applied.**

**iv) Complainant (petitioner) was the cashier who settled the check but the change and the receipt given to customer (SGV auditors) was not based on the discounted receipt.**

**v) The service attendant Luzviminda Andal when asked by Ms[.] Verna Vidallon[,] the Hotel's Assistant Financial Controller, 'answered that she is sure that there was no discount card at that time.'**

In complainant's (petitioner) rejoinder she denies being present in the administrative hearing involving Luzviminda Andal and claims that Ms. Andal and Ms. Episcopo have filed similar illegal dismissal cases against the respondent hotel. Thus, complainant (petitioner) concludes that it is untenable to hold any unchallenged facts alluded thereto. xxx"<sup>[8]</sup> (*Emphasis supplied*)

On February 28, 2005, petitioner filed a Complaint<sup>[9]</sup> for "illegal dismissal and money claims for non-payment of salaries/wages, 13th month pay and service charge[,] [petitioner] also seeks assessment for moral and exemplary damages as well as attorney's fees"<sup>[10]</sup> against private respondent.

On December 29, 2005, the Labor Arbiter rendered a Decision<sup>[11]</sup> which dismissed petitioner's Complaint<sup>[12]</sup> for lack of merit<sup>[13]</sup>.

Petitioner then filed an appeal<sup>[14]</sup> with public respondent NLRC. On February 14, 2007, public respondent NLRC issued its first assailed Resolution<sup>[15]</sup>, which denied<sup>[16]</sup> the appeal for lack of merit.

After petitioner's Motion for Reconsideration<sup>[17]</sup> was denied by public respondent NLRC in its other assailed Resolution<sup>[18]</sup> dated May 31, 2007, petitioner filed the Petition at bench, praying as follows:

"WHEREFORE, it is most respectfully prayed to this Honorable Court the instant Petition be given due course and render following relief (*sic*);

1. Annulling the Resolutions promulgated on February 14, 2007 and May 31, 2007;
2. Ordering that the dismissal of the petitioner is illegal;
3. Ordering the private respondent to reinstate immediately the petitioner to her former position without loss of seniority and benefits; and
4. Ordering the private respondent to pay backwages, damages and attorney's fees.

Other relief and remedies are likewise prayed that are just and equitable in the premises."<sup>[19]</sup>

The Petitioner raised this sole ground:

"THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE APPEAL WHICH IN EFFECT UPHELD THE LEGALITY OF PETITIONER'S DISMISSAL FROM EMPLOYMENT."<sup>[20]</sup> (*Capitalization was made in the original*)

Contrary to petitioner's arguments in her *sole assigned ground*, petitioner was legally dismissed from employment.

Petitioner had argued as follows:

**"The evidence relied upon by the public respondent in dismissing the appeal is the auditor's report and mere assumption that the use of the Starwood Privelege (*sic*) Card has been established as against the factual version of the petitioner.** It was held that the application of the discount in the settlement check was discovered because it was the SGV auditors who acted as customers. xxx

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But such findings are solely based on the report of the auditors whom the public respondent gave weight and credit against the assertions of the petitioner. As pointed out by the petitioner, the alleged SGV auditors were not presented for confrontation. The auditors' report does not have any signature to identify its author. **It is part of due process in any investigation that petitioner must be give[n] the opportunity to confront the auditors. On the Receipt and Discount Slip, those showed positive evidence of the valid application of a discount. In the latter document (Discount Slip), it was shown that a discount card was presented by the guest and the slip was even signed by the guest whose signature appears above the date '9-01-04' and**

**the receipt attached in the Show Cause Memo xxx likewise confirmed such fact. It is therefore untenable for the public respondent to conclude in the assailed Resolution that there was 'improper application of discount card['].** Mere denial of the auditors, without corroborative evidence, documentary or testimonial, can not overcome the positive assertion of facts by the petitioner in her verified (under oath) Position Paper, Reply and Rejoinder.

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**xxx It is submitted that said Show Cause Memo did not apprise her of the particular acts for which her dismissal is sought. Thus, the public respondent gravely abused its discretion to hold the dismissal 'legal' despite violation of procedural process.**

**In the case at bar, the petitioner has been serving the private respondent for twenty three (23) years with unblemished record, without previous derogatory record prior to her termination. The amount allegedly lost by the Hotel is mere P805.88 vis avis to her length of dedicated service. The severe penalty of dismissal given to the petitioner is too harsh despite those considerations, aside from lack of corroborative and substantial evidence to hold she was, indeed, guilty of 'Acts of Dishonesty', ['Misappropriation of Funds', ['Fraud', 'Gross Dishonesty', 'Serious Misconducts' and 'Loss of [T]rust and Confidence'.**

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**It is submitted that the evidence adduced by the private respondent in the case at bar, as shown in the records is unconvincing to support the termination of the petitioner.** Any doubt should have been resolved in her favor."<sup>[21]</sup> (*Emphasis Supplied*)

Defeating petitioner's arguments however, is that private respondent had sufficiently proven that its termination of petitioner's employment was because of private respondent's loss of trust and confidence on petitioner, which loss of trust and confidence is a just cause for her dismissal<sup>[22]</sup>.

As the records revealed, petitioner, as the cashier on duty<sup>[23]</sup> in private respondent's Cafe Plaza Restaurant<sup>[24]</sup> ("Restaurant" for brevity), had improperly applied a store discount in favor of a customer, which resulted to a "loss of income for the [Restaurant]"<sup>[25]</sup>. Such store discount in private respondent's Restaurant may only be given to a customer if the customer presents the "Starwood Discount Privilege Card" ("Discount Card" for brevity) to the service attendant or to the cashier.<sup>[26]</sup>

The reason for petitioner's act being improper is that when the Auditors from the Sycip, Gorres and Velayo Auditing Firm<sup>[27]</sup> ("SGV Auditors-Customers" for brevity), who "were hired by [private respondent] as professional shoppers to audit the various services of the hotel"<sup>[28]</sup>, "posted and acted as customers"<sup>[29]</sup> of private respondent's Restaurant, petitioner, being the cashier who had "access to apply discounts and perform check settlement"<sup>[30]</sup>, applied a store discount in favor of the

SGV Auditors-Customers. Petitioner having applied a store discount was reflected in the "settlement check number 567977"<sup>[31]</sup> ("subject transaction" for brevity) dated September 1, 2004. Such "settlement check" in turn, was "the document xxx retained by the [private respondent's Restaurant], which show[ed] the actual amount received by way of income of the [Restaurant] for the transaction."<sup>[32]</sup>

However, according to the SGV Auditors-Customers, "they did not present a Starwood [Discount] Privilege Card and the receipt given to them [did] not show the discount"<sup>[33]</sup>. All of these circumstances were as also found by the Labor Arbiter in his Decision<sup>[34]</sup> dated December 29, 2005, to wit:

"As may be culled from the documentary evidence and allegations on the pleadings on record, there is no dispute that **there was an improper application of a discount using a Starwood Privelege (sic) Card on the transaction of SGV Auditors when they availed of the services of Cafe Plaza.**

Was the application improper? Similarly, this question must be answered in the affirmative. It is not disputed [that] **the settlement check number 567977 with a total bill of Three Thousand One Hundred Thirty Pesos and Forty-Eight Centavos (p3,130.48)**, shows that a Starwood Privilege Discount Card in the name of Arnold Andal was applied amounting to Eight Hundred Five Pesos and Eighty-eight Centavos (P808.88) (*sic*). **The application of the discount reduced the amount settled and remitted to the Hotel** to only Two Thousand Three Hundred Twenty Four Pesos and Sixty Centavos (P2,324.60). **The auditors also stated that they did not present a Starwood Privilege Card and the receipt given to them does not show the discount.**

**The facts clearly show that only the complainant (*petitioner*), as cashier and the service attendant handled the transaction of the auditors.** Complainant (*petitioner*) does not deny that she was the cashier who settled the check but denied that she applied any discount."

<sup>[35]</sup> (*Emphasis supplied*)

Moreover, petitioner's improper application of a discount to the subject transaction could not have been committed by mere error or inadvertence. This, considering the fact that petitioner, as the cashier who handled the subject transaction, had known<sup>[36]</sup> that while the receipt which she had prepared and issued to the SGV Auditors- Customers reflected an amount of Three Thousand One Hundred Thirty Pesos and Forty-Eight Centavos (PhP3,130.48)<sup>[37]</sup>, the "settlement check" which petitioner had also prepared for the same transaction only reflected an amount of Two Thousand Three Hundred Twenty-Four Pesos and Sixty Centavos (PhP2,324.60)<sup>[38]</sup>.

Thus, petitioner's improper application of the store discount, by generating two different amounts for a singular customer transaction, which difference in the two amounts represented loss of income for private respondent, was sufficient basis for private respondent's loss of trust and confidence on petitioner. This, also considering that petitioner, as a Cashier<sup>[39]</sup> in private respondent's Restaurant, held "a position