



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **December 7, 2022** which reads as follows:

“G.R. No. 256246 (*Gerlie M. Linsangan, Petitioner, v. G&S Transport Corporation, Rafael V. Lucila, Jr. and Eva Rhoda T. Servino, Respondents*). — This Court resolves the Petition for Review on *Certiorari*¹ filed by Gerlie M. Linsangan (*Linsangan*) assailing the Decision² dated February 19, 2020 and Resolution³ dated December 16, 2020 of the Court of Appeals (*CA*) in CA-G.R. SP No. 148350, whereby the Court of Appeals affirmed the National Labor Relations Commission (*NLRC*) Decision⁴ dated June 30, 2016 in NLRC NCR 07-09063-15 (NLRC LAC No. 05-001664-16).

The procedural and factual antecedents of the case as succinctly summarized by the *CA* are as follows:

Complainant Gerlie M. Linsangan started working for the respondent (G&S) on 06 April 2005 as IIR Assistant and was last assigned at the Services and Industrial Relations. Her duties and responsibilities include among others the following: monitors infractions committed by employees and ensures due process is properly exercised before imposition of penalty; prepares summary of violation (*sic*) and monitors schedule of suspension to be submitted every 10th of the month; and prepares certificate of employment of rank and file employees and encoding manual timesheets. She was receiving a monthly salary of ₱14,630.00 at the time of her separation from work.

Respondent Servino issued a memo dated 14 May 2015 in which the complainant was asked to submit her written explanation for having violated Section 8.2 of the Code of Discipline which refers to unauthorized revealing or divulging of confidential information to individuals other than the authorized person, an offense punishable by dismissal. The complaint was in connection to an incident that transpired on 08 May 2015 in which the complainant was alleged to have revealed confidential information to

¹ *Rollo*. (Vol. 1), pp. 15-41.

² *Id.* at 129-142. Penned by Associate Justice Pablito A. Perez, with the concurrence of Associate Justice Stephen C. Cruz and Associate Justice Tita Marilyn B. Payoyo-Villordon.

³ *Id.* at 289-292. Penned by Associate Justice Pablito A. Perez, with the concurrence of Associate Justice Gabriel F. Robeniol and Associate Justice Tita Marilyn B. Payoyo-Villordon.

⁴ *Id.* at 333-355. Penned by Commissioner Erlinda T. Agus, with the concurrence of Presiding Commissioner Gregorio O. Rilog III and Commissioner Alan A. Ventura.

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Mary Jane Abalos (Abalos for brevity) the salaries of her team members. In response, complainant Linsangan filed her written explanation dated 19 May 2015 in which she denied the accusations against her although she admitted to have had a 'little conversation' with Mary Jane Abalos as regards her disappointment with her own new salary rate. On 09 June 2015, respondent Servino issued another memo requiring the complainant to submit her written explanation to the same violation and to appear on the scheduled administrative hearing. In her written explanation dated 18 June 2015, the complainant only reiterated her previous explanation that she had a little conversation with Mary Jane Abalos and that she mentioned to the latter her disappointment of her new salary rate. She vehemently denies however, that she was the one who informed 'channels to channels' of Abalos' own sentiments.

In a memo dated 27 May 2015 issued by respondent Servino, complainant Linsangan was placed under preventive suspension for 30 days pending the investigation of the complaint against her. The complainant was under preventive suspension from May 29, 2015 until June 28, 2015. In a subsequent memo dated 29 June 2015, the preventive suspension was further extended for two (2) more days with pay effective 30 June 2015.

On 09 July 2015, the complainant received a memo dated 02 July 2015 signed by respondent Lucila, in which she was found to have violated Section 8.2 of the company's Code of Discipline and her act constitutes willful disobedience of the company's rules and regulations and willful breach of trust and confidence thus, the penalty of dismissal from employment was imposed upon her. Thus, complainant instituted the present action.

In her Decision dated March 18, 2016, Labor Arbiter Paz Eugenia Neri-Dysangco (LA Neri-Dysangco) held that Linsangan was illegally dismissed by private respondent G&S Transport/Avis Rent-a-Car ("G&S"). LA Neri-Dysangco found that although Linsangan occupied a position of trust and confidence and had access to confidential information, her disclosure of the unapproved salary rate increases of some of her co-employees "(does) not establish willful disobedience" and that "in the same vein, it cannot be said that there was willful breach of the trust reposed on the complainant." LA Neri-Dysangco however denied Linsangan's claims for actual, moral, and exemplary damages for lack of merit.

Perturbed, G&S consequently filed a Memorandum of Partial Appeal with the NLRC on May 11, 2016, praying that the NLRC uphold the validity of Linsangan's termination from employment.

Linsangan likewise filed her Memorandum of Partial Appeal dated May 16, 2016 with the NLRC, praying that the NLRC grant her claims for damages.

Acting on G&S' partial appeal, the NLRC issued its Decision dated June 30, 2016, reversing and setting aside LA Neri-Dysangco's decision, ruling that Linsangan was validly dismissed from her employment with G&S. The NLRC held that private respondent G&S ably discharged its burden of proving valid cause to terminate Linsangan's services. It found that "due to the nature of her position, complainant should have refrained

from doing acts, which might erode the confidence of her employer who had reposed full trust in her. It is clear that the loss of trust and confidence was indeed not inevitable under the circumstances x x x hence the company was justified in dismissing complainant on the ground of loss of confidence.

Aggrieved by the NLRC's Decision, Linsangan filed a Motion for Reconsideration dated August 1, 2016, arguing that the NLRC committed "palpable or patent errors tantamount to grave abuse of discretion amounting to lack or in excess of jurisdiction for granting the appeal of the respondent-appellant (G&S) and setting aside the Decision of the Honorable Labor Arbiter dated 18 March 2016."

On August 30, 2016, the NLRC jointly resolved Linsangan's partial appeal dated May 16, 2016 and her motion for reconsideration dated August 1, 2016 in its assailed Decision. The NLRC dismissed Linsangan's Memorandum of Partial Appeal, noting her failure to establish the timeliness of her partial appeal. Moreover, it held that the postal money orders that accompanied Linsangan's partial appeal were expired and invalid and that in effect, she failed to pay the appeal and legal research fees required for the perfection of her appeal.

Then, touching on the merits of Linsangan's memorandum of partial appeal, the NLRC ruled that, contrary to the rule against offering evidence for the first time on appeal, Linsangan presented new evidence for the first time consisting of the entire roster of G&S' employees as well as the Collective Bargaining Agreement executed by them without satisfactorily adducing any explanation to justify the exception to the rule. It consequently held that, "in the present case, complainant did not even offer an explanation why she failed to present the evidence during the proceedings before the Labor Arbiter. The same thus should not be admitted in evidence and complainant's partial appeal should be dismissed for lack of merit."

As for her motion for reconsideration, the NLRC found no reason to reverse its finding that G&S had lawful cause to terminate Linsangan's services. It affirmed its earlier finding that complainant therein held a position of trust and confidence and committed acts of dishonesty during her employment that resulted in G&S losing its trust and confidence in her, justifying her termination from employment.⁵

Linsangan filed a petition for *certiorari*⁶ ascribing grave abuse of discretion on the part of the NLRC in completely reversing the decision of the Labor Arbiter and holding that she was not illegally dismissed. Linsangan also claimed that the NLRC committed grave abuse of discretion in holding that she is not entitled to her claims.⁷

The Court of Appeals found no merit in Linsangan's petition. The dispositive portion of the decision reads:

⁵ *Id.* at 130-133.

⁶ *Id.* at 293-325.

⁷ *Id.* at 313.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is hereby **DISMISSED**. The Decision of public respondent National Labor Relations Commission (“NLRC”) in NLRC LAC No. 05-001664-16 (NLRC NCR-07-09063-15) dated August 30, 2016 affirming its Decision dated June 30, 2016 is **AFFIRMED**.

SO ORDERED.⁸

In affirming the NLRC, the Court of Appeals found that the Notice of Termination (*NOT*) issued to Linsangan complied with procedural due process, as there was notice and hearing before effecting termination.⁹ According to the Court of Appeals, the *NOT* detailed the specific acts that constitute willful disobedience and willful breach of trust and confidence.¹⁰ The Court of Appeals further noted that there was a proper investigation and a fair hearing before Linsangan was dismissed from employment.¹¹

The Court of Appeals also found that Linsangan willfully breached the reasonable and lawful orders of G&S Transport Corp. (*G&S Transport Corp.*), committing willful disobedience and resulting in loss of trust and confidence.¹² The Court of Appeals upheld the findings of the NLRC that Linsangan as a Human Resource Department (*HRD*) Assistant held a position of trust and confidence and had access to confidential information.¹³ As such, the Code of Conduct of G&S Transport Corp. enjoins Linsangan from divulging the confidential information she may acquire in the course of employment.¹⁴ Thus, the act of discussing or divulging salaries of employees to unauthorized persons would certainly cause conflicts, discord, and covetousness between and among the employees is a willful breach.¹⁵

The Court of Appeals noted on the previous infractions of Linsangan that would justify the termination of her employment. The Court of Appeals mentioned Linsangan's past actions including the deliberate alteration of her time records to avoid penalty; failure to seasonably prepare contracts for newly hired employees; losing the pay/salary envelope of one of G&S' employees; and personal complaints filed by her colleagues against her for not paying debts.¹⁶

The Court of Appeals subsequently denied the motion for reconsideration filed by Linsangan.¹⁷

⁸ *Id.* at 141.
⁹ *Id.* at 135.
¹⁰ *Id.* at 136.
¹¹ *Id.*
¹² *Id.* at 138.
¹³ *Id.* at 137.
¹⁴ *Id.*
¹⁵ *Id.* at 139.
¹⁶ *Id.* at 140.
¹⁷ *Id.* at 65.

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Hence, the present petition.

Linsangan argues that the Court of Appeals erred in holding that she did not adequately establish grave abuse of discretion on the part of the NLRC in finding that G&S Transport Corp. had cause to terminate her employment.¹⁸ She claims that the Court of Appeals committed an error in simply affirming the decision of the NLRC despite the apparent fact that the accusations against her have no basis and the termination was evidently unlawful.¹⁹

G&S Transport Corp. counters that the Court of Appeals did not err in affirming the NLRC's findings that Linsangan's dismissal on the ground of disobedience of lawful orders of the company and willful breach of trust as it was supported by substantial evidence.²⁰ It maintains that the Court of Appeals did not commit an error in denying the money claims of Linsangan as the NLRC correctly dismissed the appeal for failure to pay the appeal fee and legal research fee and for lack of merit.²¹ It further argues that Linsangan is not entitled to reinstatement, backwages, payment of her money claims, moral and exemplary damages, attorney's fees and litigation fees.²²

G&S Transport Corp. moved to dismiss the petition for failure to comply with the requirements of Rule 45 of the Rules of Court. It points out that the petition was not verified and the annexes mentioned in the petition were not included in the copy sent to the company.²³

Considering the failure of Linsangan to file a reply to the comment on the petition for review required in the Resolution dated April 20, 2022, this Court deems it waived. Thus, we will resolve the case based on the records and submissions of the parties.

This Court's Ruling

The petition is without merit.

Section 1, Rule 45 of the Rules of Court is clear that petitioners may only raise questions of law.²⁴ This is because the resolution of the factual

¹⁸ *Id.* at 23.

¹⁹ *Id.* at 31.

²⁰ *Rollo*, (Vol. II), p. 678.

²¹ *Id.* at 717.

²² *Id.* at 720.

²³ *Id.* at 722.

²⁴ Section 1, Rule 45 of the Rules of Court reads:

SECTION 1. Filing of Petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

issues is supposed to be resolved by trial courts. This Court as it is not a trier of facts, will not ascertain the facts but would rather subscribe to the findings of the courts that passed upon the case. There is a question of law in a given case when the doubt or difference arises as to what the law is based on certain facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.²⁵

On different occasions, we recognized the following exceptions as to the limitation of the subject of review, as follows:

- (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
- (b) When the inference made is manifestly mistaken, absurd, or impossible;
- (c) When there is grave abuse of discretion;
- (d) When the judgment is based on a misapprehension of facts;
- (e) When the findings of facts are conflicting;
- (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (g) When the CA's findings are contrary to those by the trial court;
- (h) When the findings are conclusions without citation of specific evidence on which they are based;
- (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
- (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
- (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.²⁶

The review of the facts of the case is necessary because of the conflicting findings of the Labor Arbiter, and the NLRC and the Court of Appeals. The Labor Arbiter found that the company illegally terminated the employment of the petitioner while the NLRC and the Court of Appeals ruled that there was basis for the termination.

This Court, after a thorough review of the records of the case, finds that the findings of the NLRC and the Court of Appeals are more in accord with the law and jurisprudence.²⁷

²⁵ *Angeles v. Pascual*, 673 Phil. 499 (2011). [Per J. Bersamin, First Division]

²⁶ *Sps. Andrada v. Pilhino Sales Corp.*, 659 Phil. 70, 78-79 (2011). [Per J. Bersamin, Third Division]

²⁷ *Rollo*, (Vol. II), p. 720.

The respondents observed procedural and substantive due process.

In order to comply with the tenets of procedural due process, the employer must furnish the employee with two written notices before the termination of employment. The first notice apprises the employee of the particular acts or omissions constituting the violation of company policy or contract. The second notice informs the employee of the employer's decision to dismiss or terminate. There is no need for a trial type of hearing as long as the employer gave the employee a chance to explain.²⁸

The respondents were able to observe procedural due process. The Court of Appeals correctly observed:

As concurred in by the NLRC, the LA found that “there is no doubt that the requisites of procedural due process has been complied with.” We find no cause to disagree with their common conclusion. Petitioner herself readily admits that she was given two show-cause memoranda by G&S, apprising her of the charges made against her, and to which she served her explanations. Further, with her in attendance, administrative hearings were conducted before Linsangan was served a Notice of Termination apprising her of the charges made against her and the findings made by G&S along with their decision to terminate her employment. x x x

We find that the Notice of Termination issued to petitioner complied with the mandate of the Labor Code on notice and hearing. It apprised her not only of G&S' reply to her memoranda but likewise constituted a pronouncement by the company of its findings from the hearing conducted against her. It enumerated the specific acts that, as determined by G&S, constitute willful disobedience and willful breach of trust and confidence. Consequently, G&S informed her of its decision to terminate her from employment anent its finding of sufficient cause to do so.

By affording petitioner a proper investigation and a fair hearing before she was dismissed from employment, G&S ably discharged its obligation to observe procedural due process and completed its obligation to give due respect to Linsangan's right to security of tenure.²⁹

Substantive due process in relation to employment guarantees an employee with the right of tenure. Thus, the employee may only be dismissed based on a just or authorized cause provided in the law. Just causes refer to those instances enumerated under Article 297³⁰ of the Labor Code, as

²⁸ *Sps. Maynes v. Oreiro*, G.R. No. 206109, November 25, 2020. [Per J. Hernando, Third Division]

²⁹ *Rollo*, (Vol. 1), pp. 135-136.

³⁰ ART. 297. Termination by Employer. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

amended. These are causes directly attributable to the fault or negligence of the employee.³¹

In *Bristol Myers Squibb (Phils.), Inc. v. Baban*,³² we discussed the difference in treatment of confidential employees and managerial employees, *to wit*:

It is clear that Article 282 (c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. The right of employers to dismiss employees by reason of loss of trust and confidence is well established in jurisprudence.

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Verily, we must first determine if respondent holds such a position. There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. **The second class consists of cashiers, auditors, property custodians, etc. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.**³³

In the case under review, petitioner was an assistant in the Human Resource Department. Her tasks and responsibilities includes monitoring of infractions committed by employees, preparation of summary of violations and monitors schedule of suspension, providing certificates of employment of rank and file employees, and encoding of manual timesheets.³⁴ The respondents classified the petitioner as a rank-and-file employee. However, petitioner, because of the functions assigned to her is not to be categorized as ordinary rank-and-file personnel. As we have stated in the past it is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence.³⁵ To this Court's mind, the duties assigned and performed by the petitioner involved a crucial and vital function in maintaining harmony and discipline in the company. Thus, petitioner is a rank-and-file employee occupying a position of trust and confidence.

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

³¹ Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as Amended, DOLE Department Order No. 147, S. 2015, September 7, 2015.

³² 594 Phil. 620 (2008). [Per J. R.Reyes, Third Division]

³³ *Id.* at 628.

³⁴ *Rollo*, (Vol. II), p. 876.

³⁵ *Abel v. Philex Mining Corporation*, 612 Phil. 203, 214 (2009). [Per J. Carpio-Morales, Second Division]

This Court now will determine the lone matter of whether the respondents justly terminated the employment of the petitioner.

For an employer to invoke loss of trust and confidence, it must be first, work related, and second, founded on clearly established facts.³⁶ The employer's loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. 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. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion.³⁷

As unanimously found by the Labor Arbiter, the NLRC, and the Court of Appeals, the petitioner occupied a position of trust and confidence and had access to confidential information. Further, the three tribunals uniformly opined that the salary rates are confidential information. Thusly, this Court finds that petitioner willfully breached the respondents' reasonable and lawful orders as it disobeyed the clear provisions of Section 8 of respondents' Code of Conduct, which provides:

Section 8 – CONFIDENTIALITY OF INFORMATION – G&STC prides itself in recruiting, training, and producing quality employees than the rest of the industry. In order to maintain its edge, therefore, the Company must continue not only to innovate and create new methods, but also to guard its 'inventions' from pilferage or copying by other agencies.

Therefore, any report, comment, opinion, or data about the Company's operations, its financial condition and its people, constitute valuable information that must be kept away from public knowledge, because their discovery could lead to the loss of competitive advantage, or worse, to the pirating of our people and our systems to the collective detriment of all our shareholders. All employees must consider all Company information as trade secrets and must take the necessary steps to prevent outsiders (other than Government agencies that regulate security agencies) from obtaining such information.”

The same Code of Conduct provides the penalty for breach of confidentiality, it reads:

Section 8.2 – Unauthorized revealing or divulging of confidential information to individuals other than authorized person is punishable by DISMISSAL from employment on its first offense.³⁸

³⁶ *Alcaba, et al. v. Prohealth Pharma Philippines, Inc., et al.*, 832 Phil. 460, 487 (2018). [Per J. Leonen, Third Division]

³⁷ *Pardillo v. Bandojo*, G.R. No. 224854, March 27, 2019. [Per J. Caguioa, Second Division]

³⁸ *Rollo*, (Vol. II), p. 761.

Thus, on this violation alone, the respondents were justified in terminating the services of petitioner. As an employee in the HRD, petitioner is supposed to be aware of the provisions of the Code of Conduct as she was given the task of monitoring violators within the company. It is obvious that she should be the role model of how to behave in the work force.

Further, this Court finds that the termination of petitioner due to her multiple infractions is justified. As noted by the Court of Appeals and the NLRC, the respondents found the petitioner to have violated different rules and regulations of the company. The breach of confidentiality committed by the petitioner was the last straw that forced her employer to terminate her employment.

In *Merin v. National Labor Relations Commission*,³⁹ We stated:

The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.⁴⁰

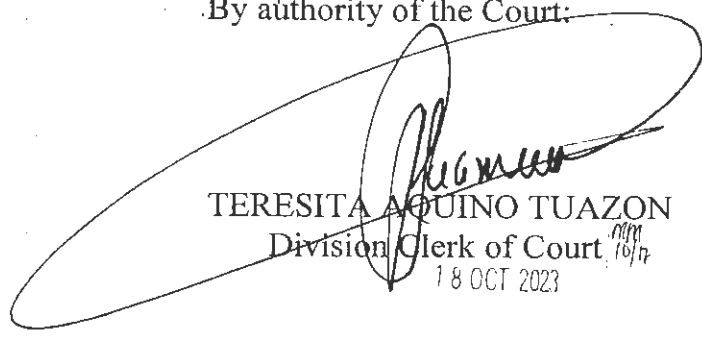
FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The Decision dated February 19, 2020 and Resolution dated December 16, 2020 of the Court of Appeals in CA-G.R. SP No. 148350 and the twin Decisions of the National Labor Relations Commission in NLRC LAC No. 05-001664-16 (NLRC NCR 07-09063-15) dated August 30, 2016, and June 30, 2016, dismissing the complaint for illegal dismissal filed by the petitioner against the respondents are **AFFIRMED** *in toto*.

SO ORDERED.”

³⁹ 590 Phil. 596 (2008). [Per J. Tinga, Second Division] cited in *University of the Cordilleras v. Lacanaria*, G.R. No. 223665, September 27, 2021. [Per J. Hernandez, Second Division]

⁴⁰ *Id.* at 603.

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court
18 OCT 2023

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