



Republic of the Philippines  
Supreme Court  
Manila

**THIRD DIVISION**

**REXIE A. HORMILLOSA,**  
Petitioner,

**G.R. No. 198699**

Present:

- versus -

**VELASCO, JR., J.,** *Chairperson,*  
**PERALTA,**  
**ABAD,**  
**MENDOZA,** and  
**LEONEN, JJ.**

**COCA-COLA BOTTLERS  
PHILS., INC.,** represented by its  
Iloilo Plant Human Resource Head,  
**ROBERT RICHARD H. DOLAR,**  
Respondent.

Promulgated:

October 9, 2013

*Alcopran*

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**DECISION**

**MENDOZA, J.:**

Through this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Rexie A. Hormillosa (*Hormillosa*) assails the April 29, 2011 Decision<sup>1</sup> and the September 5, 2011 Resolution<sup>2</sup> of the Court of Appeals (*CA*), in CA G.R. SP No. 05062, which nullified and set aside the October 26, 2009 Decision<sup>3</sup> and the January 15, 2010 Resolution<sup>4</sup> of the National Labor Relations Commission (*NLRC*). The dispositive portion of the questioned *CA* decision reads:

<sup>1</sup> *Rollo*, pp. 26-38. Penned by Associate Justice Pampio A. Abarintos with Associate Justice Gabriel T. Ingles and Associate Justice Victoria Isabel A. Paredes, concurring.

<sup>2</sup> *Id.* at 45-46.

<sup>3</sup> *Id.* at 53-86.

<sup>4</sup> *Id.* at 87-95.

**WHEREFORE**, premises considered, the petition is hereby **GRANTED** and the Decision and Resolution of public respondent (insofar as to the pronouncements relating to private respondent only) which were respectively promulgated on 26 October 2009 and 15 January 2010 relative to NLRC Case No. V-000528-00(AE-05-09) [SRAB Case No. VI-05050210-99] are **NULLIFIED** and **SET ASIDE**. In their stead, a new one is entered declaring private respondent's dismissal from his employment as valid.

SO ORDERED.<sup>5</sup>

### **The Facts**

On November 1, 1996, Hormillosa was employed as a route salesman by Coca-Cola Bottlers Phils., Inc. (*CBPI*). His duties included, among others, selling *CBPI*'s soft drink products, either on cash or on credit basis; receiving payments from proceeds of the sale or payments of past due or current accounts; issuing sales invoices; and receiving empty bottles and cases of soft drinks (*empties*).

Concerning the sales invoices, he was authorized to issue them on a cash and credit basis. He prepared the invoices stating the names of the customers, the quantity and kind of merchandise purchased, and the corresponding amounts. He was required to make the customers sign the invoices, especially in cases they were on credit basis, and leave copies with them. The invoices were then submitted to the Finance Department for accounting and auditing.

Due to their delicate position, route salesmen, like Hormillosa, were given a handbook entitled, *CCBPI Employee Code of Disciplinary Rules and Regulations*. This set of rules and regulations served as their guide in the performance of their duties. Hormillosa received his copy.<sup>6</sup>

Sometime in the early part of 1999, the then *CBPI* District Sales Supervisor, Raul S. Tiosayco III (*Tiosayco*), conducted a verification and audit of the accounts handled by Hormillosa. He discovered transactions in violation of *CCBPI Employee Code of Disciplinary Rules and Regulations*, specifically "Fictitious sales transactions; Falsification of company records/data/documents/invoices/reports; fictitious issuances of *TCS/COL* (Temporary Credit Sales/Container on Loan); non-issuance or mis-issuance of invoices and receipts as well as commercial documents to dealers; forgery; misuse, abuse or defalcation of funds form market development

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<sup>5</sup> Id. at 37.

<sup>6</sup> Position Paper of for the Respondent, CA records, p. 42.

program.”<sup>7</sup> On March 8, 1999, Tiosayco issued a memorandum to Hormillosa informing him that he was being placed on grounded status and would be subjected to an investigation.

On March 11, 1999, Tiosayco informed the Regional Sales Manager of the initial results of his verification and audit, through an inter-office memorandum,<sup>8</sup> which detailed the following findings:

1. As reflected in an invoice, Shirley Jardeleza (Jardeleza) had an outstanding container on loan (COL). Upon verification, however, this account was denied by Jardeleza. According to her, they would always buy in cash and this statement was substantiated by an attached affidavit signed by her;

2. Mrs. Feby Panerio, who was previously served by Hormillosa, denied her indebtedness as reflected in her COL account. Mrs. Panerio admitted that she was personally requested by Hormillosa to sign the COL issuance with the promise that he would settle it himself;

3. Hormillosa also issued a temporary credit sale (TCS) and COL in the name of Arnold Store but used the outlet number of Virgie Bucaes (Bucaes) who happened to be not one of Coca-Cola’s authorized credit outlets. Bucaes acknowledged that she received 50 cases but her understanding was that when she received the cases, they were part of her market development program product assistance; and

4. Mrs. Cecilia Palmes (Palmes) denied her indebtedness and complained that her signature was forged as shown in the invoice.

On March 15, 1999, Tiosayco issued another memorandum<sup>9</sup> directing Hormillosa to report on March 17, 1999 for a question-and-answer investigation relative to the findings. Hormillosa, however, asked for a deferment which request was granted.

On March 16, 1999, Hormillosa was issued another memorandum<sup>10</sup> directing him again to report on March 19, 1999. It contained a warning that failure on his part to appear on the said date would be deemed a waiver of his right to be heard and his case would be submitted for resolution based on the evidence of CBPI. Hormillosa again moved for the postponement of the investigation.

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<sup>7</sup> Id.

<sup>8</sup> *CA rollo*, p. 60.

<sup>9</sup> Id. at 61.

<sup>10</sup> Id. at 62.

On March 17, 1999, Tiosayco issued another memorandum giving Hormillosa until March 20, 1999 to submit his written explanation on his alleged violations but the latter did not heed it. Instead, he sent Tiosayco a letter<sup>11</sup> informing him that the investigation was already “moot and academic” on the pretense that he had already filed a case against CBPI for Unfair Labor Practice (*ULP*).

On March 22, 1999, Tiosayco submitted his findings and recommendations to the Regional Sales Manager, proposing the termination of Hormillosa. CBPI gave credence to the report and approved his recommendation. Subsequently, a termination letter<sup>12</sup> was issued informing Hormillosa that he was being terminated effective March 29, 1999. The letter reads:

Dear Mr. Hormillosa,

This is to inform you that effective March 29, 1999, you are hereby terminated from employment with Coca-Cola Bottlers Philippines, Inc.

The grounds for your termination among others are as follows:

1. Issuance of fictitious and falsified COL invoices particularly to named outlets or customers namely Shirley Jardeleza, Cecilia Palmes, Feby Panerio, and Virgie Bañares
2. Misappropriation of Company Funds
3. Violation of Company Rules and Regulations
4. Loss of Trust and Confidence

The decision to terminate you came up after a thorough investigation against you.

Please be guided accordingly.

In addition to his termination, CBPI also filed several criminal cases against him citing his fraudulent acts.

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<sup>11</sup> Id. at 63.

<sup>12</sup> Id. at 138.

Even after terminating Hormillosa, Tiosayco uncovered more anomalies committed by him. He found out that Hormillosa tampered a sales invoice issued to Aurelia and Cedy Tafida (*Tafida Store*) by placing an amount different from that which he had submitted to the Finance Department.

Another anomaly committed by Hormillosa was against one Winnie Pajarillo (*Pajarillo*) who purchased soft drinks and deposited an amount representing the empties. It was agreed that the deposit would be refunded to Pajarillo upon the return of the empties. When Pajarillo returned the empties and asked for a refund, he only made a partial payment.

On May 24, 1999, Hormillosa filed a complaint for ULP (harassment due to union activities and union busting), Illegal Dismissal, Illegal Deduction, Illegal Grounding, Non-payment of Commission, Non-payment of 13<sup>th</sup> Month pay, Violation of CBA, Damages, and Attorney's Fees against CBPI before the Sub-Regional Arbitration Branch No. VI (*SRAB*). Thereafter, a preliminary conference was conducted and both parties were directed to file their respective position papers.

Hormillosa averred in his position paper that prior to his dismissal, he was a member of the Board of Directors of CBPI's employees union and he became its secretary on March 7, 1999. As secretary, he sent a copy of the new list of union officers to the management with a warning that if CBPI would not stop harassing the members of the union, it would declare a strike.

He further alleged that on March 8, 1999, he was immediately placed on grounded status by Tiosayco supposedly on the basis of some anomalous transactions conducted by him per verification and audit. He claimed however, that the verification and audit were contrary to Section 2(d), Article III of the Collective Bargaining Agreement (*CBA*) which provides: "The Company shall coordinate with the Union authorized representative to witness the account verification that the company will conduct with respect to questionable accounts issued to Company customers by route salesman or relief salesmen under investigation." He likewise alleged that as part of the design to destroy the union, CBPI discriminated against the officers until they were pressured to resign.

On April 28, 2000, Labor Arbiter Rodolfo G. Lagoc (*LA Lagoc*) dismissed Hormillosa's complaint for illegal dismissal, ruling that his termination was proper. According to LA Lagoc, the provision cited by Hormillosa, as a violation of the CBA, was only a portion and was taken out of context. It explained that Hormillosa was just using the union to thwart management's exercise of its legal prerogative. LA Lagoc, however,

awarded Hormillosa a separation pay, citing the case of *Magos v. NLRC*,<sup>13</sup> where it was stated that separation pay could be granted as a form of equitable relief even if the dismissal was for a just cause. Thus, he ordered CBPI to pay Hormillosa a separation pay equivalent to one-half (1/2) month salary for every year of service, that is, ₱9,037.50 (₱6,025.00 salary per month divided by 2 then multiplied by 3 years).

On appeal, the NLRC, on January 17, 2002, ordered the remand of the case to the SRAB to give Hormillosa the opportunity to confront the witnesses and evidence against him. Moreover, it stated that Section 5(b), Rule V of the 1990 NLRC Rules was not observed. The said section provides:

If the Labor Arbiter finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, he shall issue an Order to that effect and shall inform the parties, stating the reason therefor. x x x.

The NLRC explained that the above rule was mandatory because of the word “shall.” It found that the LA failed to issue the said order despite the fact that he found no necessity of holding a trial on the merits and that the case would be resolved on the basis of the pleadings. The absence of this order deprived Hormillosa, who could have opted for a trial, his right to due process. Even though the discretion whether to hold a trial was with the LA, the rule should have been observed.

On December 24, 2008, the SRAB, this time through LA Danilo Acosta (*LA Acosta*), ruled that Hormillosa was illegally dismissed but did not order his reinstatement due to strained relations. It was decreed that he was entitled to backwages from the date of his dismissal up to December 24, 2008 plus a separation pay equivalent to one month pay for every year of service with a fraction of six months being considered one whole month. It likewise awarded attorney’s fees equivalent to 10% of the total award which reached ₱1,257,590.11, broken down as follows:

Backwages .....	₱1,070,963.83
Separation Pay.....	₱72,300.00
10% Attorney’s Fees.....	<u>₱114,326.38</u>
<b>Total.....</b>	<b>₱1,257,590.11</b>

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<sup>13</sup> 360 Phil. 670 (1998).

LA Acosta explained that because the witnesses of CBPI did not appear in the hearings as ordered, it had no other alternative but to give Hormillosa the “benefit of the doubt” and decide the case in his favor.

Aggrieved, CBPI appealed to the NLRC, arguing that the decision of LA Acosta was bereft of factual findings, applicable laws and legal principles. It insisted that the dismissal of Hormillosa was proper considering that the charges against him were proven by substantial evidence.

On October 30, 2009, the NLRC upheld the decision of LA Acosta, reasoning out that they found no substantial evidence that Hormillosa falsified and issued fictitious invoices and CBPI failed to “unleash the burden of proof”<sup>14</sup> to justify his termination. Regarding CBPI’s total liability, the NLRC, however, arrived at a different figure. Its computation was as follows:

Backwages: 3/29/1999 – 9/30/2009	
	₱6,025.00 x 126 months = ₱759,150.00
	+
Separation Pay: 11/1996 – 9/30/2009	
	₱6,025.00 x 13 years = <u>₱78,325.00</u>
	₱837,475.00
10% Attorney’s Fees:	x <u>          .10</u>
	₱83,747.50
	<b>₱837,475.00 + 83,747.50 = ₱921,222.50</b>

CBPI moved for reconsideration but its motion was denied.

Finding the NLRC decision still unacceptable, CBPI elevated the matter to the CA via a petition for certiorari under Rule 65.

On April 29, 2011, the CA *nullified* and *set aside* the NLRC decision and held that the dismissal of Hormillosa was valid. According to the CA, the NLRC ignored the fact that the decision of LA Acosta did not conform to Section 14, Rule V of the 2005 Revised Rules of Procedure of the NLRC, which reads:

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<sup>14</sup> *Rollo*, p. 84.

**SECTION 14. Contents of Decisions.** – The decisions and orders of the Labor Arbiter shall be clear and concise and shall include a brief statement of the: a) facts of the case; b) issues involved; c) applicable laws or rules; d) conclusions and the reasons therefor; and e) specific remedy or relief granted. In cases involving monetary awards, the decision or orders of the Labor Arbiter shall contain the amount awarded.

The CA stated that the NLRC decision did not contain a recital of the facts of the case, applicable laws or rules and the conclusions and reasons therefor. It did not relate how the case started, what the case was all about, and while the decision concluded that Hormillosa had been illegally dismissed, it did not contain any explanation as to why and how the dismissal became invalid or illegal. LA Acosta stated that the case was decided in favor of Hormillosa based on “benefit of the doubt,” but no law, jurisprudence or facts were supplied to justify his conclusion. The CA considered that it was in contravention of Section 14, Article VIII of the 1987 Constitution which states that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it was based.

Moreover, the CA observed, the NLRC whimsically exercised its judgment when it disregarded the evidence of CBPI, which substantially proved the valid dismissal of Hormillosa. According to the CA, Hormillosa was validly dismissed under Article 282 (c) of Labor Code, as amended. It states that loss of confidence applies to cases involving employees who occupy positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer’s money or property.<sup>15</sup> The CA pointed out that there were established circumstances proving such breach of trust and confidence. Thus:

In the extant case, private respondent’s breach of the trust reposed on him by petitioner is duly proven. The verification and audit conducted by Tiosayco on the accounts handled by private respondent revealed some anomalous transactions which certainly erode the trust and confidence reposed on him by petitioner. Even when the transactions uncovered by Tiosayco were obviously questionable, private respondent did not bother to explain them. On the contrary, he skirted the question and answer investigation and filed a complaint against petitioner instead with the SRAB No. VI.

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<sup>15</sup> Citing *Renita del Rosario v. Makati Cinema Square Corp.*, G.R. No. 170014, July 3, 2009, 591 SCRA 608.

This act of private respondent only reinforced petitioner's distrust and apprehension on private respondent's conduct in handling his accounts. The question and answer investigation would have been the right forum for private respondent to explain the accounts he handled, disprove the initial findings of anomalous transactions uncovered by Tiosayco, and clear his name in the process. Regrettably, private respondent carelessly ignored the opportunity.

Public respondent anchored its Decision on the denial of Cecilia Palmes and Feby Panerio of their signatures in the affidavits presented by petitioner and the affidavit of Virgie Bucaes (*Bucaes*) which stated that she denied the signatures of Sales Invoices Nos. 79872 E and 79873 E because she knew they were the signatures of Arnold Segaya, owner of Arnold Store; she allowed Arnold Store to use her account so that when her stock is fully consumed, she can buy from Arnold Store; and she never signed an affidavit before Hector Teodosio, a notary public.

While Cecilia Palmes and Feby Panerio denied that the signatures appearing in their supposed affidavits were theirs, the other evidence presented by petitioner were not rebutted by private respondent. Although these evidence were not testified to, they are still deemed admissible and worthy of evidentiary value. "Indeed, hearings and resolutions of labor disputes are not governed by the strict and technical rules of evidence and procedure observed in the regular courts of law. Technical rules of procedure are not applicable in labor cases, but may apply only by analogy or in a supplementary character, for instance, when there is a need to attain substantial justice and an expeditious, practical and convenient solution to a labor problem."

It is undisputed in the present case that private respondent issued sales invoices to Arnold Store using the account number of Bucaes. Private respondent was in bad faith when he booked this account because he made it appear that the account was for Bucaes. Even if Bucaes consented to this transaction, private respondent was aware that this was a prohibited practice. Also undisputed is the fact that Shirley Jardeleza (*Jardeleza*) categorically denied that she signed the sales invoice purportedly stating that she had an obligation with petitioner in the amount of ₱810.00. Although the challenged Decision stated that private respondent was able to explain that it was the helper of Jardeleza who signed the sales invoice, there was no showing that Jardeleza authorized the same.

Private respondent likewise did not refute the evidence presented by petitioner regarding the tampering of a sales invoice (Invoice No. 101193) issued to Tadifa Store. The sales invoice and its duplicate copy revealed different amounts when supposedly they should bear the same. He also did not explain why the amount deposited by Pajarillo for the empties was not refunded back to the latter when the empties were already returned. As agreed, private respondent should have already made the refund once the empties were returned. However, private respondent delayed the refund and even paid for it only partially. This is seriously dubious. Paying

partially only indicated that private respondent appropriated the deposit for himself in violation of petitioner's code of conduct.

In sum, these proofs, taken collectively, are more than enough to constitute willful breach by private respondent of the trust reposed on him by petitioner. They undoubtedly create a reasonable ground for petitioner to believe that private respondent could not longer be trusted. Hence, the latter is validly dismissed from his employment. Without finding of illegal dismissal, the monetary awards bestowed on him by the SRAB No. VI and modified by public respondent have no basis.<sup>16</sup>

Not in conformity, Hormillosa elevated his complaint to this Court via Rule 45 of the Rules of Court, questioning the following:

- 1. The finding of the Court of Appeals that the NLRC committed grave abuse of discretion in affirming the decision of SRAB No. VI despite the alleged fact that the latter did not conform to the guidelines set forth in the 2005 Revised Rules of Procedure of the NLRC; and**
- 2. The finding of the Court of Appeals that the NLRC whimsically exercised its judgment when it disregarded the evidence of Coca-Cola which substantially proved the valid dismissal of Hormillosa from work.**

Regarding the CA pronouncement that the NLRC decision did not contain the facts of the case, applicable laws or rules and the conclusions and reasons therefor, Hormillosa argues that the decision of LA Acosta substantially complied with the requirements of the NLRC Rules of Procedure. He explains that the NLRC had the occasion to exhaustively go over the records of the case and so it cannot be said that it arbitrarily affirmed the decision of LA Acosta.

Hormillosa also opines that the remand of the case to the LA was precisely for the purpose of giving him the opportunity to confront the witnesses and evidence against him. He pointed out that because those who attended the hearing (Palmes and Panerio) denied their signatures and the rest of the witnesses (Pajarillo and Jardeleza) did not appear, LA Acosta had no recourse but to disregard any evidence bearing their signatures. It was for those reasons that LA Acosta gave the "benefit of the doubt" in favor of Hormillosa and such was in accord with Article 4 of the Labor Code, to wit:

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<sup>16</sup> *Rollo*, pp. 35-36.

**Art. 4. Construction in Favor of Labor. - All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations shall be resolved in favor of labor.**

CBPI counters that Hormillosa failed to show that the CA committed any reversible error when it rendered the April 29, 2011 Decision. Such failure is fatal because it is the burden of every party seeking review of any decision of the CA or other lower tribunal to persuade this Court not only of the existence of questions of law fairly and logically arising therefrom, which he must distinctly set forth in his petition for review, but also that those questions are substantial enough to merit consideration, or that there are special and important reasons warranting the review he seeks.<sup>17</sup>

CBPI also stresses that, although Palmes and Panerio denied that the signatures appearing in their supposed affidavits were theirs, the other evidence it presented were not rebutted by Hormillosa. Specifically, he did not refute the evidence regarding the tampering of a sales invoice and its duplicate copy that revealed different amounts when supposedly they should bear the same. He did not explain either why the amount deposited by Pajarillo for the empties was not refunded to him when said empties were already returned.

Hormillosa, on the other hand, asserts that he had refuted all the evidence presented by CBPI against him, citing the denial by Palmes and Panerio of their purported signatures. He also explains that he was not able to confront the other witnesses for CBPI because they failed to appear during the scheduled hearings.

With respect to the tampering of a sales invoice issued to Tafida Store and the delayed refund of the deposit on empties to Pajarillo, he claims that those were not brought to his attention and were not mentioned in the termination letter sent to him.

### **Ruling of the Court**

Article 282 of the Labor Code enumerates the just causes for the termination of employment of an employee by the employer, to wit:

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<sup>17</sup> *Chua Giok Ong v. Court of Appeals*, 233 Phil. 110, cited in Bersamin, Appeal and Review in the Philippines, page 86, 1999 Ed.

**Art. 282. Termination by employer. – An employee 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;**
- (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 representative; and**
- (e) Other causes analogous to the foregoing.**

The rule is that, in labor cases, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required.<sup>18</sup> The CA was correct when it ruled that Hormillosa's employment was validly terminated under paragraph (c) of the above provision. There was substantial evidence to justify his dismissal.

In *Bristol Myers Squibb (Phils.), Inc. v. Baban*,<sup>19</sup> the Court discussed the requisites for a valid dismissal on the ground of loss of trust and confidence as follows:

**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**

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<sup>18</sup> *Crew and Ship Management International Inc. v. Jina T. Soria*, G.R. No. 175491, December 10, 2012; 687 SCRA 491.

<sup>19</sup> G.R. No. 167449, December 17, 2008, 574 SCRA 198.

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.

x x x x

The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.<sup>20</sup>

Hormillosa, being a route salesman, falls under the second class. By selling soft drink products and collecting payments for the same, he was considered an employee who regularly handled significant amounts of money and property in the normal and routine exercise of his functions. The nature of the position of a route salesman was described in *Coca Cola Bottlers, Phils. V. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW and Florention Ramirez*,<sup>21</sup> where it was written:

We agree that route salesmen are likely individualistic personnel who roam around selling softdrinks, deal with customers and are entrusted with large asset and funds and property of the employer. There is a high degree of trust and confidence reposed on them, and when confidence is breached, the employer may take proper disciplinary action on them. The work of a salesman exposes him to voluminous financial transactions involving his employer's goods. The life of the soft drinks company depends not so much on the bottling or production of the product since this is primarily done by automatic machines and personnel who are easily supervised but upon mobile and far-ranging salesmen who go from store to store all over the country or region. Salesmen are highly individualistic personnel who have to be trusted and left essentially on their own. A high degree of confidence is reposed on them because they are entrusted with funds or properties of their employer.

Clearly, Hormillosa occupies a position of trust. As correctly pointed out by the CA, there was a high degree of trust and confidence reposed on him and when this confidence was breached, the employer was justified in taking the appropriate disciplinary action.

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<sup>20</sup> Id. at 205-206, citing *Garcia v. National Labor Relations Commission*, G.R. No. 113774, April 15, 1998, 351 Phil. 960.

<sup>21</sup> 492 Phil. 570, 589 (2005) [also cited by the CA].

With regard to the second requisite for dismissal on the ground of loss of trust and confidence, the Court finds that Hormillosa committed acts which warranted his dismissal from employment.

Although the case was remanded to the SRAB, it was not for the purpose of conducting a new trial or hearing, but for Hormillosa to confront the witnesses against him and refute the evidence on record against him. The remand order did not vacate the earlier hearings and the evidence earlier adduced by both parties.

Except for the affidavits of Cecilia Palmes, Fely Paneiro and Shirley Jardeleza, the evidence against him remained in the records, particularly the documents and invoices he submitted to CBPI. The falsified invoices remained unexplained by him.

Hormillosa cannot deny that fact that he issued sales invoices to Arnold Store, a store unregistered or unaccredited with CBPI. He transacted with the said store using the account of Virgie Bucaes, proprietor of Virgie's Eatery. Bucaes, who had an outlet profile with CBPI, was assigned with Control No. 0027069.<sup>22</sup> Hormillosa extended credit to Arnold Store, an unknown customer to CBPI, as documented by two credit sales invoices, Invoice Nos. 79872 and 79873, amounting to ₱5,600.00 and ₱4,806.00 respectively. By doing so, he gave a false and misleading representation that the account was that of Bucaes. CBPI had a set of rules and regulations, one of which was that only those outlets, which had outlet control, were entitled to enjoy credit from CBPI. Salesmen were not allowed to extend credit to those who had no outlet numbers or outlet profiles from CBPI. Evidently, Hormillosa disregarded and disobeyed the company rules.

As earlier stated, the evidence in this regard was supplied by Hormillosa himself when he submitted copies of the sales invoices. For this reason, the stipulation under Section 2(d), Article III of the CBA, which provides that the company shall coordinate with the Union's authorized representative to witness the account verification that the company would conduct with respect to questionable accounts issued to Company customers by route salesman or relief salesmen under investigation, is not applicable.

In *Tiu and/or Conti Pawnshop v. National Labor Relations Commission*,<sup>23</sup> the Court ruled that the language of Article 282(c) of the Labor Code requires that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by the employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if

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<sup>22</sup> Annex T, Position Paper of Respondent, CA records, p. 74.

<sup>23</sup> G.R. No. 83433, November 12, 1992, 215 SCRA 540.

it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.

In the case at bench, Hormillosa's act of issuing sales invoices to Arnold Store could not have been performed without intent and knowledge on his part as such act could not have been done without planning or merely through negligence. Hence, the breach was willful.

Indeed, the tampering of the sales invoice and the matter of the empties which Hormillosa claimed were never brought to his attention nor mentioned in his termination letter, were discovered after he had already been terminated. CBPI, however, raised them as an issue in its position paper<sup>24</sup> to prove that he could no longer be trusted. Hormillosa should have addressed these issues. At any rate, considering that he had already been dismissed, CBPI no longer conducted another hearing. It can only be surmised that CBPI mentioned the newly discovered anomalies to bolster its position that he could not be trusted. Nevertheless, as pointed out earlier, the tampering of the invoices were clear enough.

Worth mentioning is the fact that Hormillosa did not deal with his employer in good faith. The records show that when Tiosayco, on March 17, 1999, directed Hormillosa to submit his written explanation on March 20, 1999, he sent instead a letter stating that the investigation would be moot and academic because he had already filed a case against the company for ULP. As can be gleaned from the records, he filed a complaint against CBPI only on March 24, 1999, negating his earlier statement that he had supposedly filed a case before Tiosayco sent the memorandum.

As keenly noted by the CA, Hormillosa's act of "filing a complaint" to skirt the question-and-answer investigation only reinforced CBPI's apprehension on his conduct in handling his accounts and eroded its trust and confidence in him. The said investigation would have been the right forum for him to explain the accounts he mishandled and disprove the findings of the verification and audit team. Instead, he passed up the opportunity to clear his name by refusing to submit himself to the investigation and explain the anomalies discovered.

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<sup>24</sup> CA records, pp. 37-154 (including annexes).

Regarding the issue of separation pay, the case of *Central Philippines Bandag Retreaders, Inc. vs. Prudencio J. Diasnes*<sup>25</sup> is instructive:

The award of separation pay is authorized in the situations dealt with in Article 283 and Art. 284 of the Labor Code, but not in terminations of employment based on instances enumerated in Art. 282.

“The only cases when separation pay shall be paid, although the employee was lawfully dismissed, are when the cause of termination was not attributable to the employee's fault but due to: (1) the installation of labor saving devices, (2) redundancy, (3) retrenchment, (4) cessation of employer's business, or (5) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees (Articles 283 and 284, Labor Code.) Other than these cases, an employee who is dismissed for a just and lawful cause is not entitled to separation pay even if the award were to be called by another name.”<sup>26</sup>

In the case at bench, the cause for the dismissal from employment of Hormillosa clearly falls under Article 282 of the Labor Code. Therefore, he is not entitled to any separation pay.

**WHEREFORE**, the petition is **DENIED**.

**SO ORDERED**.

  
**JOSE CATRAL MENDOZA**  
Associate Justice

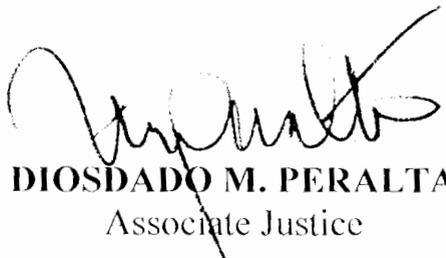
<sup>25</sup> G.R. No. 163607, July 14, 2008, citing *San Miguel Corporation v. Lao*, G.R. Nos. 143136-37, July 11, 2002, 580 Phil. 177 (2008), citing *San Miguel Corporation v. Lao*, 433 Phil. 890 (2002).

<sup>26</sup> *Eastern Paper Mills, Inc. v. NLRB*, 252 Phil. 618, 621 (1989).

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



**ROBERTO A. ABAD**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

**ATTESTATION**

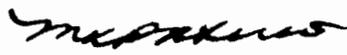
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice