Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROSALIE L. GARGOLES, Petitioner,	**G.R. No. 158583**
	Present:
-versus-	VELASCO, JR.,* LEONARDO-DE CASTRO,** Acting Chairperson, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
REYLITA S. DEL ROSARIO, DOING BUSINESS UNDER THE NAME AND STYLE JAY ANNE'S ONE HOUR PHOTO SHOP, Respondent.	Promulgated: SEP 10 2014

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D E C I S I O N

BERSAMIN, *J.*:

An act of dishonesty by an employee who has been put in charge of the employer's money and property amounts to breach of the trust reposed by the employer, and normally leads to loss of confidence in her. Such dishonesty comes within the just and valid causes for the termination of her employment under Article 282 of the *Labor Code.*

Antecedents

On February 20, 1992, the petitioner started working as an "all-around employee" acting as "cashier, sales clerk, xerox operator, janitress, photo printer, and messenger/delivery person" at Jay-Anne's One Hour Photo Shop, the proprietress of which was respondent Reylita S. Del Rosario.[1] On

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* In lieu of Chief Justice Maria Lourdes P.A. Sereno, who is on Wellness Leave, per Special Order No. 1772.

** Per Special Order No. 1771 dated August 28, 2014.

1 *Rollo*, p. 12.

March 28, 1998, the petitioner received a letter terminating her employment for dishonesty. As a result, she lodged a complaint for illegal dismissal, seeking her reinstatement and backwages.

To answer the complaint for illegal dismissal, Del Rosario laid out the reason for the termination of the petitioner in her position paper, as follows:

> Through incisive sleuthing, records inspection and investigation in the second week of March, 1998, it was discovered that complainant, tampered with the daily printer's production reports/sales which[,] as consequence thereof, the total number of prints made for the day was podded [*sic*] and erroneously reported thru double entries of the same job envelope and one (1) twin check number for every fresh role [*sic*] of film for photo-developing and printing or even recopying; it was on the same entry with two (2) twin check numbers instead of just one (1) number of the same job envelope that complainant pocketed and appropriated for her own benefit and gain the cash value or cash equivalent of the excessive or padded daily total of number of prints made and erroneously reported to the respondent store damage and prejudice amounting to ₱11,305.00 computed at 2,207 prints x ₱5.00 per print during the period December 1, 1997 to March 25, 1998 x x x.[2]

In his decision dated August 23, 1999, Labor Arbiter Cresencio G. Ramos, Jr. dismissed the petitioner's complaint for lack of merit.[3]

On August 31, 2000, the National Labor Relations Commission (NLRC) promulgated its resolution affirming the decision of the Labor Arbiter.[4]

The petitioner sought reconsideration, but the NLRC denied her motion to that effect.[5]

On July 23, 2001, the petitioner commenced her special civil action for *certiorari* in the Court of Appeals (CA), alleging in her petition that the NLRC had committed grave abuse of discretion in finding that there had been just cause for her dismissal, and that Del Rosario had complied with the requirements of procedural due process.

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2 Id. at 30.
3 Id. at 36-39.
4 Id. at 40-45.
5 Id. at 46-47.

On September 27, 2002, the CA promulgated its decision,[6] disposing:

> IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby AFFIRMED, insofar as its declaration that petitioner was dismissed from employment with a just cause. However, private respondent, having violated petitioner's right to due process, it is ordered to pay the petitioner the sum of ₱5,000.00, as indemnity. No cost.
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> SO ORDERED.

On May 13, 2003, the CA denied the petitioner's motion for reconsideration.[7]

Issues

Hence, the petitioner appeals, asserting that the CA erred in finding her dismissal from employment to have been upon just cause; that there was no substantial evidence showing the existence of just cause for her dismissal; and that because the CA held that she had been deprived of her right to due process, its finding of the existence of just cause for her dismissal was not based on facts but on speculation and assumption.[8]

Ruling

The petition lacks merit.

The just and valid causes for the dismissal of an employee, as enumerated in Article 282 of the *Labor Code*, include: (*a*) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with her work; (*b*) gross and habitual neglect by the employee of her duties; (*c*) **fraud or willful breach by the employee of the trust reposed in her by her employer or duly authorized representative**; (*d*) commission of a crime or offense by the employee against the person of her employer or any immediate member of her family or her duly authorized representative; and (*e*) other causes analogous to the foregoing.

In his decision, which the NLRC affirmed for being correct, the Labor Arbiter relevantly concluded as follows:

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6 Id. at 60-66; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice/retired), with the concurrence of Associate Justice Remedios A. Salazar-Fernando and Associate Justice Regalado E. Maambong (retired/deceased).

7 Id. at 68.

8 Id. at 19.

> After going over the evidence adduced by the respondent in support of its averments and principal defense, this Office finds the same to be reasonably sufficient to arrive at the conclusion that complainant was indeed guilty of the act(s) of dishonesty imputed upon her. Certainly, ***the aforesaid dishonest act(s) committed by the complainant logically triggered an erosion of the trust reposed upon him*** [*sic*] ***by his*** [*sic*] ***employer*** and jurisprudence is explicit on the point that when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.[9] (Emphasis supplied)

The dishonesty imputed to the petitioner included the making of double entries in the production reports and thereby enriching herself by pocketing the extra cash generated from the double entries. Contrary to her assertion that there was no substantial evidence to justify her dismissal, the production reports containing the double entries were presented as evidence; and her double entries were confirmed in the affidavit executed by Redelito Caranay, Jr., her co-employee. As such, the finding of the just cause for her dismissal did not emanate from mere speculation, suspicion or assumption.

The petitioner casts doubt on the affidavit of Caranay, Jr. by stating that he was only forced to execute the affidavit in view of his being under the control and moral domination of the respondent.[10] The Court cannot sustain her, however, considering that she did not present evidence either to discredit his execution of the affidavit or to show his ill will or malice towards her.

The petitioner argues that she did not need to dispute the charge of dishonesty or theft of her employer's funds because she had the presumption of innocence in her favor.[11]

The argument is untenable. It is true that every person is entitled to be presumed innocent of wrongdoing. The objective of the presumption has been to lay the burden of proof on the shoulders of the alleger of wrongdoing. The presumption extends to the petitioner and to every other employee charged with any wrongdoing that may cause them to be sanctioned, including being dismissed from employment. But the presumption, which is disputable, by no means excuses the employee charged with wrongdoing from answering and defending herself once the presumption has been overcome by a showing to the contrary. The failure of the employee to rebut or disprove the proof of wrongdoing then establishes the charge against her.[12] This is especially true in a case for dismissal grounded on loss of confidence or breach of trust, in which the employer may proceed to dismiss the erring employee once the employer becomes

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9 Id. at 39.
10 Id. at 21.
11 Id.
12 *House of Sara Lee v. Rey*, G.R. No. 149013, August 31, 2006, 500 SCRA 419, 437.

morally convinced that she was guilty of a breach of trust and confidence.[13] Based on the record, the petitioner did not sufficiently contradict or rebut the charge of dishonesty.

On whether or not the respondent complied with the requirements of procedural due process for dismissal, the CA observed:

> What We cannot agree on in the challenged Decision is the observance of due process in the procedure taken for the dismissal of the petitioner from employment.
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> Records reveal that private respondent gave the petitioner 72 hours from receipt of the letter dated March 25, 1998 within which to give her explanation why she should not be dismissed from service because of the earlier discussed acts alluded against her. Yet, private respondent did not present in evidence such letter which petitioner allegedly refused to acknowledge receipt. It is well to note that even before the Labor Arbiter, petitioner had already been complaining of the denial of this required first notice to explain her side of the charge against her. Under our Labor laws, two (2) written notices are required before termination of employment can be legally effected which are: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and, (2) the subsequent notice to which informs the employee of the employer's decision to dismiss him; not to mention the opportunity to answer and rebut the charges against him, in between such notices *(Legahi vs. National Labor Relations Commission, 318 SCRA 446 [1999]; Masagana Concrete Products vs. NLRC, 313 SCRA 576 [1999])*.
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> **Prescindingly, We see nothing on record that will substantially prove that petitioner was duly informed of the accusation against her to allow her a chance to explain her side thereof. Without this notice, procedural due process was not at all observed and private respondent employer failed in its assigned task to prove that the dismissal of its employee was with cause**.[14] (Bold emphasis added)

In our view, the CA thereby erred. It overlooked the fact that the respondent had presented to the Labor Arbiter as Annex 2 of her position paper the respondent's letter dated March 25, 1998 requiring the petitioner to submit her explanation.[15] The letter, which was self-explanatory, was actually quoted verbatim in the August 31, 2000 resolution of the NLRC,[16] as follows:

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13 *Reyes v. Minister of Labor,* G.R. No. 48705, February 9, 1989, 170 SCRA 134, 140.
14 *Rollo,* p. 63.
15 Records of the NLRC, p. 59.
16 *Rollo,* p. 44.

Dear Mrs. Gargoles,

> After thorough records inspection and investigation, it was discovered that you tampered with the printers daily production reports thru double entries, recording and accounting of photo films for developing and printing or recopy thereof to manipulate, obtain and appropriate cash on the second entry of the same job number with two (2) different twin checks in violation of the store standard operating procedure of one (1) job envelope and one (1) twin check number only per fresh roll of film entered for photo-developing and printing.
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> It appears that the total and accumulated losses amounted to ₱11,305.00 computed at 2,207 prints at ₱5.00 each during the period December 1, 1997 to March 25, 1998.
>
> **Please submit your explanation within seventy-two (72) hours from receipt of this memo/letter. Otherwise, failure or refusal on your part to answer thereto will be a waiver of your right to contest the above infraction of dishonesty which is a violation of store police no. 6 which has a penalty of termination in the first offense**.
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> Very truly yours,
> Signed
> REYLITA S. DEL ROSARIO

The bottom of the letter contained the handwritten annotation *refused to sign*, an indication of the refusal to receive and sign for the letter on the part of the petitioner. Such refusal to receive the letter containing the notice for her to explain, coupled with her failure to submit her explanation within the time given in the letter, implied that she waived her right to contest the contents of the letter, thereby forfeiting her right to respond to the charge against her and to rebut the evidence thereon. It further appears that on March 28, 1998 the respondent sent another letter to the petitioner informing her of the termination of her services,[17] but the latter again refused to sign in acknowledgment of the letter. Under the circumstances, the two-notice rule was evidently complied with by the respondent, thereby negating any denial of due process to the petitioner.[18]

Lastly, the petitioner posits that the CA should have applied the pronouncement in *Serrano v. National Labor Relations Commission*[19] instead of that in *Wenphil Corporation v. National Labor Relations Commission*.[20] To recall, the Court held in *Wenphil Corporation* that the employer should still be sanctioned with an order to indemnify the dismissed employee despite the termination being for cause provided the employer did not observe due process. This holding was modified in *Serrano*, with the Court ruling that where due process (*i.e.*, the two-notice rule) was not

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17 Records of the NLRC, p. 60.

18 *Leonardo v. National Labor Relations Commission*, G.R. No. 125303 & G.R. No. 126937, June 16, 2000, 333 SCRA 589, 601.

19 G.R. No. 117040, January 27, 2000, 323 SCRA 445.

20 G.R. No. 80587, February 8, 1989, 170 SCRA 69.

observed, the employer should award the dismissed employee full backwages as the penalty for the violation of due process. Essentially, *Serrano* tightened the penalty in *Wenphil Corporation* from mere indemnity to full backwages.

The position of the petitioner is untenable for two reasons. Firstly, *Serrano* has been abandoned in *Agabon v. National Labor Relations Commission*,[21] in which the Court ruled that if the termination was valid but due process was not followed, the employee remains dismissed but the employer must pay an indemnity heavier than that imposed in *Wenphil Corporation* but lighter than full backwages. In effect, *Agabon* partly restored the doctrine in *Wenphil Corporation*. And, secondly, both *Wenphil Corporation* and *Serrano* should apply only when there is a finding that the termination was valid but the requirement of due process was not followed. Obviously, neither would be applicable to the petitioner whose dismissal was valid and legal, and the respondent as her employer complied with the demands of due process.

In view of the foregoing, the NLRC did not commit any abuse of discretion, least of all a grave one, in upholding the decision of the Labor Arbiter dismissing the petitioner's complaint for illegal dismissal. *Grave abuse of discretion*, according to *De los Santos v. Metropolitan Bank and Trust Corporation*,[22] "must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction."

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on September 27, 2002 subject to the **MODIFICATION** that the indemnity of ₱5,000.00 thereby granted to the petitioner is **DELETED**; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[21] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 613-614.
[22] G.R. No. 153852, October 24, 2012, 684 SCRA 410.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice