Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DIGITAL TELECOMMUNICATIONS PHILS., INC./JOHN GOKONGWEI, JR.,
Petitioner,

- versus -

NEILSON M. AYAPANA,
Respondent.

G.R. No. 195614

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

January 10, 2018

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DECISION

MARTIRES, *J.*:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 7 October 2010 Decision[1] and 4 February 2011 Resolution[2] rendered by the Court of Appeals (*CA*) in CA-G.R. SP No. 112160. The CA affirmed with modification the 29 June 2009 Decision[3] and 28 October 2009 Resolution[4] of the National Labor Relations Commission (*NLRC*) in NLRC LAC Case No. 05-001831-08, which declared Neilson M. Ayapana (*respondent*) to have been illegally dismissed.

THE FACTS

Digital Telecommunications Philippines, Inc. (*petitioner* or *the company*) hired respondent as Key Accounts Manager for its

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[1] *Rollo*, pp. 34-41; penned by Associate Justice Juan Q. Enriquez, with Associate Justice Ramon M. Bato Jr. and Associate Justice Florito S. Macalino, concurring.

[2] Id. at 43-44.

[3] Id. at 71-76; penned by Presiding Commissioner Gerardo C. Nograles, with Commissioner Perlita B. Velasco and Romeo L. Go, concurring.

[4] Id. at 77.

telecommunication products and services in the areas of Quezon, Marinduque, and Laguna provinces, with a monthly basic pay of ₱13,100.00. Respondent was tasked, among others, to offer and sell DIGITEL's foreign exchange (*FEX*) line to prospective customers.

On 6 September 2006, respondent successfully offered two (2) FEX lines for Atimonan, Quezon, to Estela Lim (*Lim*), the owner of Star Lala Group of Companies *(Star Lala)*. He received from Lim the total amount of ₱7,000.00 *(the subject amount)* for the two lines, for which he issued two (2) official receipts. Respondent, however, did not remit the subject amount to petitioner on the same date.

On 7 September 2006, petitioner's sales team, which included respondent, held a meeting during which respondent learned, from his immediate superior, that there was no available FEX line in Atimonan, Quezon; and that it was not possible to have a FEX line in the area due to technical constraints. On the same day, respondent retrieved from Lim the two (2) official receipts issued to the latter and replaced them with an acknowledgment receipt.

On 23 November 2006, Teresita Cielo (*Cielo*), secretary of Lim, went to petitioner's business office to pay bills and to ask for the refund of the subject amount. Upon verification by Myra Santiago (*Santiago*), petitioner's customer representative, she found that there was no existing application for the said service under the name of Star Lala Group of Companies.

When Santiago found that respondent was the sales person handling Lim's transaction, she informed respondent of Cielo's request for refund on that same day; but it was only on 28 November 2006, or five (5) days from said notice, that respondent was able to make the refund.

On 29 November 2006, petitioner issued a Notice to Explain[5] to respondent, asking him to explain: why he offered an inexistent FEX line; why he withdrew the official receipts issued to Lim and replaced them with an acknowledgment receipt; why he did not immediately remit the proceeds of the transaction to petitioner's business center; and why he retained the subject amount for 84 days.

On 30 November 2006, respondent submitted a written response.[6] He explained that he was not aware of the unavailability of the Atimonan line at the time he offered it to Lim; that he retrieved the official receipts to avoid explaining the late remittance to the treasury department because, at the time, Lim was still undecided whether to take up respondent's alternative

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5 Id. at 57.
6 Id. at 58-59.

offer of subscribing to a FEX line in Lucena until such time that an Atimonan line could become available; that he issued the acknowledgment receipt as proof that the subject amount is in his possession; that prior to 23 November 2006, he made several attempts to obtain Cielo's advice as to the return of the subject amount, to no avail; and that after being informed of Cielo's request on 23 November 2006, he went to Star Lala's office, which was closed, and thereafter tried to obtain Cielo's address in order to return the money, to no avail. According to respondent, he handed the subject amount to Santiago after she informed him that Cielo would retrieve the money from her.

On 4 December 2006, petitioner sent a Notice of Offense[7] to respondent, scheduling his administrative hearing and requesting his presence there.

On 19 January 2007, petitioner issued a Notice of Dismissal[8] finding respondent guilty of "breach by the employee of the trust and confidence reposed in him by management or by a company representative" under petitioner's disciplinary rules, which merited dismissal for the first offense.

Aggrieved, respondent filed a complaint for illegal dismissal. The Labor Arbiter dismissed the complaint, ruling that substantial evidence exists that respondent was involved in an event that justified petitioner's loss of trust and confidence in him, and therefore, he was validly dismissed from employment.[9] Respondent then appealed to the NLRC.

The NLRC Ruling

The NLRC reversed and set aside the decision of the Labor Arbiter. It ruled that respondent was merely guilty of imprudence and not of bad faith or malice. The NLRC found that dismissal was too harsh a penalty, especially since respondent appeared to have a clean record except for the Notice of Final Warning[10] issued to him by petitioner on 17 October 2005. The NLRC also considered in respondent's favor the certificates of commendation issued to him for being the most outstanding account manager in 2001 and 2002, as well as the service award he received in 2006. Consequently, it ordered the petitioner to pay respondent separation pay in the amount of ₱78,600.00 computed at one-month pay for every year of service, *viz*:

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7 Id. at 60.
8 Id. at 61.
9 Id. at 63-68; penned by Labor Arbiter Melchisedek A. Guan.
10 Id. at 78.

> WHEREFORE, the appeal filed by complainant is GRANTED IN PART. The Decision of Labor Arbiter Melchisedek A. Guan dated March 6, 2008 is REVERSED and SET ASIDE, and a NEW ONE rendered finding dismissal a harsh penalty and ordering respondents to pay complainant separation pay in the sum of ₱78,600.00 as computed above.
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> SO ORDERED.[11]

Respondent thereafter filed a motion for reconsideration, which was denied by the NLRC. Unsatisfied with the decision, respondent appealed to the CA.

The CA Ruling

The CA affirmed the NLRC ruling with modification that petitioner was further ordered to pay full back wages inclusive of allowances and other benefits or their monetary equivalent, *viz*:

> WHEREFORE, premises considered, the Decision dated June 29, 2009 of the National Labor Relations Commission (*NLRC*) in NLRC LAC Case No. 05-001831-08 is AFFIRMED with MODIFICATION that private respondent DIGITEL is ordered to pay petitioner separation pay and full back wages inclusive of allowances and other benefits or their monetary equivalent from January 19, 2007 up to the finality of this Decision.
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> SO ORDERED.[12]

The CA held that respondent's dismissal was not valid because neglect of duty, as a just cause for dismissal, must not only be gross but also habitual. An isolated act of negligence cannot be ground for dismissal, and respondent was found negligent in only one instance.

Aggrieved, petitioner filed a motion for reconsideration, which was denied by the CA. Hence, this petition.

ISSUES

Petitioner raises the following issues:

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[11] Id. at 75.
[12] Id. at 41.

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S FINDING THAT NO JUST CAUSE EXISTS TO WARRANT RESPONDENT AYAPANA'S DISMISSAL DESPITE THE LAW AND EVIDENCE TO THE CONTRARY.

II.

THE COURT OF APPEALS ERRED IN AWARDING BACK WAGES AND SEPARATION PAY TO RESPONDENT AYAPANA DESPITE LACK OF LEGAL BASIS.

Simply put, this Court is tasked to consider whether the CA correctly held that respondent's dismissal was invalid and that he is entitled to full back wages and separation pay.

DISCUSSION

Incipiently, this Court addresses respondent's contention that petitioner can no longer raise the issue on the validity of his dismissal since it has failed to file a motion for reconsideration from the NLRC's decision, thus, it is bound by the NLRC's finding on this issue.

Respondent errs. It is settled that the entire case becomes open to review, and the Court can review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[13]

The issue of whether respondent was validly dismissed, though ruled upon by the NLRC without an appeal from petitioner, is pivotal in determining respondent's entitlement to back wages and separation pay, which was raised by respondent in his appeal to the CA. It is clearly necessary to arriving at a just disposition of the controversy. Thus, it was proper for the CA to pass upon said issue, and for petitioner to interpose an appeal therefrom.

Now to the primary issue at bar: was respondent validly dismissed? The Court rules in the affirmative.

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[13] *Aliling v. Feliciano*, 686 Phil. 889, 903-904 (2012).

Respondent held a position of trust and confidence and committed an act that justified petitioner's loss of trust and confidence.

A perusal of the notice of dismissal issued by petitioner to respondent shows that the ground relied upon by the former was the latter's breach of the trust and confidence reposed in him by the company, contrary to the ruling of the CA, which based its decision on gross and habitual neglect, a separate ground under Article 297[14] of the Labor Code.

The willful breach by the employee of the trust reposed in him by his employer or the latter's duly authorized representative is a just cause for dismissal. However, the validity of a dismissal based on this ground is premised upon the concurrence of these conditions: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be a willful act that would justify the loss of trust and confidence.[15]

The first requisite is certainly present. In a number of cases, this Court has held that rank-and-file employees who are routinely charged with the care and custody of the employer's money or property are classified as occupying positions of trust and confidence.[16] In *Philippine Plaza Holdings, Inc. v. Episcope*,[17] the Court held that a service attendant tasked to attend to dining guests, handle their bills, and receive their payments for transmittal to the cashier is an employee occupying a position of trust and confidence and is thus expected to act with utmost honesty and fidelity.[18]

It is not disputed that respondent was tasked to solicit subscribers for petitioner's FEX line and, in the course thereof, collect money for subscriptions and issue official receipts therefor, as was the case in the transaction subject of this controversy. Being involved in the handling of the company's funds, respondent undeniably occupies a position of trust and confidence.

The records likewise reveal that the second requisite is present. It must be emphasized that a finding that an employer's trust and confidence has been breached by the employee must be supported by substantial evidence,[19] or such amount of relevant evidence which a reasonable mind

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[14] This is based on the Labor Code of the Philippines, Presidential Decree No. 442, as Amended & Renumbered on 21 July 2015.

[15] *Martinez v. Central Pangasinan Electric Cooperative, Inc.*, 714 Phil. 70, 75 (2013).

[16] Id.; *Bluer than Blue Joint Ventures Co. v. Esteban,* 731 Phil. 502, 511 (2014).

[17] 705 Phil. 210 (2013).

[18] Id. at 218.

[19] Id. at 219.

might accept as adequate to justify a conclusion. It must not be based on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer.[20]

The totality of the circumstances in the case at bar supports a conclusion that respondent's dismissal was based on substantial evidence that he had willfully breached the trust reposed upon him by petitioner, and that petitioner was not actuated by mere whim or capriciousness.

It is uncontroverted that respondent took part in a series of irregularities relative to his transaction with Lim, to wit:

First, he offered an inexistent FEX line to Lim, for which he received a subscription payment of ₱7,000.00. Even granting he did not know that the Atimonan line was unavailable at the time he offered the same to Lim, he was remiss in not ascertaining its availability before he concluded his transaction with Lim and received from her the subscription payment. As an employee admittedly tasked with soliciting subscribers for the Company's FEX line, it was an integral part of his functions to ensure that the lines he offered to potential subscribers were valid and subsisting.

Second, it is not disputed that respondent was required and expected to immediately remit the proceeds acquired in the course of his sales transactions; which he failed to do in Lim's case, without sufficient explanation for such lapse.

Third, respondent readily admits that when he came to know of the Atimonan line's unavailability, he did not immediately effect a refund nor inform management of his decision to retain the money supposedly pending Lim's decision to acquire another line. Instead, he retrieved the official receipts from Lim and issued an acknowledgment receipt.

Respondent contends that he could not be imputed with any reckless, willful, or deliberate act of breaching petitioner's trust and confidence because he was of the honest belief that the Atimonan line was existent when he offered it to Lim; that he retained the money pursuant to an oral agreement between him and Lim, wherein he gave her time to contemplate the option of obtaining a refund or availing of another FEX line pending the availability of the Atimonan line; and that he issued the acknowledgment receipt as evidence that the sum collected was in his possession.

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[20] *Lopez v. Alturas Group of Companies*, 663 Phil. 121, 128 (2011), citing *Cruz v. Court of Appeals*, 527 Phil. 230, 243 (2006).

Respondent's arguments are misplaced. Even if this Court were to concede that he was merely negligent in offering an FEX line whose existence he did not ascertain first, his acts subsequent to being aware of the Atimonan line's unavailability indubitably manifests willfulness and deliberateness. In his response to petitioner's notice to explain, respondent admitted he came to know of the Atimonan line's unavailability during their team's 7 September 2006 meeting when he was informed by his superior, Rene Rico (*Rico*). When respondent inquired from Rico if it was possible that the Atimonan line would be available in the near future, the latter answered in the negative.[21] It therefore reeked of underhandedness that petitioner still gave Lim the option to avail of a different FEX line until such time that the Atimonan line would become available, when he already knew at the time that the Company was not even contemplating such service. There is also no showing that he disclosed the full extent of Rico's response to Lim.

Respondent's act of retrieving and cancelling the official receipts without petitioner's knowledge or conformity was also highly irregular and prejudicial to the company, as its cancellation has tax and reportorial implications that may result in liability.

Moreover, respondent admitted that the reason he cancelled the official receipts was to conceal from the treasury department the fact of late remittance.[22] Notably, petitioner also failed to explain why he did not at least inform management about his oral agreement with Lim, considering that the company could incur liability arising from his continued retention of the subscription money. Lim's consent to such retention is immaterial, because the duty to remit the proceeds or at least disclose any action relative to funds acquired for the availment of the company's services was mandatory to the company.

Third, respondent retained the subject amount from 6 September 2006 to 28 November 2006, offering no sufficient explanation for this prolonged period of retention, other than to insist that he was allowed to do so by Lim. However, as discussed earlier, this does not explain why respondent would withhold from the company information regarding company funds or a potentially contentious transaction, if he had truly acted in good faith. As borne by the records, it was only on 23 November 2006 that the petitioner, through its customer representative Santiago, became aware of such

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[21] The following is taken verbatim from respondent's response to the Company's Notice to Explain: "By that time, I was not aware that Manila Line is not available in ATM. The next day Sept. 7, 2006 our monthly meeting was held here in Lucena. If S'Rene remembered I even asked him if Manila Line is available in Atimonan. **When he said that it's not available, I asked him if it is possible in the near future that it would be offered in Atimonan. S'Rene said "NO."** I immediately informed the owner thru phone that Atimonan is not included in '02' areas. **I told her for the meantime to avail our FEX Line in Lucena and Laguna unti such time that FEX Line is offered in Atimonan.**" (emphasis supplied); *rollo*, p. 58.

[22] Id.

retention. Moreover, while respondent claims that he issued an acknowledgment receipt as proof that he possessed the money and would return it as soon as Lim signified her desire for a refund, it is curious that he was only able to return the subject amount on 28 November 2006, or five (5) days after being told by Santiago to refund it on 23 November 2006.

All the above circumstances militated against respondent's claim of good faith and clearly established an act that justified the Company's loss of trust and confidence in him. In *Bristol Myers Squibb (Phils.), Inc. v. Baban*,[23] the Court held that "as a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt."[24]

Furthermore, no bad faith or ill will could be imputed to the company in dismissing respondent because the latter was apprised of the charges against him and was given an opportunity to submit a written explanation, which he complied with. A hearing was also conducted.

It must be remembered that the discipline, dismissal, and recall of employees are management prerogatives, limited only by those imposed by labor laws and dictated by the principles of equity and social justice.[25] This Court finds that petitioner exercised its management prerogatives consistent with these principles.

Even with a finding that respondent was validly dismissed, separation pay may be granted as a measure of social justice.

Generally, an employee dismissed for any of the just causes under Article 297 is not entitled to separation pay. By way of exception, the Court has allowed the grant of separation pay based on equity and as a measure of social justice, as long as the dismissal was for causes other than serious conduct or those manifesting moral depravity.[26]

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23 594 Phil. 620 (2008).

24 Id. at 631-632, *citing Atlas Fertilizer Corporation v. NLRC*, 340 Phil. 85, 94 (1997).

25 *Peckson v. Robinsons Supermarket Corporation*, 713 Phil. 471, 480-481 (2013).

26 *Philippine Commercial International Bank v. Abad*, 492 Phil. 657, 663-664 (2005).

This Court is mindful of the new rule it established in *Toyota v. NLRC*,[27] where the Court held that "in addition to serious misconduct, in dismissals based on other grounds under Art. 282[28] like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee."[29] However, the Court also recognizes that some cases merit a relaxation of this rule, taking into consideration their peculiar circumstances.

Here, while it is clear that respondent's act constitutes a willful breach of trust and confidence that justified his dismissal, it also appears that he was primarily actuated by zealousness in acquiring and retaining subscribers rather than any intent to misappropriate company funds; as he admitted in his response to the notice to explain that offering an alternative FEX line to Lim was part of his strategy to ensure her subscription.

The lack of moral depravity on respondent's part is also shown by the following circumstances: (1) he was the recipient of certificates of commendation[30] from petitioner in the years 2001 and 2002, for being an outstanding account manager, as well as of a service award in 2006 for continuous service to the company; (2) he was granted promotional increases[31] in 2002, 2004, and 2005, as well as a merit increase[32] in 2003; (3) he has served the company from 16 February 2001 to 19 January 2007 with only one other known infraction embodied in a notice of final warning that petitioner failed to expound on; and (4) based on Cielo's *Salaysay*,[33] Lim did allow respondent to retain the subject amount for a time, even though, as discussed earlier, this is immaterial to determining whether his act justified his dismissal, since he had an independent duty to disclose material agreements or transactions to petitioner.

To be sure, his zealousness was manifested through acts that showed an inordinate lapse of judgment warranting his dismissal in accordance with management prerogative, but this Court considers in his favor the above circumstances in granting him separation pay in the amount of one (1) month pay for every year of service.[34]

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27 562 Phil. 759, 812 (2007).
28 Now Article 297 of the Labor Code.
29 *Toyota v. NLRC*, supra note 27 at 812.
30 *Rollo*, pp. 100-101.
31 Id. at 122-123 and 125-126.
32 Id. at 124.
33 Id. at 121.
34 *Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, 247 Phil. 641, 650 (1988), where the Court ruled that "separation pay, if found due under the circumstances of each case, should be computed **at the rate of one month salary for every year of service, assuming the length of such service is deemed material**."

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed 7 October 2010 Decision and 4 February 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 112160, are **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dismissing respondent Neilson M. Ayapana's complaint for illegal dismissal and other monetary claims is **REINSTATED** with **MODIFICATION** that respondent should be paid separation pay equivalent to one month of his latest salary for every year of service.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 20 2018