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**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**FIRST DIVISION**

**PEPSI-COLA PRODUCTS PHILS.,  
INC.,**

**G.R. No. 248108**

Petitioner,

Present:

GESMUNDO, C.J.,  
*Chairperson,*  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

- versus -

**ANGELO T. PACANA,**

Promulgated:

Respondent.

**JUL 14 2021**

*[Signature]*

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**DECISION**

**CARANDANG, J.:**

Before Us is a Petition for Review on *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated August 31, 2018 and the Resolution<sup>3</sup> dated May 8, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 07889-MIN. The CA affirmed the Resolution<sup>4</sup> dated October 26, 2016 of the National Labor Relations Commission (NLRC), declaring the dismissal of private respondent Angelo T. Pacana (Pacana) without just cause and without due process.

The case originated from the Complaint<sup>5</sup> and Amended Complaint<sup>6</sup> for illegal dismissal, illegal suspension, illegal deduction, and payment of backwages, separation pay, actual, moral, and exemplary damages as well as

<sup>1</sup> Rollo, pp. 3-43.  
<sup>2</sup> Penned by Associate Justice Tita Marilyn Payoyo-Villordon, with the concurrence of Associate Justices Romulo V. Borja and Oscar V. Badelles; id. at 296-307.  
<sup>3</sup> Penned by Associate Justice Oscar V. Badelles, with the concurrence of Associate Justices Loida S. Posadas-Kahulugan and Florencio M. Mamauag, Jr.; id. at 320-321.  
<sup>4</sup> Id. at 163-176.  
<sup>5</sup> Id. at 51.  
<sup>6</sup> Id. at 52-65.

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attorney's fees filed by Pacana against Pepsi Cola Products Phils., Inc. (petitioner), its General Manager Joemar E. Alova (Alova), Sales Manager Neil G. Ribagorda (Ribagorda), and Human Resources (HR) Manager Gay Victorino B. Talja (Talja).<sup>7</sup> Pacana alleged that he started working for petitioner as a sales trainee in its Cagayan De Oro (CDO) plant on July 16, 2013. He was assigned to assist in the outlets handled by another sales trainee, John Welrey Tuquib (Tuquib). Among the clients of Tuquib was Mega Integrated Agro Livestock Farm Corp, (Mega Farm). Sometime in September 2013, Tuquib went on absence without leave (AWOL). Then Sales Manager, Ariel Maganto (Maganto), directed Pacana to assume and take charge of the accounts handled by Tuquib. However, no proper turnover of accountabilities was made.<sup>8</sup>

On February 16, 2014, Pacana became a Key Accounts Manager (KAM) with a monthly salary of ₱20,000.00. He was primarily responsible for the booking of petitioner's products and the collection of the sales derived from such booking. He was under the supervision of Ribagorda the sales manager which replaced Maganto after the latter resigned. Pacana claimed that Ribagorda displayed favoritism which adversely affected the conditions of his employment.<sup>9</sup> He narrated that around 9:00 p.m. of June 27, 2015, petitioner's Fleet Manager Rommel Geroy (Geroy) went to his house to get the company vehicle assigned to him upon the authority of Alova. However, in the early morning of the following day, Pacana received a call that the vehicle figured in an accident and was garaged only at the CDO plant at 3:00 p.m. of June 28, 2015. This means that the vehicle was used by an officer of Alova for a personal purpose. Subsequently, Pacana was threatened by Ribagorda, upon the instruction of Alova, that he would be dismissed from employment. Thus, Pacana's counsel sent a letter to Alova regarding the matter. This caused Alova to angrily approach Pacana in the CDO plant lambasting him with the following words: "[b]akit mo pinarating sa lawyer mo ang tungkol sa aksidente? Sino ka ba? Lalabanan kita! Tatanggalin kita sa trabaho!"<sup>10</sup>

On August 27, 2015, Pacana was informed by Ribagorda that he was placed under preventive suspension. Upon the order of Alova, Ribagorda took away and hauled the records and documents on Pacana's table without the benefit of inventory. On August 28, 2015, Pacana performed his usual duty as a KAM and went to Mega Farm to collect payment from his previous bookings, which are ₱71,604.00 (booked on June 30, 2015), ₱61,314.00 (booked on July 14, 2015), and ₱71,604.00 (booked on July 19, 2015 or for a total of ₱204,522.00. It is a standard operating procedure that in the collection of sales a Charge Invoice Transmittal (CIT) shall be prepared by the Settlement and Credit Officer, which in turn shall be transmitted to the Sales Manager for appropriate action. However, Pacana's copy of the duly filled up CIT was one of the documents taken from his table

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<sup>7</sup> Id. at 65

<sup>8</sup> Id. at 52-54.

<sup>9</sup> Id. at 52-54.

<sup>10</sup> Id. at 56-57.

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by Ribagorda. Hence, he executed an Affidavit of Loss as basis to ask for another copy from the Finance Department. His request was denied. This circumstance led him to believe that petitioner's managers were going to dismissed him by resorting to incriminatory machinations.<sup>11</sup>

On August 29, 2015, Pacana received a Memorandum<sup>12</sup> dated August 28, 2015 (NTE) jointly signed by Alova and Ribagorda with the subject – “Notice of Specific Charge/Written Explanation/ Notice of Administrative Investigation/Notice of Preventive Suspension.” The following were imputed against him:

Last August 27, 2015, the undersigned conducted a confirmation of outlet Mega Integrated Agro-Livestock Farm Corp (Mega Farm). The following irregularities were discovered:

1. Transactions for the dates June 30, July 13 and 18, 2015, with the corresponding amount were denied by the account because these were not delivered to them.

Invoice Date	Invoice No.	Amount
June 30, 2015	#369000049103	71,604.00
June 13, 2015	#369000049369	61,314.00
July 18, 2015	#369000049452	71,604.00
	TOTAL	204,522.00

Upon initial inquiry with the Third Party Delivery (TPD), they manifested that they were not the one who got the signature of the outlet representative for the invoices, It is further alleged that you got the invoice from them and return it with the signature of the outlet representative.

2. The following two transactions/deliveries for July 6, 2015 are still unsettled based on the Settlement and Credit Section's Record:

Invoice No.	Amount
#369000049230	52,241.28
#369000049231	66,320.04
TOTAL	118,561.32

Upon confirming with the outlet, Mega Farm manifested that these invoices were already paid last July 28, 2015 with check voucher no. 7470908 and subsequently received by you as evidenced by OR no. 40016200. However, during review of the company's OR, it was found out that you attached a different check voucher applied to different invoices.

3. Five more transactions are still unsettled based on Settlement and Credit Section's record:

<sup>11</sup> Id. at 57-58.

<sup>12</sup> Id. at 322-323.

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Invoice No.	Amount
#369000049306	18,018.00
#369000049340	45,887.65
#369000049448	28,323.75
#369000049449	22,584.85
#369000049451	28,480.61
TOTAL	143,284.86

Mega Farm also manifested that these invoices were already paid last August 12, 2015 with check voucher no. 7470947 and subsequently received by you as evidenced by OR no. 40018481. During review of the company's copy of the OR, it was also found out that you attached a different check voucher applied to different invoices."<sup>13</sup>

Pacana claimed that he failed to file an answer to the NTE since he was already placed under preventive suspension from August 28, 2015 to September 26, 2015. He was barred entry from the company and was prevented from requesting copies of documents to prove his innocence. In this regard, he argued that the administrative hearing conducted on September 4, 2015 was a mockery and a violation of his right to due process. On September 25, 2015, his preventive suspension was extended to an indefinite date until the administrative case against him was terminated. Finally, in a Memorandum dated October 19, 2015, he was dismissed from service.<sup>14</sup>

Pacana argued that the indefinite extension of his preventive suspension amounts to constructive dismissal. His continued employment in the company does not pose a serious and imminent threat to the life or property of the petitioner or his co-workers.<sup>15</sup> As to the alleged irregularities stated in the NTE, Pacana claimed that these are utter falsities. First, with respect to the issue of non-delivery of products worth ₱204,522.00 to Mega Farm, Pacana explained that the delivery of Pepsi products and the subsequent settlement of the accounts and pertinent records behoove upon the Third-Party Delivery (TPD) pursuant to the TPD contract which petitioner had entered into. Second, as regards the remaining transactions enumerated in no. 2 and 3 of petitioner's NTE, Pacana asserted that they were already paid by Mega Farm and that he applied the principle of First In-First Out (FIFO). Under FIFO, the account that should be first settled is the last unpaid account at the time he assumed as a KAM on the outlets left by Tuquib. The application of FIFO was dictated by the exigency of the service as a direct consequence of the failure to conduct a proper turnover of accountabilities of Tuquib. Pacana alleged that Ribagorda cannot deny that he knew of the FIFO procedure as it was the practice at the time of his employment. He insisted that he applied FIFO in good faith and petitioner was not prejudiced by such practice. Thus, he argued that he was dismissed without cause and without due process.<sup>16</sup>

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<sup>13</sup> Id. at 59-60, 322-323.

<sup>14</sup> Id. at 63-64.

<sup>15</sup> Id. at 77.

<sup>16</sup> Id. at 77-81.

In their Position Paper,<sup>17</sup> petitioner and its managers countered that Pacana was preventively suspended as stated in the NTE as they believed that his continued employment poses a serious threat to the property of petitioner, which apprehension turned out to be correct. During the administrative investigation held on September 4, 2015, Pacana admitted that he falsified check vouchers, invoices, and official receipts to the extent of allegedly losing three invoices in his possession to conceal the fraudulent acts committed. While Pacana's preventive suspension was extended, he was entitled to his wages during the period of extension as stated in the Memorandum dated September 25, 2015. Petitioner averred that Pacana had standing accountabilities in the total amount of ₱466,368.18 representing the uncollected amounts from Mega Farm. Out of which ₱261,846.18 were already paid by Mega Farm, while the remaining ₱204,522.00 were fictitious sales transactions in favor of Mega Farm authored by Pacana.<sup>18</sup> Petitioner argued that Pacana's act of booking orders in the name of Mega Farm but giving instructions to the TPD to deliver it to different outlets and applying Mega Farm's payments to other invoices is a violation of the company's rules and regulations against fraud and acts of dishonesty.<sup>19</sup>

Petitioner recalled that during the administrative investigation, Pacana insisted that petitioner's products were delivered to Mega Farm on July 1, 2015 but he admitted that he has no proof of delivery. He also did not confirm from Mega Farm if it received the products. He stated that he lost all the three invoices representing the transactions.<sup>20</sup> With respect to the two unsettled transactions for July 16, 2015, Pacana explained that he applied the principle of FIFO, thus he was not able to apply the payment of Mega Farm to the corresponding invoices. When asked if he was aware of the proper procedure, he answered yes; and further admitted that he deviated from it "by applying payment to other transaction." He also admitted that he continuously applied FIFO despite knowing that it is wrong.<sup>21</sup> The five other unsettled accounts mentioned in number 3 of the NTE were duly paid by Mega Farm as evidenced by OR No. 40018481, Pacana admitted to having falsified the settlement documents copy which he submitted to petitioner's finance department to reconcile with the amount stated in the official receipt.<sup>22</sup>

Petitioner alleged that Pacana was dismissed for just cause and with due process. First, Pacana's termination was on the ground of loss of trust and confidence. As a managerial employee, he occupies a position of trust, his act of intentionally engaging in fictitious transactions, falsifying official receipts, and purposely using the fake invoices to conceal his inadequacies

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<sup>17</sup> Id. at 88-111

<sup>18</sup> Id. at 91-93.

<sup>19</sup> Referring to Group III No. 4 (engaging in fictitious transactions, fake invoicing, deals padding, and other sales malpractices), No. 8 (breach of trust and confidence), and No. 12 (falsifying company records or documents or knowingly falsified records or documents); id. at 95-96.

<sup>20</sup> Id. at 352-353.

<sup>21</sup> Id. at 354.

<sup>22</sup> Id. at 354-355.

makes him unworthy of the confidence demanded of his position. Second, petitioner observed the twin notice requirement in termination proceedings as evidenced by the Memorandum informing Pacana of the charges against him and the Notice of Decision informing him of his dismissal from service. Pacana was also given ample opportunity to be heard during the hearing conducted on September 4, 2015. There being no illegal dismissal, Pacana is not entitled to reinstatement and to his monetary claims.<sup>23</sup>

### **Ruling of the Labor Arbiter**

In his Decision<sup>24</sup> dated May 16, 2016, the Labor Arbiter (LA) ruled in favor of Pacana, the dispositive portion of which reads:

**WHEREFORE**, judgment is hereby rendered as follows:

1. Declaring the dismissal of complainant Angelo T. Pacana as illegal for lack of just cause and observance of due process;
2. Finding the penalty of dismissal imposed on complainant too harsh and disproportionate and that his suspension with severe warning would have sufficed, which suspension, for all intents and purposes, has already been deemed serve from the time he was dismissed from service up to the date of this Decision and that full backwages should accrue thereafter in the event that respondents appeal the Decision;
3. Ordering respondent Pepsi-Cola Products Philippines, Inc. to pay complainant the following amounts:
  - (a) Separation pay equivalent to one (1) month pay for every year of service until the finality of this Decision, which as of this date, tentatively computed in the amount of Php60,000.00 (P20,000.00 x 3 years);
  - (b) Nominal damages, Php30,000.00;
  - (c) Illegal Deductions, Php12,178.00;
  - (d) Attorney's Fees (10%) Php10,217.00;or for a total tentative sum of Php 112,395.00
4. Dismissing the rest of the money claim, and the complaint against respondents Joemar E. Alova, Neil G. Ribagorda, and Gay Victorino B. Talja, Jr. for lack of merit.

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*First* and foremost, the LA ruled that the penalty of dismissal is unjustified under the circumstances. Pacana's alleged acts or omissions were not shown to have been intentionally done or attended by wrongful or perverse attitude to constitute serious misconduct, willful disobedience, or

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<sup>23</sup> Id. at 101-107.

<sup>24</sup> Penned by Labor Arbiter Rammex C. Tiglao; id. at 114-128.

<sup>25</sup> Id. at 128.

breach of trust. The charges were not supported at all by any audit, incident, or confirmatory reports, or sworn statements from Mega Farm. The inexplicable lack of reports goes against ordinary experience and common practice among big reputable companies like petitioner.<sup>26</sup>

*Second*, the LA agreed with Pacana that FIFO was allowed in the company in the settlement of payments of client's accounts and that the latter could not be faulted since there was no proper turn-over of the accounts, documents, and properties to him when Tuquib went on AWOL.<sup>27</sup>

*Third*, the LA observed that there is ambiguity as to the total uncollected amount from Mega Farm. In their position paper, petitioner and its managers stated that Pacana had outstanding accountabilities in the amount of ₱466,368.18. However, they also admitted in the same pleading that during the administrative hearing, they found out that the amount of ₱261,846.18 was already paid by Mega Farm, while the remaining ₱204,552.00 were fictitious sales transaction in favor of Mega Farm authored by Pacana. The LA noted the foregoing admission contradicted the memo from petitioner's corporate legal and the Notice of Decision dated October 19, 2015 that the total uncollected amount from Mega Farm as a result of Pacana's infractions is ₱466,368.18.<sup>28</sup>

*Fourth*, the LA held that Pacana admitted that he had unsettled deliverables in the amount of ₱204,552.00. This act could be a mere error or lapse of judgment on his part or at most a careless act. The penalty of dismissal is too harsh a penalty. Petitioner could have imposed the penalty of suspension with a severe warning.<sup>29</sup>

*Fifth*, the LA ruled that Pacana was not given an ample opportunity to be heard. The conduct of only one administrative hearing is insufficient because the charges against Pacana involved numerous documents and there was substantial evidentiary dispute. Not to mention that he was placed under preventive suspension which was even extended pending the administrative investigation. The LA declared that a formal hearing should have been conducted. Consequently, for violation of Pacana's right to due process, the LA ordered petitioner to pay him nominal damages in the amount of ₱30,000.<sup>30</sup>

The LA also awarded Pacana the following: (1) separation pay equivalent to one month for every year of service or tentatively computed in the total amount of ₱60,000 since reinstatement would just create an atmosphere of antipathy and antagonism,<sup>31</sup> (2) illegal deductions in the

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<sup>26</sup> Id. at 119-120.

<sup>27</sup> Id. at 120.

<sup>28</sup> Id. at 120-121.

<sup>29</sup> Id. at 122.

<sup>30</sup> Id. at 125-127.

<sup>31</sup> Id. at 125.



amount of ₱12,178;<sup>32</sup> and (3) 10% attorney's fees in the amount of ₱10,217.80 or for a total tentative amount of ₱112,395.88 because he was compelled to litigate to protect his rights. The total monetary award shall earn legal interest of 6% per annum from the finality of the decision until fully paid.

The LA dismissed Pacana's claim for moral and exemplary damages for lack of basis as well as the claims against Alova, Ribagorda, and Talja, Jr. for lack of merit.<sup>33</sup>

Petitioner appealed to the NLRC.

### **Ruling of the National Labor Relations Commission**

In its Resolution<sup>34</sup> dated October 26, 2016, the NLRC affirmed the LA's ruling with modification in that it deleted the award of illegal deduction in the amount of ₱12,178.08 since Pacana failed to allege and prove his entitlement for the same.<sup>35</sup>

The NLRC declared that Pacana holds a position of trust and confidence, but petitioner failed to establish the act that would justify its loss of trust warranting Pacana's dismissal from service.<sup>36</sup>

### **Ruling of the Court of Appeals**

In its assailed Decision,<sup>37</sup> the CA held that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that Pacana's dismissal on the ground of loss of trust and confidence has no basis in fact and in law. It agreed with the NLRC that petitioner cannot even make a stand on the exact and correct total uncollected amount from Mega Farm to which Pacana is allegedly liable. There was nothing on record that would show that petitioner investigated the individual transactions and corresponding amounts to give Pacana the opportunity to answer the charge of fictitious sales transactions. The CA found that Pacana was not given ample opportunity to be heard.<sup>38</sup>

Petitioner moved for reconsideration which the CA denied in its Resolution<sup>39</sup> dated May 8, 2019. Aggrieved, petitioner filed the present Petition for Review on *Certiorari*.

<sup>32</sup> Referring to Pacana's claim in his Amended Complaint that petitioner made illegal deductions from his January to August 2015 salary.

<sup>33</sup> *Rollo*, p. 127.

<sup>34</sup> *Id.* at 163-176.

<sup>35</sup> *Id.* at 175.

<sup>36</sup> *Id.* at 173.

<sup>37</sup> *Supra* note 2.

<sup>38</sup> *Rollo*, p. 306.

<sup>39</sup> *Supra* note 4.

### Arguments of the Petitioner

Petitioner alleged that it validly terminated Pacana's employment for loss of trust and confidence because of the following:

- (1) Pacana engaged in ghost deliveries. Mega Farm denied receipt of petitioner's product amounting to ₱204,522.00. It also denied the signatures appearing in the three corresponding invoices dated June 30, 2015 and July 13 and 18, 2015;<sup>40</sup> and
- (2) Pacana defalcated company funds. This refers to the seven other invoices/transactions of Mega Farm amounting to a total of ₱118,561.32 and ₱143,284.86, which amounts were already paid to Pacana as evidenced by OR Nos. 40016200 and 40018481. However, Pacana applied the payments to different invoices which evinces that he "defalcated the amount corresponding to the invoices for which he applied such payment."<sup>41</sup>

Petitioner argued that Pacana admitted the foregoing irregularities during the administrative investigation held on September 4, 2015. Pacana knew that he deviated from the proper procedure by observing FIFO. He applied FIFO to cover-up previous transactions of Mega Farm by not applying payments to the invoices on record appertaining to the particular deliveries of Mega Farm.<sup>42</sup> He also falsified and submitted fictitious invoices to reconcile with the amount in the ORs.<sup>43</sup>

Further, petitioner asserted that it complied with the twin requirements of notice and hearing. It issued a Memorandum dated August 28, 2015 to Pacana apprising him of the charges against him. It also served a Notice of Termination dated October 19, 2015 informing Pacana of his dismissal and the reasons for the same. Also, Pacana does not deny that he attended the September 4, 2015 hearing and that he was given the opportunity to defend himself.<sup>44</sup>

Furthermore, Pepsi reiterated that Pacana is a managerial employee reposed with managerial duties to oversee petitioner's business in his assigned area. His acts of falsifying check vouchers and official receipts and defalcating the amounts representative thereof, show that he had breached the trust and confidence reposed by petitioner.<sup>45</sup>

### Arguments of the Respondent

In his Comment,<sup>46</sup> Pacana asserted that he was illegally placed under preventive suspension because his presence does not pose a serious and

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<sup>40</sup> *Rollo*, pp. 17-18.

<sup>41</sup> *Id.* at 19.

<sup>42</sup> *Id.* at 15.

<sup>43</sup> *Id.* at 14-15.

<sup>44</sup> *Id.* at 21-29.

<sup>45</sup> *Id.* at 32.

<sup>46</sup> *Id.* at 381-423.



imminent threat to the life and property of petitioner and his co-workers.<sup>47</sup> As a result of his suspension, he alleged that was barred access to the company and was deprived of the documents/papers crucial to his defense during the administrative investigation. He also claimed that he was not paid his salary during the period of extension of his preventive suspension.<sup>48</sup> With respect to the irregularities attributed to him, Pacana argued that, first, he cannot be held liable for the uncollected ₱204,522.00 since it remained uncollected due to the fault of petitioner. The amount was never in his possession. Hence, to demand its turnover would be tantamount to extortion and unjust enrichment. As regards the other transactions amounting to ₱118,561.32 and ₱143,284.86, they were paid by Mega Farm and such payment went to the coffers of petitioner.<sup>49</sup> Accordingly, Pacana prayed that We dismiss the petition for review on *certiorari* for lack of merit.<sup>50</sup>

### Issue

The issue in this case is whether the CA erred in finding that Pacana was dismissed without just cause and without due process.

### Ruling of the Court

The petition is meritorious.

At the outset, a petition for review on *certiorari* under Rule 45 of the Rules of Court deals only with pure questions of law. We are not a trier of facts. However, case law as well as the Internal Rules of the Court<sup>51</sup> provide for exceptions or certain instances when We may determine factual issues, which are:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;

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<sup>47</sup> Id. at 398.

<sup>48</sup> Id. at 399-400.

<sup>49</sup> Id. at 401-402.

<sup>50</sup> Id. at 421.

<sup>51</sup> Rule 3, Section 4. *Cases When the Court May Determine Factual Issues*. – The Court shall respect the factual findings of lower courts, unless any of the following situations is present:

- (a) the conclusion is a finding grounded entirely on speculation, surmise and conjecture;
- (b) the inference made is manifestly mistaken;
- (c) there is grave abuse of discretion;
- (d) the judgment is based on a misapprehension of facts;
- (e) the findings of fact are conflicting;
- (f) the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee;
- (g) the findings of fact of the collegial appellate courts are contrary to those of the trial court;
- (h) said findings of fact are conclusions without citation of specific evidence on which they are based;
- (i) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;
- (j) the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record; and
- (k) all other similar and exceptional cases warranting a review of the lower courts' findings of fact (*Internal Rules of the Supreme Court, 2010*)

(4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>52</sup>

The foregoing exceptions apply in all cases which may be the subject of a petition for review on *certiorari* whether civil, criminal, tax, or labor,<sup>53</sup> such as the present petition.

Notably, jurisprudence further instructs that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.<sup>54</sup>

In *Maritime Factors, Inc. v. Hindang*,<sup>55</sup> the Court reversed the judgment of the CA, which affirmed the findings of fact and rulings of the NLRC and the LA, on the ground that these three tribunals did not give credence to the evidence on record. There, the employer denied the claim for death benefits filed by the brother of the deceased seafarer since the cause of death of the seafarer is suicide as evidenced by a photocopy of the fax transmission of the medical report of the Saudi Arabian doctor who immediately conducted an autopsy on the seafarer's body upon his death and the written report of his three fellow crew members. However, the lower courts disregarded the said documents and relied on the NBI post-mortem findings and certification that the seafarer died of Asphyxia by strangulation. We reviewed the uniform factual findings of the LA, NLRC, and the CA as it was clearly shown that they were arrived at with grave abuse of discretion, or arbitrarily, and in utter disregard of the evidence on record. We ultimately rendered judgment in favor of the employer, finding that the seafarer's death is attributable to his deliberate or willful act; hence, non-compensable.

<sup>52</sup> *Neri v. Yu*, G.R. No. 230831, September 5, 2018, citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990).

<sup>53</sup> *Id.*

<sup>54</sup> *Maritime Factors, Inc. v. Hindang*, G.R. No. 151993, October 19, 2011, citing *Colegio de San Juan de Letran-Calamba v. Villas*, 447 Phil. 692, 700 (2003).

See also *Maralit v. Philippine National Bank*, G.R. No. 163788, August 24, 2009, where We stated that labor officials commit grave abuse of discretion when their factual findings are arrived at arbitrarily or in disregard of evidence. Here, We affirmed the ruling of the CA, which in turn reversed the decisions of the NLRC and the LA because their factual findings were arrived at in disregard of the evidence.

<sup>55</sup> *Id.*

While *Maritime Factors, Inc.* involves a claim for death benefits, We see no reason not to apply it in this case, where it is apparent the labor tribunals and the CA committed grave abuse of discretion in finding that Pacana was dismissed without just cause and without due process despite the evidence on record showing the contrary. Thus, We shall review the factual findings of the courts *a quo*.

**Pacana was dismissed with just cause.**

Pacana was terminated from employment due to loss of trust and confidence. For his termination to be valid, two conditions must concur: (1) he must occupy a position of trust and confidence; and (2) there must be some basis for the loss of trust and confidence, that is, the employer must establish the existence of an act justifying the loss of trust of trust and confidence.<sup>56</sup> Both are present in this case.

Case law teaches that there are two classes of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees. The first class are 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 includes those who in the normal and routine exercise of their functions regularly handle significant amounts of money or property. Examples are cashiers, auditors, and property custodians.<sup>57</sup> Nevertheless, it is the nature and scope of the work and not the job title or designation which determines whether an employee holds a position of trust and confidence.<sup>58</sup> Pacana falls in the second class.

In *Digital Telecommunications Phils., Inc. v. Ayapana*,<sup>59</sup> We held that a Key Accounts Manager is a position of trust and confidence. There, the rank-and-file employee involved was tasked to solicit subscribers for Digitel's foreign exchange line and collect money for subscriptions as well as issue receipts therefor. Similarly, Pacana is a Key Accounts Manager of petitioner. His primary task is to make bookings for petitioner's products and to collect the sales from such bookings. Since Pacana handles company funds in the normal and routine exercise of his functions, it is evident that he occupied a position of trust and confidence.

Conversely, the LA, the NLRC, and the CA held that petitioner failed to establish that Pacana committed a willful act that would justify its loss of trust and confidence and merit dismissal from service.

<sup>56</sup> *Coca-Cola Femsal Philippines, Inc. v. Alpuerto*, G.R. No. 226089, March 4, 2020, citing *Bravo v. Urios College*, 810 Phil. 603 (2017).

<sup>57</sup> *University of Manila v. Pinera*, G.R. No. 227550, August 14, 2019, citing *Wesleyan University Phils. v. Reyes*, 740 Phil. 297, 311 (2014).

<sup>58</sup> *Coca-Cola Femsal Philippines, Inc. v. Alpuerto*, G.R. No. 226089, March 4, 2020, citing *Bravo v. Urios College*, 810 Phil. 603 (2017).

<sup>59</sup> 823 Phil. 228 (2018).

We disagree.

The record is replete with evidence that Pacana was guilty of fraud and by his own admission during the administrative investigation, he deviated from company procedure and falsified documents to conceal his misconduct.

As regards the first set of transactions referred in the NTE amounting to a total of ₱204,522.00, there is substantial proof that these are ghost deliveries. As evidenced by the notations found in the Trade Receivable Confirmation Form,<sup>60</sup> Sheila Lamat and Lucio Lina, representatives of Mega Farm, denied the delivery and receipt of petitioner's products covered by Invoice Nos. 369000049103, 369000049369, and 369000049452 as well as the signature and penmanship appearing thereon. The operators and driver of RVC Trucking and BJ & J Trucking also stated in their handwritten notes<sup>61</sup> that Pacana got the invoices from the TPD and when he returned them, they already contained the signatures of Mega Farm representatives. During the administrative investigation, Pacana stated that he did not know whether the products were delivered to Mega Farm. He did not check whether the stocks were duly received by the client. He also stated that the three (3) invoices were already lost.<sup>62</sup> When asked where petitioner's stocks/products are, Pacana answered that he does not know. Since Mega Farm denied receiving the products covered by the subject invoices, the amount of ₱204,522.00 remained uncollected.

With respect to the second and third set of transactions stated in the NTE amounting to ₱118,561.32 and ₱143,284.86, respectively, Pacana admitted that these were all paid by Mega Farm. However, he applied the payments to other transactions. He was aware that he deviated from the proper procedure by applying FIFO, but he still continued to practice the same. He also candidly admitted that he falsified documents. The pertinent portions of the administrative investigation are reproduced below:<sup>63</sup>

Jacky O.  
Bongo  
(JOB):

For item No. 2, Invoice No. 49230 and 49231 still unpaid in PCPPI transaction. But Shiela Lamat presented that they already paid this transaction and subsequently received by you based on the evidence OR No. 16200. There records already paid but as per our data dili ba bayad. It was found out that you attached different check voucher applied to different invoices.

Angelo  
T.Pacana  
(ATP):

**I admit na gi FIFO setting nko ni xa.**

<sup>60</sup> *Rollo*, p. 334.

<sup>61</sup> Id. at 342-343.

<sup>62</sup> Minutes of the Administrative Investigation dated September 4, 2015, pp. 4-6; *rollo*, pp. 352-354.

<sup>63</sup> Id. at 6-7; *rollo*, pp. 354-355.

Ed G.  
Matas  
(EGM): What is the correct procedure?

ATP: Delivery sa stock, settlement sa RSA,  
counter nako s outlet, himooan to nila  
check voucher

EGM: **Ano yung mali mong ginawa?**

ATP: **Hindi ko na-apply sa payment sa  
invoice na nasa record sa outlet**

EGM: Ano yung ginawa mo?

ATP: **I deviated.**

EGM: **By what**

ATP: **By applying payments to other  
transactions.**

EGM: **So ano ngayun ng nangyari?**

ATP: **Distorted na ang AR Balance sa outlet**

EGM: May ganito na bang transaction na  
ginawa mo?

ATP: Actually sir, when I started as Sales  
Trainee, may kasama din ako na sales  
trainee, during ng route kami napag-  
uspan naming ang ganyan.

EGM: Did you infrom your boss that unusual  
transaction

ATP: Yes sir, Ariel Maganto

EGM: **Kahit alam mo na mali pinagpatuloy  
mo pa rin**

ATP: **Yes sir**

x x x x

JOB: Item 3, per OR 40018481, notice that  
there is different (*sic*) check voucher  
applied to the invoices

GVT: **You falsified these documents?**

ATP: **Yes sir**

JOB: **Prepared by you?**

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ATP: **Yes mam.**<sup>64</sup> (Emphasis supplied)

Significantly, while Pacana argued that the administrative investigation was a sham because he was allegedly deprived of the papers or documents vital to his defense, he neither assailed the authenticity of the minutes of the meeting/transcript of the hearing nor retracted the declarations and admissions he made in the course thereof. Clearly, Pacana, by his own admissions, provided sufficient evidence of his deliberate acts that justify petitioner's loss of trust and confidence.

More, the records showed that the Office of the City Prosecutor of Cagayan de Oro, in its Resolution<sup>65</sup> dated September 26, 2016, found probable cause against Pacana for two counts of Estafa under Article 315, 1(b)<sup>66</sup> of the Revised Penal Code and 2 counts of Falsification of Commercial Document under Article 172<sup>67</sup> of the same Code. The Investigating Prosecutor was convinced that Pacana misappropriated or converted to his personal gain petitioner's products which he undertook to sell as KAM or malversed the proceeds of its sale which prejudiced petitioner in the total amount of ₱466,368.18. To conceal his fraudulent act, Pacana falsified invoice numbers just to reconcile with the amount reflected in the vouchers.

Taken in totality, petitioner had proven by substantial evidence that Pacana, by his fraudulent acts, willfully breached the trust and confidence reposed on him.

Meanwhile, the claim of Pacana that what triggered the administrative case against him was his counsel's letter to Alova deserves scant consideration. We find that this is a mere coincidence, which does not taint the subsequent administrative investigation conducted against him. Pacana failed to prove that petitioner, Alova, Ribagorda, or Talja merely fabricated or orchestrated the irregularities imputed to him in light of the evidence presented and his acknowledgment of his own misconduct during the administrative investigation.

As to the first transactions referred in the NTE, Pacana argued that the amount of ₱204,522.00 remain uncollected because the Charge Invoice

<sup>64</sup> Id.

<sup>65</sup> Id. at 369-377.

<sup>66</sup> Estafa with abuse of confidence – With unfaithfulness or abuse of confidence, namely:  
x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

<sup>67</sup> Article 172. *Falsification by private individual and use of falsified documents.* – The penalty of *prisión correccional* in its medium and maximum periods and a fine of not more than One million pesos (P1,000,000) shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; x x x.

Transmittal Form was in the possession of petitioner as it is among the documents taken away from him when he was preventively suspended. Yet, during the administrative investigation, Pacana did not raise this issue and candidly admitted that he does not know whether the products worth ₱204,522.00 were indeed delivered, as in fact, Mega Farm denied the receipt of the same. He also stated that he lost the three invoices covering the ₱204,522.00 delivery. Thus, the non-payment of the ₱204,522.00 was attributable to Pacana and not petitioner.

With respect to the second and third transactions referred in the NTE, Pacana harped on the alleged practice of applying FIFO in the settlement of accounts to justify his application of the check vouchers of Mega Farms to other invoices. However, Pacana's definition of FIFO is incorrect, so was his reliance to it. FIFO is an accounting term which means that an inventory is valued at the most recent cost, since the cost of the oldest inventory is charged out first, whether or not this accords with the actual flow.<sup>68</sup> Pacana's illegal act pertains to "lapping." Lapping occurs when an employee alters accounts receivable records in order to hide the theft of cash. This is done by diverting a payment from one customer, and then hiding the theft by diverting cash from another customer to offset the receivable from the first customer.<sup>69</sup> Here, since Pacana applied the payment of Mega Farm amounting to ₱118,561.32 and ₱143,284.86 or totaling to ₱261,846.18 to other invoices, he made it appear that Mega Farm still has a balance of ₱261,846.18. While the misapplied ₱261,846.18 went to the coffers of petitioner (although not credited to Mega Farm's account), a question arises as to the whereabouts of the payment corresponding to the invoices where Pacana applied the supposed payments of Mega Farm. Ultimately, petitioner is still prejudiced in the amount of ₱261,846.18 since it can no longer collect the same from Mega Farm. Mega Farm already paid the amount to Pacana but Pacana did not credit it to the former but to his other collectibles.

In this connection, We clarify that contrary to the ruling of the LA, there is no contradiction among the Position Paper of petitioner, the Notice of Decision sent to Pacana, and the Memorandum of petitioner's Corporate Legal as regards the amount of Pacana's liability. All of these documents stated that Pacana had an outstanding liability in the amount of ₱466,368.18. The breakdown of which are as follows: (a) ₱204,522.00 refers to the amount of ghost deliveries to Mega Farm and (b) ₱261,846.18 refers to aggregate amount that Mega Farm paid but Pacana did not apply to the corresponding invoices of Mega Farm. The seeming confusion arose from the wording of petitioner's Position Paper, which stated that, "[i]t bears emphasis that Pacana has outstanding liabilities to Pepsi in the total amount of ₱466,368.18 representing the total uncollected amount from Mega Farm but which during the administrative investigation, it was found out that the amount of ₱261,846.18 was already paid by Mega Farm; while the remainder amounting to ₱204,522.00 were fictitious sales transactions in

<sup>68</sup> Elliot, B. and Elliot, J. Financial Accounting and Reporting (19<sup>th</sup> ed.), p. 518.

<sup>69</sup> <<https://www.accountingtools.com/articles/what-is-lapping-fraud.html>>, last accessed on July 11, 2021.

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favor of Mega Farm authored by Pacana x x x.”<sup>70</sup> Indeed, as explained previously, the ₱261,846.18 was already paid by Mega Farm to Pacana, but the latter did not apply it to Mega Farm’s account. Instead, Pacana applied the payment to other invoices. This does not mean that Pacana is no longer liable for amount of ₱261,846.18. Since he applied Mega Farm’s payment to his other collectibles, the invoices of Mega Farm corresponding to the misapplied amount, now remain unpaid.

**Pacana was dismissed with due process.**

Pacana was dismissed from service with due process. He was served with the twin notice requirement informing him of the charges against him and decision of the petitioner. The NTE or the Memorandum<sup>71</sup> dated August 28, 2015 directed him to explain why he should not be disciplined for the irregularities he had committed. It also informed him of the administrative investigation, where he was advised to bring his witnesses and counsel to assist him. It cannot be said that Pacana was not given an ample opportunity to be heard just because only an administrative hearing was conducted. “Ample opportunity to be heard” is not limited to a formal hearing.”<sup>72</sup> “A trial-type hearing is not even essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based.”<sup>73</sup> Interestingly, at the end of the administrative investigation, Pacana even thanked petitioner in giving him an opportunity to be heard. He asked for a chance to solve the problem.<sup>74</sup> He cannot now claim that he was deprived of due process.

Pacana was subsequently served with a Notice of Decision<sup>75</sup> dated October 19, 2015, which he received on October 21, 2015. The said notice detailed the grounds for his dismissal from service.

**Pacana’s preventive suspension was justified.**

We reject Pacana’s claim that his preventive suspension was illegal. Suffice it to state that placing an employee under preventive suspension is allowed under Section 8, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended, provided that the employee’s continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers. Here, Pacana as a KAM has access to the booking/sales documents and receipts of petitioner, which are the very subject of the case against him. Petitioner cannot be faulted for protecting its property against loss or further tampering.

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<sup>70</sup> Rollo, p. 92.

<sup>71</sup> Id. at 323-324.

<sup>72</sup> *Perez and Doria v. Philippine Telegraph and Telephone Company*, 810 Phil. 603, 609 (2009).

<sup>73</sup> Id. at 610, citing *Autobus Workers’ Union v. NLRC*, 353 Phil. 419 (1998).

<sup>74</sup> Minutes of the Administrative Investigation, p. 8; rollo, p. 356.

<sup>75</sup> Rollo, pp. 326-333.

The management prerogative of placing an employee under preventive suspension is however limited to a maximum duration of 30 days. In case of extension of the period of suspension, the employer must pay the wages and other benefits due to the worker. Pacana argued that he was not paid during the extension of his preventive suspension. However, We find that this is the first time that Pacana raised this argument. We note that in his Amended Complaint and Position Paper, he merely stated that the extension of his preventive suspension amounted to constructive dismissal. It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel. To consider the alleged fact and argument belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.<sup>76</sup>

Notably, while the right of the employer to freely select or discharge his/her employees is subject to regulation by the State in the exercise of its police power, there is an equally established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him/her.<sup>77</sup>

In fine, We reverse the assailed Decision of the CA and dismiss Pacana's Amended Complaint for lack of merit.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated August 31, 2018 and the Resolution dated May 8, 2019 of the Court of Appeals in CA-G.R. SP No. 07889-MIN are **REVERSED** and **SET ASIDE**, and a new one is entered **DISMISSING** the Amended Complaint of Angelo T. Pacana for lack of merit.

**SO ORDERED.**

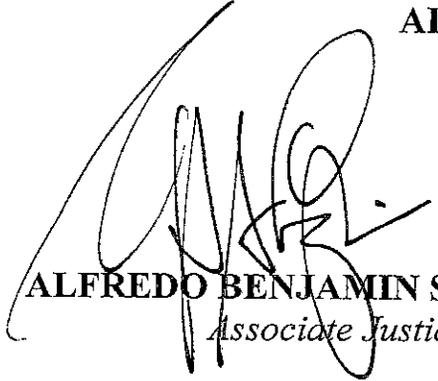
  
**ROSMARID D. CARANDANG**  
*Associate Justice*

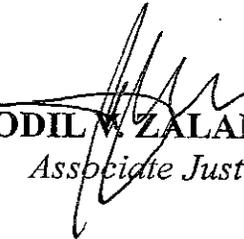
<sup>76</sup> *Guerrero v. Philippine Transmarine Carriers, Inc.*, G.R. No. 222523, October 3, 2018.

<sup>77</sup> *SM Development Corp. v. Ang*, G.R. No. 220434, July 22, 2019.

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**RODIL W. ZALAMEDA**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

