



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

JENNIFER C. LAGAHIT,
 Petitioner,

G.R. NO. 177680

Present:

-versus -

SERENO, C.J.,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 BERNABE, JJ.:

**PACIFIC CONCORD CONTAINER
 LINES/MONETTE CUENCA
 (BRANCH MANAGER),**
 Respondents.

Promulgated:

JAN 13 2016

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DECISION

BERSAMIN, J.:

We resolve the appeal of petitioner Jennifer Lagahit from the decision promulgated on May 10, 2006,¹ whereby the Court of Appeals (CA) disposed in CA-G.R. SP No. 00991 entitled *Pacific Concord Container Lines and Monette Cuenca v. National Labor Relations Commission, Fourth Division, and Jennifer Lagahit*, as follows:

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED and the assailed Decision dated December 15, 2004 promulgated by the National Labor Relations Commission, Fourth Division, Cebu City, in NLRC Case No. V-000529-2003/RAB Case No. VII-11-2271-2002, as well as the Resolution dated May 25, 2005 are hereby REVERSED and SET ASIDE. Petitioner is ORDERED to pay private respondent the amount of ₱25,000.00 as nominal damages. Further, the preliminary injunction issued by this Court is likewise made permanent.

No pronouncement as to costs.

SO ORDERED.²

¹ *Rollo*, pp. 33-44; penned by Associate Justice Enrico A. Lanzanas (retired), with Associate Justice Pampio A. Abarintos (retired) and Associate Justice Apolinario D. Bruselas, Jr. concurring.

² *Id.* at 43.

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Antecedents

In February 2000, respondent Pacific Concord Container Lines (Pacific Concord), a domestic corporation engaged in cargo forwarding,³ hired the petitioner as an Account Executive/Marketing Assistant.⁴ In January 2002, Pacific Concord promoted her as a sales manager with the monthly salary rate of ₱25,000.00, and provided her with a brand new Toyota Altis plus gasoline allowance.⁵ On November 8, 2002, she reported for work at 9:00 a.m. and left the company premises at around 10:30 a.m. to make client calls. At 1:14 p.m. of that day, she received the following text message from respondent Monette Cuenca, to wit:

TODAY U R OFFICIALY NT CONNECTED WITH US.
Sender: MONETTE
+639173215330
Sent: 8-Nov-2002
13:14:01⁶

Cuenca also sent a text message to Roy Lagahit, the petitioner's husband, as follows:

IBALIK KARON DAYON ANG AUTO OG PALIHUG LANG
KO OG KUHA SA NYONG BUTANG OG DI NAKO MO
STORYA NI JENIFER. IL WAIT⁷
Sender: MONETTE
+639173215330
Sent: 8-Nov-2002
12:50:54⁸

The petitioner immediately tried to contact Cuenca, but the latter refused to take her calls. On the same day, the petitioner learned from clients and friends that the respondents had disseminated notices, flyers and memos informing all clients of Pacific Concord that she was no longer connected with the company as of November 8, 2002.⁹ Pacific Concord also caused the publication of the notice to the public in the *Sunstar Daily* issue of December 15, 2002.¹⁰

On November 13, 2002, the petitioner sent a letter to Pacific Concord,¹¹ which reads as follows:

³ Id. at 34.

⁴ Id. at 14.

⁵ Id. at 72.

⁶ Id. at 16, 52.

⁷ Translated as: "Return the car right now and please get your things, I will no longer talk with Jenifer. I'll wait." (See id. [at 16,52])

⁸ Id.

⁹ Id. at 185.

¹⁰ Id. at 186.

¹¹ Id. at 152.

November 13, 2002

Branch Manager
PACIFIC CONCORD CONTAINER LINES, INC.
N&N Building A.C. Cortes Mandaue City

Attention: Monette Cuenca

Madam,

In connection with your text message and flyers advising me that you have terminated my employment, please arrange and expedite settlement of all benefits due to me under the law.

In as much as the facts of my termination has not been formally detailed to me, I believe I was deprived of the due process that would have given me the chance to formally present my side. It startled me at first but I have accepted my fate. However, **we both have names and reputations to protect**. Factual incidents made as basis of my termination can help us mutually clear our names.¹²

Thank you,

(Sgd)
JENNIFER LAGAHIT

Cuenca replied to the letter on November 25, 2002,¹³ advising the petitioner thusly:

25 November 2002

TO : MS. JENNIFER C. LAGAHIT
FM : PACIFIC CONCORD CONTAINER LINES, INC.
CEBU BRANCH

RE : UNCOLLECTED ACCOUNTS

Herewith is the list of your uncollected accounts as of November 22, 2002.

Kindly take note that you have personally guaranteed the above accounts. Moreover, you have reported it as your income and you have already availed the commission due for the above shipments.

We are therefore holding the release of the monies due to you until we can collect the above accounts.

X X X X

(Sgd)
MONETTE G. CUENCA
Branch Manager

¹² Bold underscoring is part of the original text.

¹³ *Rollo*, p. 279.

On November 26, 2002, the petitioner filed her complaint for constructive dismissal in the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in Cebu City.¹⁴

In their position paper,¹⁵ the respondents denied having terminated the petitioner despite the fact that there were valid grounds to do so. They insisted that the petitioner had betrayed the trust and confidence reposed in her when she: (a) used the company-issued vehicle for her own personal interest; (b) failed to achieve her sales quota, and to enhance and develop the Sales Department; (c) enticed her marketing assistant, Jo Ann Otrera, to resign and join her in transferring to another forwarding company; (d) applied for other employment during office hours and using company resources; (e) solicited and offered the services of Seajet International, Inc. during her employment with Pacific Concord; (f) received a personal commission from Wesport Line, Inc. for container shipments; and (g) illegally manipulated and diverted several containers to Seajet International.¹⁶

The respondents claimed that Pacific Concord even issued at one time a memorandum to the petitioner¹⁷ to cite her insubordination in refusing to participate in the company's teambuilding activity; that in the two meetings held on September 27, 2002¹⁸ and October 9, 2002,¹⁹ she was afforded the chance to explain her side on the reports that she was looking for other employment, but she dismissed the reports as mere speculations and assured them of her loyalty; that although valid grounds to terminate the petitioner already existed, they did not dismiss her; and that she voluntarily resigned on November 13, 2002 after probably sensing that the management had gotten wind of her anomalous transactions.²⁰ They submitted affidavits to support their allegations.²¹

Ruling of the Labor Arbiter

Labor Arbiter Julie C. Rendoque rendered a decision on June 9, 2003, declaring that the respondents were not able to prove that the petitioner had committed acts constituting betrayal of trust; that they had not informed her prior to her dismissal of the offenses she had supposedly committed;²² and that owing to the illegality of the dismissal, they were liable for backwages and separation pay, to wit:

¹⁴ Id. at 49.

¹⁵ Id. at 283-306.

¹⁶ Id. at 288-290.

¹⁷ Id. at 251.

¹⁸ Id. at 148-149.

¹⁹ Id. at 150-151.

²⁰ Id. at 287.

²¹ Id. at 143-145.

²² Id. at 97-98.

WHEREFORE, VIEWED FROM THE FOREGOING, judgment is hereby rendered declaring herein **respondents GUILTY of ILLEGALLY DISMISSING complainant from her employment.** Consequently, respondents **PACIFIC CONCORD CONTAINER LINES/MONEETTE [sic] CUENCA** are hereby ordered to pay, jointly and severally, **complainant JENNIFER C. LAGAHIT with the following:**

a.	Separation Pay	₱ 25,000.00
b.	Backwages	<u>₱175,000.00</u>
	TOTAL=====	₱200,000.00
		VVVVVVV

within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.

Other claims are DISMISSED for lack of merit.

SO ORDERED.²³

Ruling of the NLRC

On appeal, the NLRC affirmed the ruling of the Labor Arbiter with modification, *viz.*:

WHEREFORE, the Decision dated June 9, 2002 of the Labor Arbiter is **MODIFIED** by **AFFIRMING** his finding that the respondents are guilty of illegally dismissing the complainant from her employment, but **MODIFYING** his award for separation pay computed at one (1) month salary for every year of service, a fraction of at least six (6) months being considered one (1) year from the complainant's first day of employment in February 2000 UNTIL THE FINALITY OF THIS DECISION; and backwages starting November 8, 2002 UNTIL THE FINALITY OF THIS DECISION.

The appeal of the respondents is dismissed for lack of merit.

X X X X

SO ORDERED.²⁴

The NLRC found that the respondents did not observe due process in terminating the services of the petitioner; and rejected their claim that she had resigned on November 13, 2002.²⁵

The respondents filed their motion for reconsideration,²⁶ but the NLRC denied their motion on May 25, 2005.²⁷

²³ Id. at 100.

²⁴ Id. at 194.

²⁵ Id. at 192-193.

²⁶ Id. at 195-202.

²⁷ Id. at 206-207.

Decision of the CA

On May 10, 2006, the CA promulgated its decision granting the respondents' petition for *certiorari*, and annulling the decision of the NLRC. It pronounced that there were sufficient justifications to terminate the petitioner's services for disloyalty and willful breach of trust, *viz.*:

In the present case, it is clear that Lagahit deliberately committed successive acts which translated to blatant disloyalty and willful breach of the trust reposed upon her by Pacific, and acts which, in the final reckoning are obviously detrimental to the material interest of the company under which she is employed. From January 2002, Lagahit was found to have committed a series of willful acts which may reasonably and expectedly arouse Pacific's distrust and a consequent finding of Lagahit's unfitness to continue her employment, thus: (a) Lagahit has been persistent in applying for employment in other competing cargo-forwarding companies; (b) Lagahit even enticed her Marketing Assistant to join her quest to find another job outside Pacific and at a competing company at that; (c) Lagahit rendered actual services at competing companies for a fee and commission while she was still under the employee of Pacific and was regularly receiving salary therefrom; and (d) Lagahit brought and referred prospective shipping clients to other cargo-forwarding corporations. Verily, the commission of the foregoing acts vividly demonstrated, not only, Lagahit's disloyalty and unfaithfulness to her employer, but likewise her blatant ingratitude to the company from which she derives her regular source of livelihood, considering that, incidentally, the performance of these disloyal and inimical acts commenced when Lagahit was just newly promoted to the higher post of Sales Manager at Pacific.

x x x x

Lagahit is not an ordinary rank-and-file employee of Pacific, but contrarily, is by far an employee authorized to formulate significant company plans and policies, and whose designation and basic functions, on its face, betrays the fact that too much trust and confidence was indeed reposed upon her. As borne by the records, Lagahit occupies the responsible post of Sales Manager, and as such her basic functions, *inter alia*, consists [sic] of the following: (1) formulation of strategic action and marketing plans to make the Pacific Sales Department successful, (2) implementation of marketing strategies to help Pacific Sales team achieve its periodic target, (3) direct transaction with various shipping clients, and (4) in having a free hand in dealing with various shipping lines. Quite significantly, Lagahit was given sensitive and responsible functions that goes deep into the financial success, or otherwise ruin, of Pacific, which is more than a clear testament to the fact her position is accorded with trust and confidence.

Such being the case, Lagahit owes it to herself and to Pacific to work religiously and with undivided time and attention to promote the latter's business interests. Unfortunately, such was not the case. As it turned out, Lagahit made a consistent attempt to seek employment at other cargo forwarding companies that directly compete with the business of

Pacific, obviously, constituting a willful breach of trust consequentially resulting to Pacific's loss of confidence in Lagahit's loyalty and efficacy. Worse, Lagahit conducted her job applications during office hours when she should have been rendering her services for Pacific. Furthermore, the height of her disloyalty exhibited its face when Lagahit began to actually render services and refer prospective shipping clients to other competing cargo-forwarding companies for a fee and commission, at the same time employed with Pacific and receiving regular salary therefrom.²⁸

Nonetheless, the CA held that despite the existence of a valid cause to terminate her employment Pacific Concord was liable for nominal damages of ₱25,000.00 for denying the petitioner's right to due process.²⁹

The CA denied the petitioner's motion for reconsideration on March 30, 2007.³⁰ Hence, this appeal.

Issues

The petitioner imputes the following errors to the CA, namely:

I

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING UNDUE WEIGHT AND CREDENCE TO THE RESPONDENTS' LATEST DEFENSE, THEREBY DISTURBING THE FINDINGS OF FACT OF THE LABOR ARBITER AND NLRC WHO SHARE THE SAME FINDINGS;

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING MS. LAGAHIT TO HAVE BEEN VALIDLY DISMISSED ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE;

III

PETITIONER IS ENTITLED TO HER CLAIMS FOR SEPARATION PAY AND BACKWAGES³¹

The petitioner argues that the CA erroneously concluded that she had been dismissed considering that the respondents had initially denied her having dismissed her, and claimed instead that she had voluntarily resigned; that the Labor Arbiter and the NLRC had correctly concluded that she had not resigned, but had been illegally terminated without substantive and procedural due process;³² and that the evidence adduced against her that the

²⁸ Id. at 39-41.

²⁹ Id. at 43.

³⁰ Id. at 46-47.

³¹ Id. at 23.

³² Id. at 24.

CA relied upon to sufficiently establish her breach of trust were speculative and hearsay.³³

In contrast, the respondents aver that:(a) the petitioner occupied a position of trust and confidence that she breached by working for, serving, and soliciting clients in behalf of competing cargo-forwarding companies using the respondents' resources;³⁴ (b) she had not explained her meetings, job applications and moonlighting with competing companies;³⁵ (c) the sworn statements narrating her breach of trust and disloyalty to the company submitted by the respondents substantially justified her dismissal on the ground of loss of trust and confidence;³⁶ and (d) her resignation letter confirmed that she no longer desired to work for the company considering that she succeeded in landing a job with Seajet Lines in just three days after her resignation.³⁷

Did the petitioner resign as sales manager of Pacific Concord? Did Pacific Concord have sufficient grounds to terminate her for breach of trust and confidence under Article 282³⁸ of the *Labor Code*?

Ruling of the Court

We find merit in the appeal.

I

Lagahit did not resign from her employment

On the first issue, we find in favor of the petitioner.

In cases of unlawful dismissal, the employer bears the burden of proving that the termination was for a valid or authorized cause, but before the employer is expected to discharge its burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of her dismissal from employment.³⁹ In this case, the petitioner proved the overt acts committed by the respondents in abruptly terminating her employment through the text messages sent by Cuenca to the petitioner and her husband, as well as the notices distributed to the clients and published in the *Sun Star*. It is notable that the respondents did not deny

³³ Id. at 27.

³⁴ Id. at 322.

³⁵ Id. at 323.

³⁶ Id. at 324.

³⁷ Id. at 326.

³⁸ Now Article 297 pursuant to R.A. No. 10151 (*See* DOLE Department Advisory No. 01, series of 2015)

³⁹ *Noblejas v. Italian Maritime Academy of the Phils., Inc.*, G.R. No. 207888, June 9, 2014, 725 SCRA 570, 579; *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244-256.

or controvert her evidence on the matter. Thereby, she showed Pacific Concord's resolve to terminate her employment effective November 8, 2002.

On the other hand, the respondents' insistence that the petitioner had resigned was bereft of factual support. As a rule, the employer who interposes the resignation of the employee as a defense should prove that the employee voluntarily resigned.⁴⁰ A valid resignation is the voluntary act of an employee who finds herself in a situation where she believes that personal reasons cannot be sacrificed in favor of the exigency of the service and that she has no other choice but to disassociate herself from employment.⁴¹ The resignation must be unconditional and with a clear intention to relinquish the position.⁴² Consequently, the circumstances surrounding the alleged resignation must be consistent with the employee's intent to give up the employment.⁴³ In this connection, the acts of the employee before and after the resignation are considered to determine whether or not she intended, in fact, to relinquish the employment.⁴⁴

The facts and circumstances before and after the petitioner's severance from her employment on November 8, 2002 did not show her resolute intention to relinquish her job. Indeed, it would be unfounded to infer the intention to relinquish from her November 13, 2002 letter, which, to us, was not a resignation letter due to the absence therefrom of anything evincing her desire to sever the employer-employee relationship. The letter instead presented her as a defenseless employee unjustly terminated for unknown reasons who had been made the subject of notices and flyers informing the public of her unexpected termination. It also depicted her as an employee meekly accepting her unexpected fate and requesting the payment of her backwages and accrued benefits just to be done with the employer.

For sure, to conclude that the petitioner resigned because of her letter of November 13, 2002 is absurd in light of the respondents having insisted that she had been terminated from her employment earlier on November 8, 2002. In that regard, every resignation presupposes the existence of the employer-employee relationship; hence, there can be no valid resignation after the fact of termination of the employment simply because the employee had no employer-employee relationship to relinquish.

⁴⁰ *Central Azucarera de Bais v. Siason*, G.R. No. 215555, July 29, 2015; *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. July 18, 2011, 654 SCRA 18, 29; *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, G.R. No. 177114, April 13, 2010, 618 SCRA 208, 215; *Vicente v. Court of Appeals*, G.R. No. 175988, August 24, 2007, 531 SCRA 240, 250.

⁴¹ *Globe Telecom v. Crisolago*, G.R. No. 174644, August 10, 2007, 529 SCRA 811, 819; *Alfaro v. Court of Appeals*, G.R. No. 140812, August 28, 2001, 363 SCRA 799, 808.

⁴² *Blue Angel Manpower and Security Services v. Court of Appeals*, G.R. No. 161196, July 28, 2008, 560 SCRA 157, 164.

⁴³ *Malig-on v. Equitable General Services, Inc.*, G.R. No. 185269, June 29, 2010, 622 SCRA 326, 329.

⁴⁴ *Fortuny Garments v. Castro*, G.R. No. 150668, December 15, 2005, 478 SCRA 125, 130.

II**Lagahit did not breach her employer's trust;
her dismissal was, therefore, illegal**

Having settled the issue of the dismissal in the petitioner's favor, we next resolve whether or not the CA correctly ruled the petitioner's dismissal as justified on the ground of breach of trust and confidence.

The petitioner assails the CA for upholding her termination based on speculations and hearsay, and for entirely disregarding the factual findings in her favor of the LA and the NLRC.⁴⁵ In contrast, the respondents maintain that the allegation of disloyalty against her was substantiated by the affidavits they had submitted that the CA relied on to sustain the validity of her dismissal.⁴⁶

We agree with the petitioner.

To justify the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause, and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving the validity of the dismissal with clear, accurate, consistent, and convincing evidence.⁴⁷ The employer's case succeeds or fails on the strength of its evidence, not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them.⁴⁸

In its decision, the CA recognized the wide latitude of discretion given to the management in terminating managers for breach of trust and confidence. It declared Pacific Concord to have justifiably resorted to terminating the petitioner's employment as a measure of self-preservation in view of her repeated acts of disloyalty that were prejudicial to its interest.⁴⁹

The CA was thereby gravely mistaken.

Article 282(c)⁵⁰ of the *Labor Code* authorizes an employer to dismiss an employee for committing fraud, or for willful breach of the trust reposed

⁴⁵ *Rollo*, p. 25.

⁴⁶ *Id.* at 324.

⁴⁷ *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 205.

⁴⁸ *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, G.R. No. 185335, June 13, 2012, 672 SCRA 375, 394.

⁴⁹ *Rollo*, pp. 39-42.

⁵⁰ Now Article 297(c).

by the employer. However, loss of confidence is never intended to provide the employer with a blank check for terminating its employee.⁵¹ For this to be a valid ground for the termination of the employee, the employer must establish that: (1) the employee must be holding a position of trust and confidence; and (2) the act complained against would justify the loss of trust and confidence.⁵²

There are two classes of employees vested with trust and confidence. To the first class belong the managerial employees or 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. Cashiers, auditors, and property custodians are some of the employees in the second class.⁵³

The petitioner discharged the following duties and responsibilities as sales manager, to wit:

SALES MANAGER

Job Description

- Promotes services being offered by the company
- Must generate new accounts for the company
- Responsible for motivating the Sales Team to hit their respective QUOTA and TARGET
- Responsible for the Strategic Planning and Action Plan for the Sales Department
- Should submit Production Report on a weekly basis for the Sales Department specifying each sales contribution for the week
- Responsible in inspiring and developing confidence of the Sales Team
- Responsible in promoting, formulating, implementing market strategy that will help achieve the target of the Sales Department
- Coordinates regularly with the Sales people on their day to day activities regarding rates and operational matters
- Keeps track all sales transactions, assist the sales people in their problem regarding rates and operational matters
- Gathers and provides sales leads, replied to agents' inquiries regarding sales matters
- Transacts rates and other related cargo needs with the shipping lines
- Promotes and maintains good relations with clients
- Prepares quotation to the clients for intended shipments

⁵¹ *Mabeza v. National Labor Relations Commission*, G.R. No. 118506, April 18, 1997, 271 SCRA 670, 682.

⁵² *Bristol Myers Squibb (Phils.) v. Baban*, G.R. No. 167449, December 17, 2008, 574 SCRA 198, 205-206.

⁵³ *Id.*

- Performs other tasks, duties and responsibilities as may be assigned from time to time
- Reports directly to the Branch Manager⁵⁴

Her position as sales manager did not immediately make the petitioner a managerial employee. The actual work that she performed, not her job title, determined whether she was a managerial employee vested with trust and confidence.⁵⁵ Her employment as sales manager was directly related with the sales of cargo forwarding services of Pacific Concord, and had nothing to do with the implementation of the management's rules and policies. As such, the position of sales manager came under the second class of employees vested with trust and confidence. Therein was the flaw in the CA's assailed decision. Although the mere existence of the basis for believing that the managerial employee breached the trust reposed by the employer would normally suffice to justify a dismissal,⁵⁶ we should desist from applying this norm against the petitioner who was not a managerial employee.

At any rate, the employer must present clear and convincing proof of an actual breach of duty committed by the employee by establishing the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest.⁵⁷ The required amount of evidence for doing so is substantial proof. With these guidelines in mind, we cannot hold that the evidence submitted by the respondents (consisting of the three affidavits) sufficiently established the disloyalty of the petitioner. The affidavits did not show how she had betrayed her employer's trust. Specifically, the affidavit of Russell B. Noel⁵⁸ only stated that she and her husband Roy had met over lunch with Garcia Imports and a certain Wilbur of Sea-Jet International Forwarder in the first week of November 2002. To conclude that such lunch caused Pacific Concord to lose its trust in the petitioner would be arbitrary. Similarly, the affidavit of Mark Anthony G. Lim⁵⁹ was inconclusive. Therein affiant Lim deposed:

1. That I was present when Ms. Vivian Veloso, former Branch Manager of Westport Line Inc., disclosed to Ms. Monette Cuenca and Ms. Mitzie Ibona on November 11, 2002 at the office of Admiral Overseas Shipping Corp., where she is presently employed with, that Ms. Jennifer C. Lagahit received a personal commission or rebate for the full container shipments moved via Westport Line Inc. in the amount of USD 50.00 per container.⁶⁰

⁵⁴ *Rollo*, p. 236.

⁵⁵ *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 558 SCRA 590, 605.

⁵⁶ *Grand Asian Shipping Lines v. Galvez*, G.R. No. 178184, January 29, 2014, 715 SCRA 1, 27; *Mendoza v. HMS Credit Corporation*, G.R. No. 187232, April 17, 2013, 696 SCRA 794, 804 citing *Etcuban v. Sulpicio Lines*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 478.

⁵⁷ *Wah Yuen Restaurant v. Jayona*, G.R. No. 159448, December 16, 2005, 478 SCRA 315-319; *Estiva v. National Labor Relations Commission*, G.R. No. 95145, August 5, 1993, 225 SCRA 169, 177.

⁵⁸ *Rollo*, p. 143.

⁵⁹ *Id.* at 144.

⁶⁰ *Id.*

The foregoing statement was bereft of the particulars about how the petitioner had entered into the transaction, as well as about the prejudice that Pacific Concord had suffered from her receipt of the commission. Also, that this information was made known to Cuenca three days after she had already terminated the petitioner belied the relevance of the information to the termination.

In her affidavit,⁶¹ Jo Ann Otrera declared that the petitioner had called other forwarding companies to inquire about any vacant positions, and that the petitioner had enticed her to transfer to another company. However, such declarations did not provide the sufficient basis to warrant the respondents' loss of confidence in the petitioner. We stress that although her supposedly frantic search for gainful employment opportunities elsewhere should be considered as inappropriate for being made during office hours, the same did not constitute willful breach of trust and confidence of the employer. The loss of trust and confidence contemplated under Article 282(c) of the *Labor Code* is not ordinary but willful breach of trust. Verily, the breach of trust is willful if it is intentional, knowing, deliberate and without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.⁶² Most importantly, the cause of the loss of trust must be work-related as to expose the employee as unfit to continue working for the employer.⁶³

Considering that the petitioner's duties related to the sales of forwarding services offered by Pacific Concord, her calling other forwarding companies to inquire for vacant positions did not breach the trust reposed in her as sales manager. Such act, being at worst a simple act of indiscretion, did not constitute the betrayal of trust that merited the extreme penalty of dismissal from employment. We remind that dismissal is a penalty of last resort, to be meted only after having appreciated and evaluated all the relevant circumstances with the goal of ensuring that the ground for dismissal was not only serious but true.⁶⁴

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on May 10, 2006 by the Court of Appeals; **REINSTATES** the decision of the National Labor Relations Commission rendered on December 15, 2004 subject to the **MODIFICATION** that the total monetary awards shall

⁶¹ Id. at 145.

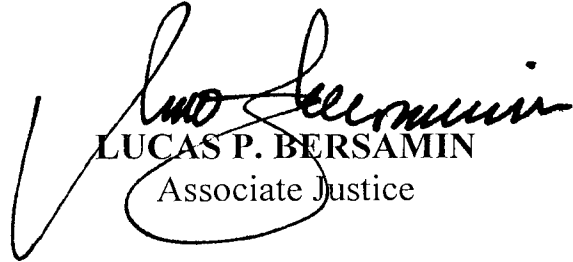
⁶² *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, June 22, 2011, 652 SCRA 463, 471 citing *Tiu v. National Labor Relations Commission*, G.R. No. 83433, November 12, 1992, 215 SCRA 540, 547.

⁶³ *Alvarez v. Golden Tri Bloc, Inc.*, G.R. No. 202158, September 25, 2013, 706 SCRA 406, 418-419; *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 325.

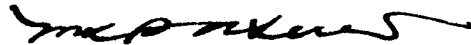
⁶⁴ *Dongon v. Rapid Movers and Forwarders Co., Inc.*, G.R. No. 163431, August 28, 2013, 704 SCRA 56, 69.

earn interest at the rate of 6% *per annum* from the finality of this decision until full satisfaction; and **ORDERS** the respondents to pay the costs of suit.

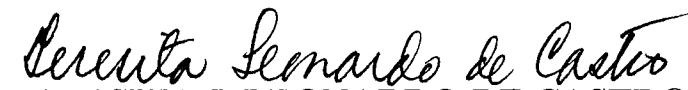
SO ORDERED.

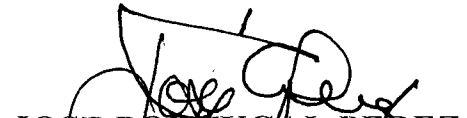

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
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.


MARIA LOURDES P. A. SERENO
Chief Justice