Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TABUK MULTI-PURPOSE COOPERATIVE, INC. (TAMPCO), JOSEPHINE DOCTOR, and WILLIAM BAO-ANGAN, *Petitioners,*	**G.R. No. 203005** Present: CARPIO, *Chairperson,* BRION,* DEL CASTILLO, MENDOZA, *and* LEONEN,** *JJ.*
- versus -	
MAGDALENA DUCLAN, *Respondent.*	Promulgated: 14 MAR 2018

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DECISION

DEL CASTILLO, *J.*:

An employee's willful and repeated disregard of a resolution issued by a cooperative's board of directors (BOD) declaring a moratorium on the approval and release of loans, thus placing the resources of the cooperative and ultimately the hard-earned savings of its members in a precarious state, constitutes willful disobedience which justifies the penalty of dismissal under Article 282 of the Labor Code.

Assailed in this Petition for Review on *Certiorari*[1] are: 1) the September 15, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114753, which reversed and set aside the November 25, 2009 Decision[3] and April 8, 2010 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC CA-No. 050848-06 (RA-06-09); and 2) the CA's July 11, 2012 Resolution[5] denying reconsideration of its assailed Decision.

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* On leave.
** On official leave.
1 *Rollo*, pp. 10-34.
2 CA *rollo*, pp. 449-467; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S.E. Veloso and Edwin D. Sorongon.
3 NLRC Records, pp. 584-593; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.
4 Id. at 639-641.
5 CA *rollo*, pp. 582-583.

Factual Antecedents

Petitioner Tabuk Multi-Purpose Cooperative, Inc. (TAMPCO) is a duly registered cooperative based in Tabuk City, Kalinga. It is engaged in the business of obtaining investments from its members which are lent out to qualified member-borrowers. Petitioner Josephine Doctor is TAMPCO Chairperson and member of the cooperative's BOD, while petitioner William Bao-Angan is TAMPCO Chief Executive Officer.

Respondent Magdalena Duclan was employed as TAMPCO Cashier on August 15, 1989. In 2002, TAMPCO introduced Special Investment Loans (SILs) to its members and prospective borrowers. Among those who availed themselves of the SILs were Brenda Falgui (Falgui) and Juliet Kotoken (Kotoken).[6]

In June 2003, the TAMPCO BOD issued Board Action (BA) No. 28 which limited the grant of SILs to ₱5 million and instructed management to collect outstanding loans and thus reduce the amount of loans granted to allowable levels. This was prompted by a cooperative report stating that too many SILs were being granted, the highest single individual borrowing reached a staggering ₱14 million, which thus adversely affected the cooperative's ability to grant regular loans to other members of the cooperative.[7] However, despite said board action, SILs were granted to Falgui and Kotoken over and above the ceiling set. This prompted the BOD to issue, on October 26, 2003, BA No. 55 completely halting the grant of SILs pending collection of outstanding loans.

Despite issuance of BA No. 55, however, additional SILs were granted to Falgui amounting to ₱6,697,000.00 and to Kotoken amounting to ₱3.5 million.[8] Eventually, Falgui filed for insolvency while Kotoken failed to pay back her loans.

On February 23, 2004, TAMPCO indefinitely suspended respondent and other cooperative officials pursuant to BA No. 73-03, and required them to replace the amount of ₱6 million representing unpaid loans as of February 21, 2004. On March 6, 2004, respondent's suspension was fixed at 15 days, and she was ordered to return to work on March 15, 2004.

The TAMPCO BOD then created a fact-finding committee (committee) to investigate the SIL fiasco.[9] Respondent and other TAMPCO employees were summoned to the proceedings and required to submit their respective answers to the committee.[10]

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6 Id. at 115.
7 NLRC Records, pp. 99, 102.
8 *Rollo*, p. 137.
9 Id. at 116.
10 Id. at 57-59, 85-86.

Respondent submitted to the committee an October 21, 2004 letter,[11] admitting that despite the issuance of BA No. 55, she and her co-respondents approved and released SILs, and that she acknowledged responsibility therefor.

After conducting hearings, the committee issued its Report on the Special Investment Loans,[12] which states as follows:

> x x x x
>
> a. There are loan notes which do not contain the signature of the spouse of the borrower as mandated under Chapter 10 of the Policy Manual. This is true in the loan notes of Monica Oras, and Juliet Kotoken for her loan application sometime on [sic] January 12, 2004;
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> b. Special loans were still granted even after the setting of the allowable ceiling on June 28, 2003 (BA No. 28) and even after the Board of Directors stopped the granting of the Special Investment Loan on October 26, 2003 (BA No. 55);
>
> c. Loans were released even there [sic] were lacking documents. The case of the SIL granted for example to Mrs. Juliet Kotoken and Mrs. Brenda Falgui on January 12, 2004 were released even without the required loan note. It was revealed that Mr. Peter Socalo prepared the voucher and Mrs. Aligo did the releasing of the amount upon the conformity of Mrs. Magdalena Duclan. The loan notes were made and executed later after the loans were also released;
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> d. Checks used to secure or postdated checks intended to pay the Special Investment loans were not presented for payment at the time that they fall [sic] due;
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> e. Extension of the term of the loan were done through the substitution of the checks without prior approval of the Board of Directors.
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> All the above findings were not denied and in fact respondents CEO Rev. Ismael Sarmiento admitted the charge against him. "Mea Culpa" x x x he said[,] but at the same time prayed for the Committee's and Board's understanding and compassion. Magdalena Duclan and Fruto Singwey admitted [their fault under] command responsibility for the action of their subordinates.
>
> All the other respondents invoked that they just [performed] their duties [or be charged with] insubordination x x x.
>
> To the issue of the missing check which was raised by Mr. Dulawon in the previous Board meetings, the committee heard again the side of the cashier [who] denied that the same is missing. Accordingly, the same was changed by Mrs. Brenda Falgui, or that a substitute check was issued by Mrs. Falgui. She [had a] conflicting statement before the Board when she stated that the amount belongs to Juliet's account.
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> CONCLUSION:

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11 Id. at 114.

12 Id. at 115-119.

> There was indeed an error, mistake, negligence or abuse of discretion that transpired in the grant of the special investment loans. x x x [T]here are violations of the policies or Board actions which should be dealt with[.] x x x.
>
> RECOMMENDATIONS:
>
> AS TO THE ACCOUNTABILITY
>
> x x x x
>
> Mrs. Magdalena Duclan
>
> The committee recommended that she will be immediately suspended without pay and for her to collect the SIL she [had] released even without the loan note and for her to account [for] or pay the missing value of the check bearing no. 00115533 in the amount of ₱1,500,000.00 [by] Dec. 31, 2004.
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> [For failure] to collect or account/pay [by then she] shall be [dismissed] from service with forfeiture of all benefits.
>
> She violated policies and Board actions, specially 28 and 55 in relation to the manual.[13]

On November 6, 2004, the BOD adopted the report of the committee and ordered that respondent be suspended from November 8 until December 31, 2004; respondent was likewise directed to collect, within the said period, the unauthorized SIL releases she made, otherwise she would be terminated from employment.[14]

Unable to collect or account for the ₱1.5 million as required, respondent was dismissed from employment. Thus, in a February 1, 2005 communication,[15] TAMPCO wrote:

> Anent your letter dated January 26, 2005, reiterating your plea for a reconsideration of your suspension for the reason that you were suspended twice on different days for the commission of the same offense, the following quoted paragraph was lifted from lines 339 through 350 of the minutes of the regular meeting of the TAMPCO BOD held on November 27, 2004, treating the matter of your concern for your information, to wit:
>
> > *"x x x CEO Sarmiento and Cashier Duclan [requested] reconsideration of their suspension pointing out that they are being suspended twice for the same offense. The Board denied the request, clarifying that the basis for the second suspension is the discovery of the release of cash to the SIL recipient without first accomplishing the corresponding loan note and which action is contrary to the established processes. It was mentioned*

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13 Id. at 117-119.
14 Id. at 40.
15 Id. at 94.

> *that such violation is punishable by outright dismissal but the policy was humanized with the imposition only of suspension to the violators to give them ample time to collect the unauthorized disbursement. x x x [The first] suspension was lifted because their services were urgently needed in the distribution of dividends and patronage refunds. The Board decided to stand by its decision based on the recommendation of the fact-finding committee."*
>
> [For] failure to comply with the tasks required x x x within the effectivity period of your suspension as set under Office Orders numbered 001-04 and 002-04, both dated November 6, 2004, the Board, during its January 29, 2005 regular meeting, decided to terminate your services x x x effective as of the closing of office hours on February 1, 2005.

Ruling of the Labor Arbiter

On July 12, 2005, respondent filed a complaint for illegal dismissal, with recovery of backwages; unpaid holiday pay; premium and 13th month pay; moral, exemplary and actual damages; and attorney's fees, against respondents which was docketed in the NLRC RAB, Cordillera Administrative Region, Baguio City as NLRC Case No. RAB-CAR-07-0344-05 (R-11-08).

On April 24, 2009, Labor Arbiter Monroe C. Tabingan issued a Decision[16] in the case, decreeing as follows:

> WHEREFORE, all premises duly considered, the respondent is hereby found to have illegally suspended, then illegally dismissed the herein complainant. In view of the fact that this decision was a collective act of the Board of Directors and Officers of the respondent, they, as well as the respondent Cooperative, are hereby jointly and severally held liable to pay to the complainant the following:
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> 1. Her full backwages from the time of her illegal suspension beginning 24 February 2004 to 15 March 2004, and her illegal dismissal from 08 November 2004 to the finality of this Decision, with legal rate of interest thereon until fully paid, currently computed at PhP1,188,288.30, subject to re-computation at the time of the payment of said monetary claim;
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> x x x x
>
> 2. Her separation pay in lieu of reinstatement of one (1) month pay for every year of service beginning at the time of her initial date of hiring, to the finality of this decision, with legal rate of interest thereon until fully paid, currently computed at PhP405,002.40, said interest subject to re-computation at the time of the payment;

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16 Id. at 125-157.

x x x x

3. Moral damages in the amount of PhP100,000.00 and exemplary damages in the amount of PhP100,000.00;

4 Her attorney's fees of not less than ten (10%) per centum of the total monetary award hereto awarded, currently computed at ₱159,329.07, subject to re-computation at the time of payment.

SO ORDERED.[17]

In ruling that respondent was illegally dismissed, the Labor Arbiter made the following findings: a) respondent's first suspension was for an indefinite period, hence illegal; b) respondent was not accorded the opportunity to explain her side before she was meted the penalty of suspension; c) placing respondent on suspension and requiring her to personally pay the loan is not the proper way to collect irregularly released loans; d) although respondent's indefinite suspension was eventually reduced to 15 days, by that time respondent was suspended for 20 days already; e) respondent was deprived of the opportunity to explain her side when she was suspended the second time on November 8, 2004 to December 31, 2004; f) the second suspension was illegal because it was beyond 30 days; g) respondent was suspended twice for the same infraction; h) the February 1, 2005 letter informing respondent of her termination is redundant since respondent has been deemed constructively dismissed as early as February 23, 2004 when she was indefinitely suspended; i) as cashier, respondent's signing of the check before its release is merely ministerial; she has no hand in the processing or approval of the loans; j) TAMPCO had previously tolerated the practice of releasing loans ahead of the processing of vouchers and board approval and during the prohibited period; and k) petitioners did not terminate respondent's co-workers who were charged with committing the same infraction.[18]

Ruling of the National Labor Relations Commission

Petitioners filed an appeal before the NLRC, which was docketed as NLRC CA-No. 050848-06 (RA-06-09). On November 25, 2009, the NLRC issued its Decision[19] containing the following pronouncement:

Anent respondent's first suspension, the NLRC noted that petitioners already modified the period from being indefinite to only 15 days and that respondent was properly paid her wages corresponding to said period of suspension. Thus, there was no need to discuss the validity of said suspension. Regarding the second suspension from November 8 to December 31, 2004, the

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17 Id. at 156-157.

18 Id. at 150-156.

19 Id. at 158-167; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

NLRC found the same as illegal considering that it was imposed as a penalty and not as a preventive suspension pending investigation of her administrative liability. In fact, during her suspension, she was ordered to collect the loan illegally released. However, as regards her dismissal from service, the NLRC found the same as valid and for cause. The NLRC opined that respondent was notified of the investigation to be conducted by the Fact-Finding Committee; the notice apprised her that she was being charged with: (1) violation of BA No. 55 stopping the giving of SILs; (2) violation of BA No. 28 limiting the individual grant of SIL to ₱5 million; and (3) violation of lending policies requiring the consent of spouse in the granting of loans. Respondent was given the opportunity to answer the charges against her. In fact, she admitted having released SILs despite the board resolution discontinuing the same. Despite this admission, petitioners continued with the investigation and found the following infractions to have been committed by respondent:

> 1. There were loan notes which did not contain the signature of the borrower's spouse as mandated by the Policy Manual of the Cooperative;
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> 2. SILs were still granted even after the BOD passed BR Nos. 28 and 55 which limited the ceiling of SILs to be granted and even subsequently stopping the grant of the said loan;
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> 3. Loans were released even [when] there [were] documents [missing]. The cases of Ms. Kotoken and Falgui were cited where their loans were released despite the absence of loan notes;
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> 4. [Post-dated] checks used to secure the SILs were not presented at the time they fell due; and
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> 5. Extension of the term of the loans [was] done through substitution of checks without prior approval of the BOD.[20]

According to the NLRC, the Fact-Finding Committee discovered that respondent unilaterally altered the terms of the loan by extending the dates of maturity of checks which secured the loans and that she reported a partial payment, by way of two (2) checks, of the loan of Kotoken in the amount of ₱3 million although the subject checks were not yet encashed. Worse, the checks were later dishonored when presented for payment.

As observed by the NLRC, respondent failed to refute the above findings. In fact, she admitted having released SILs despite knowledge of board resolutions discontinuing the grant of SILs and despite the fact that the borrower concerned had exceeded the allowable ceiling.

The NLRC did not give credence to respondent's assertion that as a mere

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[20] Id. at 164.

cashier, she has no discretion at all on the approval of the loans. The NLRC opined that respondent was the custodian of the entire funds of TAMPCO and also an honorary member of the BOD, advising the latter on financial matters. The NLRC also held that the release of funds is not purely ministerial as respondent was expected to check all the supporting documents and whether pertinent policies regarding the loan had been met by the applicant.

For the NLRC, respondent's transgressions were deliberate infractions of clear and mandatory policies of TAMPCO amounting to gross misconduct.

The dispositive portion of the NLRC Decision reads:

> WHEREFORE, premises considered, the appeal of respondents is GRANTED. The Decision of the Labor Arbiter dated April 24, 2009 is hereby REVERSED AND SET ASIDE, and a new one is hereby rendered DISMISSING the above-entitled complaint for lack of merit. Respondent Tabuk Multi-Purpose Cooperative, Inc. is, however, ordered to pay complainant's wages for the period of November 8 to December 31, 2004.
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> SO ORDERED.[21]

Respondent moved to reconsider. However, in a Resolution dated April 8, 2010, the NLRC held its ground.[22]

Ruling of the Court of Appeals

In a Petition for *Certiorari*[23] filed with the CA and docketed therein as CA-G.R. SP No. 114753, respondent sought to set aside the NLRC dispositions and reinstate the Labor Arbiter's judgment, arguing that she had no discretion in the release of the SILs; that she was not an ex-officio member of the cooperative's BOD; that while she committed a violation of the cooperative's policies, she should be accorded clemency just as her co-respondents were pardoned and allowed to collect their benefits; that she did not commit gross misconduct, as she was not solely responsible for the prohibited release of the SILs to Kotoken and Falgui, since they were previously approved by the loan investigator, the Credit Committee, and the General Manager prior to their release; that petitioners did not properly observe the twin-notice rule prior to her dismissal, as she was not given any notice to present her side – instead, she was dismissed outright when she failed to collect and return the amount she disbursed *via* the SILs; that there is no just cause for her dismissal; that her length of service (15 years) and her unblemished record with the cooperative should merit the setting aside of her

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21 Id. at 166.
22 Id. at 175.
23 Id. at 168-197.

dismissal, and instead, her previous suspensions should suffice as a penalty for her infraction; that the exoneration of her co-respondents – notably the General Manager - who was allowed to retire, given a "graceful exit" from the cooperative, honorably discharged, allowed to collect his benefits in full, and given a certification to the effect that he did not commit any violation of the cooperative's policies, rules, and regulations – constitutes discrimination, favoritism, evident bad faith, and a violation of her constitutional right to equal protection; and that the Labor Arbiter's decision is entirely correct and should be given full credence and respect.

In their Comment[24] seeking dismissal of the Petition, petitioners contended that the Petition was filed to cover up for a lost appeal; that no reversible error is evident; that contrary to respondent's claim, her position as cashier is the "lifeblood and very existence of the Cooperative" since she was the "key to the vault and the dispenser of the Cooperative's fund"; that respondent is responsible and accountable for all disbursements because before the release of the loan proceeds, she must ensure that all the processes and necessary documents are duly complied with and there are no violations of any of the cooperative's policies and rules; that she is likewise responsible for the collection activities of the cooperative and the coordination thereof, as required under her job description; that respondent was customarily appointed by the BOD as its adviser and treasurer – being so, she very well knew of its policies; that as cashier, her signature to the checks were required prior to the release thereof to the SIL borrowers – thus, she is liable for signing these checks and releasing them to the borrowers in disregard of BA No. 55 prohibiting the further release of loans pending collection of those outstanding; that there is no favoritism or discrimination when the former General Manager was allowed a graceful exit while respondent was dismissed, as the decision to allow the former to retire and collect his benefits is a management prerogative that respondent cannot interfere with; and that ultimately, respondent was dismissed not for her failure to collect the outstanding loans, but for her violation of the cooperative's policies (BA Nos. 28 and 55); that in dismissing her, due process was observed.

On September 15, 2011, the CA issued the herein assailed Decision, decreeing as follows:

> WHEREFORE, premises considered, the Decision of the NLRC dated 25 November 2009 is hereby REVERSED and SET ASIDE. The Decision of the Labor Arbiter dated 24 April 2009 in NLRC Case No. RAB-CAR-07-0344-05 (R-11-18) is hereby REINSTATED.
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> SO ORDERED.[25]

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[24] Id. at 198-210.
[25] Id. at 55.

The CA held that respondent's dismissal was illegal; that she was not guilty of violating her duties and responsibilities as Cashier; that she was under the supervision of the cooperative's Finance and Credit Managers, who are primarily responsible for the approval of loan applications; that as Cashier, she was a mere co-signatory of check releases and simply acts as a "check and balance on the power and authority of the General Manager;" that she does not exercise discretion on the matter of SILs – specifically the assessment, recommendation, approval and granting thereof; that only the Loan Officers, as well as the Credit, Finance, and General Managers, have a direct hand in the evaluation, assessment and approval of SIL applications, including their required attachments/documents; that while the questioned SILs were released without the approval of the BOD, such practice was sanctioned and had been adopted and tolerated within TAMPCO ever since; that it is unjust to require respondent to pay the amounts released to SIL borrowers but which could no longer be collected; that it was unfair to condemn and punish respondent for the anomalies, while her co-respondents, particularly the former General Manager, was given a graceful exit, honorably discharged, and was even allowed to collect his retirement benefits in full; that respondent's suspension from November 8 to December 31, 2004 was illegal; and that petitioners failed to comply with the twin-notice rule prior to her dismissal.

Petitioners filed a Motion for Reconsideration,[26] but the CA denied the same in its July 11, 2012 Resolution. Hence, the present Petition.

In a November 11, 2013 Resolution,[27] this Court resolved to give due course to the Petition.

On March 19, 2014, petitioners filed an Urgent Motion[28] seeking injunctive relief to enjoin the execution of judgment. In a March 24, 2014 Resolution,[29] the motion was denied.

Issues

Petitioners submit the following issues for resolution:

> 1. WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD TO REVERSE THE DECISION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION THEREBY AFFIRMING THE DECISION OF THE HONORABLE LABOR ARBITER.

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26 Id. at 56-84.
27 Id. at 483-484.
28 Id. at 729-735.
29 Id. at 748-749.

> 2. WHETHER THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT DID NOT CONSIDER THE EVIDENCE OF THE PETITIONERS AS IT RULED THAT THE RESPONDENT WAS REMOVED IN VIOLATION OF THE TWO-NOTICE RULE AND THAT THERE IS NO JUST CAUSE FOR HER REMOVAL.
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> 3. WHETHER THE HONORABLE COURT OF APPEALS PATENTLY COMMITTED A GRAVE ERROR WHEN IT RULED THAT THE JOB OF THE RESPONDENT MAGDALENA DUCLAN INCLUDES CHECK AND BALANCE AND YET IT CONCLUDED THAT HER FUNCTION IS MERELY MINISTERIAL. THUS, SHE CANNOT BE HELD ACCOUNTABLE FOR HER [CONDUCT].
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> 4. WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT ACTED ON THE PETITION FOR CERTIORARI (RULE 65) FILED BY THE RESPONDENT DESPITE THE FACT THAT THE PROPER REMEDY SHOULD [HAVE] BEEN X X X A PETITION FOR REVIEW ON CERTIORARI.[30]

Petitioners' Arguments

Praying that the assailed CA pronouncements be set aside and that the NLRC judgment be reinstated instead, petitioners essentially argue in their Petition and Reply[31] that due process was observed in the dismissal of respondent; that there was just and valid cause to dismiss her, as she violated the cooperative's policies and board resolutions limiting and subsequently prohibiting the grant and release of SILs – which actions jeopardized TAMPCO's financial position; that respondent's actions constituted serious misconduct and willful disobedience, justifying dismissal under Article 282 of the Labor Code;[32] that while the Credit and General Managers possessed discretion in the evaluation and approval of SIL applications, respondent as Cashier was still accountable as she was duty-bound to check that the release of the loan amounts was proper and done in accordance with the cooperative's rules and policies; and that there is no basis to suppose that respondent was unfairly treated, since all those found responsible for the SIL fiasco were dismissed from service after their respective cases were individually considered and accordingly treated based on the infractions committed.

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30 Id. at 15.

31 Id. at 471-474.

32 ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
(e) Other causes analogous to the foregoing.

Respondent's Arguments

In her Comment,[33] respondent counters that the Petition fails to present any cogent argument that warrants reversal of the assailed CA dispositions; that on the contrary, the CA correctly upheld her rights to security of tenure and due process; that there was no valid cause to dismiss her; that as Cashier, she had no power to approve SIL applications, but only release the loan amounts after the applications are evaluated and approved by the Credit Manager, and under the supervision of the Finance Manager; and that the respective decisions of the CA and the Labor Arbiter are correct on all points and must be upheld.

Our Ruling

The Court grants the Petition.

Under Article 282 of the Labor Code, the employer may terminate the services of its employee for the latter's serious misconduct or willful disobedience of its or its representative's lawful orders. And for willful disobedience to constitute a ground, it is required that: "(a) the conduct of the employee must be willful or intentional; and (b) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge. Willfulness must be attended by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. In any case, the conduct of the employee that is a valid ground for dismissal under the Labor Code constitutes harmful behavior against the business interest or person of his employer. It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer."[34]

The persistent refusal of the employee to obey the employer's lawful order amounts to willful disobedience.[35] Indeed, "[o]ne of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. Disobedience, to be a just cause for termination, must be willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. A willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge."[36]

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33 *Rollo*, pp. 269-289.

34 *Dongon v. Rapid Movers and Forwarders Co., Inc.*, G.R. No. 163431, August 28, 2013, 704 SCRA 56, 67-68.

35 *San Miguel Corporation v. Pontillas*, 576 Phil. 761, 770 (2008).

36 *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011).

As TAMPCO Cashier, respondent was, among her other designated functions and duties, responsible and accountable for all disbursements of cooperative funds and the coordination of delinquency control and collection activities.[37] She was likewise expected to understand the cooperative's operational procedures,[38] and of course, follow its rules, regulations, and policies.

A year after introducing the SIL program, TAMPCO realized that a considerable amount of the cooperative's loanable funds was being allocated to SILs, which thus adversely affected its ability to lend under the regular loan program. It further discovered that single individual borrowings under the SIL program reached precarious levels, thus placing the resources of the cooperative at risk. Thus, in June 2003, the TAMPCO BOD issued BA No. 28, putting a cap on SIL borrowings at ₱5 million. In October of the same year, BA No. 55 was issued, completely prohibiting the grant of SILs. However, despite issuance of BA Nos. 28 and 55, respondent and the other officers of the cooperative including its former General Manager, continued to approve and release SILs to borrowers, among them Falgui and Kotoken, who received millions of pesos in loans in January and December of 2004, and in January 2005. Eventually, Falgui claimed insolvency, and Kotoken failed to pay back her loans.

The CA failed to consider that in releasing loan proceeds to SIL borrowers like Falgui and Kotoken even after the BOD issued BA Nos. 28 and 55, respondent, and the other cooperative officers, willfully and repeatedly defied a necessary, reasonable and lawful directive of the cooperative's BOD, which directive was made known to them and which they were expected to know and follow as a necessary consequence of their respective positions in the cooperative. They placed the resources of the cooperative – the hard-earned savings of its members – in a precarious state as a result of the inability to collect the loans owing to the borrowers' insolvency or refusal to honor their obligations. Respondent committed gross insubordination which resulted in massive financial losses to the cooperative. Applying Article 282, her dismissal is only proper.

Respondent cannot pretend to ignore the clear mandate of BA Nos. 28 and 55 and justify her actions in releasing the loan proceeds to borrowers by claiming that she had no choice but to release the loan proceeds after the SIL loan applications were evaluated and approved by the loan investigator, the Credit Committee, and the General Manager. These officers were themselves bound to abide by BA Nos. 28 and 55 – they, just as respondent, are subordinate to the TAMPCO BOD. Pursuant to the Philippine Cooperative Code of 2008, or Republic Act No. 9520, TAMPCO's BOD is entrusted with the management of the affairs of the cooperative (Article 5 [3]); the direction and management of the cooperative's affairs shall be vested in the said board (Article 37); and it shall be

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37 *Rollo*, p. 46.
38 Id.

responsible for the strategic planning, direction-setting and policy-formulation activities of the cooperative (Article 38).

Just the same, respondent could have simply refused to release the loan proceeds even if the loan applications were duly approved. Had she done so, she would have been excluded from the indictments. She would have continued with her employment. In this regard, the CA erred completely in declaring that only the Loan Officers, as well as the Credit, Finance, and General Managers are primarily responsible since only they exercised discretion over SIL applications, and respondent had no choice but to perfunctorily release the loan proceeds upon approval of the applications.

The Court likewise finds that in dismissing respondent, petitioners observed the requirements of due process. An investigation was conducted by a fact-finding committee; respondent and her colleagues were summoned and required to explain – and they did; respondent submitted an October 21, 2004 letter acknowledging and confessing her wrongdoing – that despite BA No. 55, she and her colleagues continued to approve and release SILs. After the investigation proceedings, the committee prepared a detailed Report of its findings and containing a recommendation to suspend the respondent, require her to restore the amounts she wrongly disbursed – by collecting the credits herself, and in the event of failure to restore the said amounts, she would be dismissed from the service. The Report was approved and adopted by the cooperative's BOD, which resolved to suspend respondent from November 8 until December 31, 2004 and ordered her to collect, within the said period, the unauthorized SIL releases she made; otherwise, she would be terminated from employment. When respondent failed to restore the amounts in question, the BOD ordered her dismissal from employment. Respondent was informed of her dismissal in a February 1, 2005 communication addressed to her; this is the second of the twin notices required by law. Thus, as to respondent, the cooperative observed the proper procedure prior to her dismissal.

> In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. x x x[39]

During the proceedings below, respondent questioned the cooperative's decision requiring her to collect the credits from Falgui and/or Kotoken, claiming this was illegal and improper. But there is nothing wrong in requiring her to do so; this is simply ordering her to restore the amounts she unlawfully released. She

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[39] *New Puerto Commercial v. Lopez*, 639 Phil. 437, 445 (2010).

may do so in any way she deemed best: either by paying the amounts from her own funds, or by collecting the same from the borrowers themselves. The cooperative could have rephrased its directive to her by simply ordering her to restore the lost amounts. This is pretty much standard procedure in cases of this nature: the accused in malversation cases is required to restore the amount lost, and bank tellers or cashiers are told to pay back what the banks lose through their willful or negligent acts.

There is also nothing irregular in the cooperative's decision to require from respondent and her colleagues the collection or restoration of the amounts that were illegally released, with a threat that in case of failure to do so, they would be dismissed from employment. Respondent and her colleagues were simply given the opportunity to clear themselves from the serious infractions they committed; their failure to restore the amounts lost in any manner could not prevent the imposition of the ultimate penalty, since their commission of the serious offense has been adequately shown. In fact, respondent voluntarily confessed her crime. To the mind of the Court, respondent and her colleagues were afforded ample opportunity to clear themselves and thus restore the confidence that was lost, and TAMPCO was not precluded from testing their resolve.

Finally, while the CA finds that it is unfair for TAMPCO to treat respondent differently from the former General Manager, who was permitted to retire and collect his benefits in full, the appellate court must nonetheless be reminded that "[t]he law protects both the welfare of employees and the prerogatives of management. Courts will not interfere with prerogatives of management on the discipline of employees, as long as they do not violate labor laws, collective bargaining agreements if any, and general principles of fairness and justice."[40] Moreover, management is not precluded from condoning the infractions of its employees; as with any other legal right, the management prerogative to discipline employees and impose punishment may be waived.[41] As far as respondent is concerned, the cooperative chose not to waive its right to discipline and punish her; this is its privilege as the holder of such right. Finally, it cannot be said that respondent was discriminated against or singled out, for among all those indicted, only the former General Manager was accorded leniency; the rest, including respondent, were treated on equal footing. As to why the former General Manager was allowed to retire, this precisely falls within the realm of management prerogative; what matters, as far as the Court is concerned, is that respondent was not singled out and treated unfairly.

WHEREFORE, the Petition is **GRANTED**. The assailed September 15, 2011 Decision and July 11, 2012 Resolution of the Court of Appeals in CA-G.R.

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40 *The University of the Immaculate Conception v. National Labor Relations Commission*, 655 Phil. 605, 616 (2011).

41 *Salvaloza v. National Labor Relations Commission*, 650 Phil. 543 (2010); *RBC Cable Master System v. Baluyot*, 596 Phil. 729 (2009); *R.B. Michael Press v. Galit*, 568 Phil. 585 (2008).

SP No. 114753 are **REVERSED** and **SET ASIDE**. The November 25, 2009 Decision of the National Labor Relations Commission in NLRC CA-No. 050848-06 (RA-06-09) is **REINSTATED** and **AFFIRMED**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

(On leave)
ARTURO D. BRION
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

(On official leave)
MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson

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