Republic of the Philippines
Supreme Court
Manila

SPECIAL FIRST DIVISION

EAST ASIA UTILITIES CORP., ROGELIO Q. LIM, MACARIO P. BALALI, AND NOEL T. FERNANDEZ, Petitioners,	**G.R. No. 211443**
	Present:
	GESMUNDO, *C.J.* *Chairperson*,
	CARANDANG,
	ZALAMEDA,
- versus -	M. LOPEZ, and
	GAERLAN, *JJ.*
	Promulgated:
JOSELITO Z. ARENAS, Respondent.	DEC 01 2021

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RESOLUTION

CARANDANG, *J.*:

This resolves the Motion for Reconsideration[1] filed by petitioners, East Asia Utilities Corp. (EAUC), Rogelio Q. Lim, Macario P. Balali, and Noel T. Fernandez, imploring the Court to set aside its Resolution[2] dated July 3, 2019. In the assailed resolution, the Court upheld the factual findings of the Court of Appeals (CA) and found that respondent Joselito Z. Arenas was illegally dismissed.[3]

EAUC is a corporation engaged in the distribution and supply of power in Lapu Lapu City, and petitioners Lim, Balali, and Fernandez, are the President and General Manager, Human Resource Manager, and Plant Manager, respectively of EAUC. On the other hand, respondent Arenas was hired by EAUC as Shift Engineer on April 4, 1994, and was promoted as Shift Superintendent on July 1, 1999.[4]

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1 *Rollo*, pp. 448-464.
2 Id. at 444-447.
3 Id. at 446.
4 Id. at 69.

Factual Antecedents

The record showed that on August 3, 2010, at around 10:30 p.m., respondent heard a noise of an electric portable cutter from the maintenance shop. When he inspected the area, he saw Romeo M. Cabili (Cabili) cutting a scrapped retainer ring using an electric portable cutting disc. Respondent ordered Cabili to immediately return the item otherwise he would report the matter. Thereafter, respondent proceeded with his routine inspection of the other areas of the plant where he then met electrical technician, Edward Camus (Camus). Respondent relayed the incident to Camus which was heard by another employee, John D. Gamalo.[5]

On the same date, at around 11:00 p.m. to midnight, respondent saw Cabili again working on the retainer ring. Cabili welded the scrapped retainer ring back together, and painted the welded area, so the cut part would not show.[6]

On subsequent dates, he narrated the incident to other shift supervisors, Nelson T. Dingal, Florante Balili and Ceasar Albarico, and to mechanical technician, Ernesto P. Cajes. Albarico asked respondent if he had already prepared a written report about the incident but respondent answered that he had not yet reported it to Plant Manager Fernandez but he had already reprimanded Cabili. Cajes likewise told respondent that he needed to prepare a report on the matter, but respondent answered, "*Malooy lagi ta ni Ronnie, daghang anak*" (I pity Ronnie, he has many children).[7]

On August 7, 2010, Fernandez learned about the incident through an anonymous text message via mobile phone which read, "*Sir gud pm 4 ur info naskpan ni jojo arenas si Ronnie cabili cutting guba retainer ring sea water pump wbes n gbii wy action c jojo, ebdence na c Ronnie usa na dako kawatan sa planta, plihog himo action bhin kawat sa planta concern employee*" (Sir, good afternoon, for your information, Jojo Arenas caught Ronnie Cabili cutting a defective retainer ring for sea water pump on Thursday night; Jojo did not act on it, evidence that Ronie is one big thief at the plant. Please act on the thievery at the plant. concerned employee.). Immediately thereafter, Fernandez investigated the matter.[8]

Four days after the incident or on August 10, 2010, respondent verbally reported the incident to Fernandez. He told Fernandez that he caught Cabili in the act of slicing the used seawater pump retainer ring and advised Cabili to restore the ring otherwise he would report the incident to the management. Fernandez instructed respondent to submit an incident report.[9]

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5 Id.
6 Id.
7 Id. at 69-70.
8 Id. at 70.
9 Id.

On August 12, 2010, EAUC formed an Employee Behavior Action Review Panel (EBARP) to investigate and come up with its findings and recommendation on the case.[10]

Respondent submitted his written explanation as follows: (a) he reported the incident late because of his shifting schedule although he verbally informed all his co-shifters about it; (b) he did not intend to formalize a written complaint because he saw that his warning was enough, that a complaint would mean dismissal for Cabili, that the amount involved was not big, that the item was also scrap material, that he did not want Cabili to have a grudge on him, and that he wanted Cabili to be accosted at the guardhouse if he had plans of stealing; (c) he denied tolerating Cabili. He warned him and even counseled him.; (d) he considered the factors that Cabili had no previous record of infraction, that it would not be fair enough to pin him down, and for humanitarian consideration; (e) he also denied covering up the incident because he told his co-shifters and some subordinates about it to embarrass Cabili; and (f) he is concerned for his safety because he had received death threats before for fighting for the interest of the company and he did not want Cabili to get even with him if he directly pinned him.[11]

Three hearings were conducted by the EBARP on August 13, 20 and 23, 2010. On September 1, 2010, the EBARP issued its report and recommended that respondent be dismissed because of the following grounds: (1) he did not report or late reporting to the top management the August 3, 2010 incident involving Cabili; (2) tolerating the wrongdoing committed by Cabili; and (3) efforts to cover up the infraction committed by Cabili.[12]

On September 2, 2010, Lim sent a letter informing respondent of his dismissal effective immediately.[13]

However, on September 3, 2010 Cabili filed a handwritten resignation and asked for forgiveness for what he had done.[14]

Consequently, respondent filed a case of illegal dismissal with money claims against the petitioners.[15]

For their part, petitioners claimed that Cabili's act fell under Corrective Action Code F, among the most serious in the company's Employee Code on Good Behavior, punishable by dismissal. They argued that respondent has no authority to impose any corrective action on an employee. Rather, it was respondent's duty to submit a written incident

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10 Id. at 71.
11 Id.
12 Id. at 72.
13 Id.
14 Id.
15 Id.

report within a reasonable time from his discovery of the act. However, respondent merely told his co-employees that there was no more need for a report because he already reprimanded and counseled Cabili. According to petitioners, this would have been the correct procedure had the deviation been minor. Worse, not only did respondent fail to submit a written incident report, but that he never intended to make a report of it and only submitted the same when told by Fernandez seven days after the incident. Moreover, respondent's superior initially learned of the incident from other sources. Petitioners also alleged that respondent gave very contrasting and conflicting reasons for his failure to report the incident which can be gleaned from his answers to the EBARP during its investigation and from his written explanation.[16]

Petitioners also averred that during the third day of investigation, respondent alleged for the first time that Cabili was cutting the retainer ring to make a special tool. Petitioners saw this as a clear attempt to justify the act because Cabili already admitted that he did not have a drawing or pattern of the same, and there was never any mention of the alleged special tool during the early stages of the investigation.[17]

Lastly, petitioners' said that respondent must have forgotten that as a managerial employee, he was supposed to act in consonance with the trust and confidence reposed on him. On the contrary, respondent tolerated and attempted to cover up the incident. Instead of preserving the evidence of wrongdoing, respondent admitted that he saw Cabili welding back the ring and painting it so the cut part would not show. To petitioners', respondent's acts showed that he did not live up to the trust and confidence given to him by the company.[18]

The Conflicting Rulings of the Lower Tribunals

In a Decision[19] dated December 15, 2010, the Labor Arbiter (LA) found that respondent has been illegally dismissed and ordered the petitioners to: (1) reinstate respondent to his former position without loss of seniority rights and other privileges; (2) to jointly and solidarily pay the respondent the total amount of ₱336,128.10.[20]

However, in its Decision dated May 31, 2011 and Resolution dated July 29, 2011, the National Labor Relations Commission (NLRC) reversed the LA's decision on appeal.[21] The NLRC held that respondent was validly dismissed; thus, there was no basis for the grant of reinstatement or

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16 Id. at 72-73.
17 Id. at 73.
18 Id.
19 Penned by Acting Exec. Labor Arbiter Jose G. Gutierrez; id. at 180-189.
20 Id. at 73-74.
21 Penned by Presiding Commissioner Violeta Ortiz-Bantug, with the concurrence of Commissioners Aurelio D. Menzon and Julie C. Rendoque; id. at 214-226, 228-230.

separation pay in lieu of reinstatement as well as backwages, moral and exemplary damages and attorney's fees.[22]

In his petition for *certiorari*[23] with the CA, the appellate court granted respondent's petition and reversed and set aside the rulings of the NLRC. The CA reverted to the LA's decision with modification and ordered the petitioners to: (1) pay respondent, in addition to his backwages and 13th month pay, separation pay equivalent to one month salary for every year of service in lieu of reinstatement due to the strained relations of the parties brought about by the filing of this case and (2) pay attorney's fees equivalent to 10% of the total monetary award.[24]

Thereafter, the petitioners sought recourse to the Court. In denying the petition for review, the Court disposed of the case solely on the ground that respondent's belated reporting of the incident was not characterized by wilfulness or malice. The Court explained that:

> Although a less stringent degree of proof was required in termination cases involving managerial employees, the employers could not invoke the ground of loss of trust and confidence arbitrarily. In order for an employee to be validly dismissed based on loss of trust and confidence, the breach of the employee should be willfully and intentionally made.
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> x x x x
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> While herein respondent held the position of shift superintendent, a position of trust and confidence, We failed to see that his negligence to immediately report the incident would amount to loss of trust and confidence.
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> After a judicious consideration of the availing circumstances, We deem that the respondent's belated reporting of the incident was not characterized by willfulness or malice. The records reveal that right after the respondent called the attention of Cabili and asked him to return the sea water pump retainer rings, he had narrated the incident to his co-shift supervisors and other employees. While it took the respondent seven (7) days to report the same, no loss or prejudice accrued on the part of the petitioner."[25] (citations omitted)

Undaunted, petitioners ask for a reconsideration of the Court's resolution.

Respondent filed its Comment[26] dated February 12, 2020 arguing that petitioner's intent to delay is apparent. Moreover, respondent argued that the

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22 Id. at 75.
23 Id. at 231-260.
24 Id. at 80-81.
25 Id. at 445-446.
26 Id. at 488-492.

established facts as determined by the CA and this Court are based on the records of the case and no amount of cleverly contrived sophistry or a monotonous repetition of arguments that have already been considered, appreciated, and resolved could alter the same.[27]

Ruling of the Court

After a second look at this case and the facts and circumstances obtaining herein, the Court agrees with the findings and conclusion of the NLRC that respondent's dismissal from employment on the ground of loss of trust and confidence was valid.

At the outset, it should be emphasized that as a rule, this Court is not a trier of facts and this applies with greater force in labor cases. Hence, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and if supported by substantial evidence, are accorded respect and even finality by this Court. But where the findings of the NLRC and the Labor Arbiter are contradictory, as in the present case where the LA and the CA are one in ruling that respondent was illegally dismissed from work while the NLRC ruled otherwise, this Court may delve into the records and examine for itself the questioned findings.[28]

It is well-settled that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests. This is all the more true in the case of managerial employees or personnel occupying positions of responsibility.[29]

In the present case, it must be emphasized that respondent was holding a top level managerial position in the company as shift superintendent receiving a monthly salary of ₱89,000.00 excluding other benefits and privileges. The position of shift superintendent is the second highest position in the plant level, subsequent to the plant manager. During his shift, the shift superintendent is the highest ranking officer in the plant.

In view of the nature of respondent's occupation, his employment may be terminated for breach of trust under Article 297(c)[30] of the Labor Code. To justify a valid dismissal based on loss of trust and confidence, the concurrence of two conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[31] These two requisites are present in this case.

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27 Id. at 490.

28 *Victory Liner, Inc., v. Pablo M. Race*, 548 Phil. 282, 293 (2007).

29 *SM Development Corporation v. Ang*, G.R. No. 220434 July 22, 2019.

30 Article 297. TERMINATION BY EMPLOYER. An employer may terminate an employee for any of the following causes:
x x x x
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

31 *SM Development Corporation v. Ang*, supra note 27.

The first requisite has already been established. Respondent, as the shift superintendent, certainly required the full trust and confidence of EAUC. As to the second requisite that there must be an act that would justify the loss of trust and confidence, however, the degree of proof required in proving loss of trust and confidence differs between a managerial employee and a rank and file employee.[32] The Court already made the distinction between managerial employees and rank-and-file personnel insofar as terminating them on the basis of loss of trust and confidence; thus:

> It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. **In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required, but the mere existence of a basis for believing that such employee has breached the trust of his employer suffices.** As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.[33]

Set against these parameters, respondent was validly dismissed based on loss of trust and confidence. As shift superintendent, respondent was expected to be always on top of any situation that may occur at the plant, which includes the safeguarding of the company's assets. Evidently, the intricate position held by respondent required the full trust and confidence of EAUC.

Respondent's explanation that there was no cover-up because he had already told his co-shifters about the incident is untenable. Informing the other shift supervisors is not enough because as far as they are concerned, it is only hearsay. It was respondent's duty to immediately submit a written incident report which happened during his shift. Respondent even alleged that Cabili was cutting the retainer ring to make a special tool. However, Cabili had already admitted that he did not have a drawing or pattern of the same and there was never any mention of the alleged special tool during the early stages of the investigation.[34]

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32 Id.

33 *Casco v. NLRC*, 826 Phil. 300, 300-301 (2018).

34 *Rollo*, p. 73.

The Court also observed that respondent gave contrasting and conflicting reasons for his failure to report the incident. Respondent said that he belatedly reported the incident because of his shifting schedule. He likewise said that he did not intend to formalize a written complaint against Cabili because he had already warned him, and even counseled him. From these, it clearly appears that respondent had no intention at all to make a report of the incident and only submitted the same when told by Fernandez.

What is worse is that the matter would be left unnoticed if not for the information received from other sources. Respondent ought to know that it is not for him to exonerate Cabili because he has no authority to impose any corrective action on an employee.

In this case, there is no disputable fact, and the issue centers around how the act of respondent can be characterized since loss of trust and confidence is treated differently for rank and file personnel and managerial employees. The failure of respondent to immediately report to management any infraction committed by his subordinate during his shift is clearly an act inimical to the company's interests sufficient to erode petitioners trust and confidence in him. Respondent ought to know that his job demands an extensive amount of trust from petitioners. The entire company depended on him as he is the highest ranking officer during his shift. He failed to perform what was expected of him, thus, petitioners had a valid reason in losing confidence in him which justified his termination.

While the right of an employer to freely select or discharge his employees is subject to the regulation by the State in the exercise of its paramount police power, there is also 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.[35]

WHEREFORE, the instant motion for reconsideration is **GRANTED**, and the assailed Resolution dated July 3, 2019 of this Court is hereby **RECONSIDERED** and **SET ASIDE**. The Decision dated May 31, 2011 and the Resolution dated July 29, 2011 of the National Labor Relations Commission are **REINSTATED**.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

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35 *Punongbayan and Araullo (P&A) v. Lepon*, 772 Phil. 311 325-326 (2015).

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Jutice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
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 Resolution 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