



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 27, 2020 which reads as follows:

“G.R. No. 245984 (Jason P. Esmele v. Lindberg AG-A4 Branch Office, Martin Kirk, Henrik Lindberg, Edwin Espinosa, Santiago Detal, Jr., and Per Israelsen)

The Case

This petition seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 142570:

1. Decision¹ dated July 31, 2018 finding petitioner’s dismissal from employment valid; and
2. Resolution² dated March 5, 2019 denying petitioner’s motion for reconsideration.

The Facts

Respondent Lindberg Subic, Inc. (also known as Lindberg AG-A4 Branch) is the Philippine Branch of Lindberg AG, Switzerland.³ It was licensed to engage in the manufacturing and trading of spectacle frames and other optical articles in the country.⁴

- over – eleven (11) pages ...

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* Justice Leonen designated as additional member in lieu of CJ Peralta

¹ Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and (now SC Associate Justice) Rodil V. Zalameda, concurring.

² Penned by now Supreme Court Associate Justice Rodil V. Zalameda, with Associate Justice Fernanda Lampas Peralta and now Supreme Court Associate Justice Henri Jean Paul B. Inting, concurring.

³ CA Decision dated July 31, 2018, p. 2.

⁴ NLRC Decision, p.2.

On April 3, 2006, it hired petitioner Jason P. Esmele as Production Operations Manager. He was tasked to oversee the production line and evaluate the workers assigned therein.

On October 3, 2013, Lindberg's Chief Operating Officer Per Israelsen received an electronic mail from an unknown sender complaining about the management's purported inaction on the repeated tardiness by Manager Rollie Lee and attaching therewith a copy of the latter's Daily Time Record. The anonymous letter reads:

*Hindi po ito tama. This is unfair. If we are late we get penalty. But if the boss is late it is just ok. Why they have special treatment. I got this one In and Out of Sir Rollie. He has many lates but no Penalty. He is late because he is drinking the night before work. But they are blind to see. Too many to count.*⁵

On October 4, 2013, Israelsen referred the matter to Lindberg's Managing Director Edwin M. Espinosa for investigation. Through Lindberg's IT Support Personnel, Espinosa discovered that Lee's Daily Time Record was obtained from the company's Data Viewer, a program where all the employees' Daily Time Records may be viewed. The program was installed in the managers' computers for the sole purpose of monitoring their subordinates' performance. The IT Support Personnel also informed Espinosa that petitioner had previously demonstrated the use of the Data Viewer with Lee's Daily Time Record as an example. Upon verification, Lindberg's IT Administrator in Denmark informed Espinosa that Lee's Daily Time Record was stored in the disk drive of petitioner's office computer.⁶

On October 12, 2013, Espinosa, together with Customer Service Manager Santiago Detal, Jr. and Technical Manager Martin Kirk summoned petitioner to a meeting. They confronted petitioner with the e-mail received by Israelsen as well as Lee's Daily Time Record found in his office computer. Petitioner, however, adamantly denied knowledge thereof.

On October 17, 2013, Espinosa sent a letter to petitioner requiring him to explain within five (5) days why he should not be sanctioned for violation of Lindberg's Company Policies and Procedures specifically for false testimony and fraudulent act.

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⁵ CA Decision dated July 31, 2018, p. 2.

⁶ *Id.* at 3.

In his Letter dated October 22, 2013, petitioner claimed that he saved Lee's Daily Time Record in his computer because he was "*investigating and validating a complaint about the alleged unfair treatment on tardiness.*"⁷ As for the charge of false testimony, he explained he was not subjected to a formal inquiry and the questioning by Espinosa, Detal, and Kirk was a mere casual conversation. Lastly, he asserted that the Data Viewer program was accessible to all managers. He, therefore, did not use fraudulent means to obtain Lee's Daily Time Record.

On October 29, 2013, Espinosa issued a warning letter to petitioner admonishing him for his actions. Petitioner was also reminded that going through the company's data system and copying files therein was a breach of confidentiality. Espinosa underscored that as a manager, petitioner held a position of trust and confidence in the company and was warned that any similar incidents in the future would merit more severe sanctions including dismissal.

After the investigation was concluded, petitioner met with Israelsen. He suddenly confessed that he, indeed, sent the anonymous e-mail. With this new development, a formal meeting was held between Espinosa, Detal, Israelsen, and petitioner. There, petitioner confirmed his admission as the sender of the e-mail to Israelsen.

In a letter dated December 17, 2013, petitioner was directed to submit a written explanation on why he should not be sanctioned for his initial denial and eventual admission of sending the anonymous e-mail. In his Letter dated December 22, 2013, petitioner bewailed that the offense charged was already covered by the October 17, 2013 show cause order for which he was already issued a warning.⁸

On December 27, 2013, petitioner was terminated from employment on ground of false testimony and fraud or willful breach of trust.⁹

Petitioner thus sued for illegal dismissal, holiday pay, 13th month pay, leave pay, allowances, moral and exemplary damages and attorney's fees.¹⁰ He claimed that he did not breach the trust and confidence reposed on him by his employer. He merely reported Lee's tardiness and did not fraudulently obtain copy of the latter's Daily

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⁷ *Id.* at 4.

⁸ *Rollo*, p. 169.

⁹ CA Decision dated July 31, 2018, p. 4.

¹⁰ *Rollo*, p. 151.

Time Record. He initially refused to divulge his involvement in sending the anonymous e-mail because he was only waiting for the proper forum and time. Too, there was no compliance with procedural due process as he was penalized twice for the same offense.¹¹

On the other hand, respondents maintained that petitioner's dismissal was valid. He was terminated due to loss of trust and confidence for his repeated acts of lying unbecoming of a manager. Respondents highlighted that it was not the first time petitioner had been caught committing fraud and giving false testimony. In 2007, petitioner had already been suspended for two (2) weeks on ground of Unacceptable Conduct and False Testimony for claiming he was authorized to effect changes in Lindberg's systems and altering the same when in fact, he was not. He was then warned that a repetition of the same offense in the future will be dealt with a much heavier sanction including termination.¹² Lastly, they had complied with the requirements of procedural due process prior to severance of petitioner's employment.

The Ruling of the Labor Arbiter

By Decision¹³ dated October 23, 2014, Labor Arbiter Leandro M. Jose dismissed the complaint. The labor arbiter found that Lindberg had sufficient basis to lose trust and confidence in petitioner because "his actuations fell short of what is required of him as a manager."¹⁴ Petitioner's act of accessing confidential information against a fellow manager was unethical. Too, his sending of an anonymous e-mail which upon confrontation he initially denied but later on admitted smacks of unprofessionalism.¹⁵

Petitioner's claim for holiday pay, vacation/sick leave pay was denied as he was a managerial employee. As for his other money claims, the same were denied for lack of sufficient basis.¹⁶

The Ruling of the NLRC

On petitioner's appeal, the NLRC reversed under Decision¹⁷ dated May 29, 2015.

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¹¹ *Id.* at 170.

¹² *Id.* at 128.

¹³ Penned by Labor Arbiter Leandro M. Jose; *rollo*, pp.151-164.

¹⁴ *Rollo*, p. 163.

¹⁵ *Id.* at 163-164.

¹⁶ *Id.* at 164.

¹⁷ Penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Commissioners Grace E. Maniquiz-Tan and Dolores M. Peralta-Beley, *rollo*, pp. 165-177.

The NLRC ruled that petitioner did not commit false testimony under Lindberg's Rules which penalizes "giving false testimony or falsifying any document, records or information in any study, research, inquiry, investigation or proceeding **in which the company is involved or interested.**"¹⁸

According to the NLRC, the investigation on the anonymous e-mail where petitioner initially denied involvement in was merely an internal matter between petitioner himself and his co-employee Manager Lee. It did not involve Lindberg itself.¹⁹ More, petitioner offered excuses, *i.e.* lack of "neutral venue", "clear HR Support System" and "Framework for a Grievance System", to justify his actions.²⁰ Thus, his acts were not sufficient bases for loss of trust and confidence.²¹ The *fallo* of the NLRC decision thus reads:

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. The assailed Decision of the Labor Arbiter dated October 23, 2014 is **REVERSED and SET ASIDE**. Complainant-appellant is hereby found to have been illegally dismissed. Lindberg Subic, Inc. (a.k.a Lindberg Ag A4 Branch Subic Bay) is ordered to reinstate appellant to his former position or substantially the same position without loss of seniority rights and other privileges and to pay his backwages from the time of his dismissal up to the finality of this Decision, computed as follows:

BACKWAGES:

a) Basic Salary

12/27/13 - 5/29/15 = 17.07 mos.

₱77,395.50 x 17.07 = ₱1,321,141.19

b) 13th Month Pay

₱1,321,141.19/12 = P110,095.10

₱1,431,236.29

Attorney's Fees (10%)

₱143,123.62

TOTAL AWARD

₱1,574,359.91

SO ORDERED.²²

Respondents' motion for reconsideration was denied under Resolution dated July 30, 2015.²³

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¹⁸ Section 16 of Lindberg's Rules as cited in the NLRC Decision dated May 29, 2015; *rollo*, p. 173.

¹⁹ *Rollo*, p. 173.

²⁰ *Id.* at 174.

²¹ *Id.* at 173.

²² *Id.* at 176-177.

²³ *Id.* at 179-185.

The Ruling of the Court of Appeals

Respondents sought affirmative relief from the Court of Appeals which under its assailed Decision²⁴ dated July 31, 2018, nullified the NLRC's dispositions. It ruled that the NLRC erroneously oversimplified the charges against petitioner.²⁵

First, in the anonymous e-mail he sent to Lindberg's Chief Operating Officer Israelsen, he made it appear that it was written by a rank-and-file employee by its wording and reference to Lee as "boss" and "Sir Rollie" and not a co-ranking manager such as himself. This caused alarm to Lindberg's management for it was led to believe that a regular employee gained access to its Data Viewer system.

Second, in the e-mail, petitioner alleged that Lee was late because he engaged in drinking sprees. As it was though, Lee's tardiness had been excused by management because he had to attend to his mother who suffered from dementia. Notably, it appeared that petitioner was merely intriguing against his co-manager.²⁶

Third, Lindberg's Rules sanctioned false testimony with dismissal from employment and it was the second time petitioner had been found guilty of such act. In fact, he was forewarned that a repetition of the same offense would be dealt with more severely in the future, which included termination.²⁷

Finally, the Court of Appeals stressed that petitioner was not terminated solely on account of his unauthorized reproduction of a co-manager's Daily Time Record and dishonesty. Rather, it was the totality of petitioner's past and present behavior that breached the trust and confidence reposed on him by Lindberg. Petitioner's dismissal, therefore, was valid. The Court of Appeals ruled:

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated 29 May 2015 rendered by Public Respondent National Labor Relations Commission (NLRC) in *NLRC RAB-III-01-21120-14* is **ANNULLED and SET ASIDE**. The Decision dated 23 October 2014 of Labor Arbiter Leandro M. Jose in *NLRC LAC NO. 01-000020-15* is **REINSTATED**.

SO ORDERED.²⁸

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²⁴ Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and (now SC Associate Justice) Rodil V. Zalameda, concurring.

²⁵ CA Decision, p. 10.

²⁶ *Id.* at 13.

²⁷ *Id.*

²⁸ *Id.* at 15.

Petitioner's motion for reconsideration was denied under Resolution²⁹ dated March 5, 2019.

The Present Petition

Petitioner now invokes the Court's discretionary appellate jurisdiction to review and set aside the assailed dispositions of the Court of Appeals. He essentially avers that his dismissal on ground of loss of trust and confidence was not valid since his acts were not willful and related to his fitness or unfitness as a manager.³⁰

Respondents riposte that they had validly terminated petitioner on ground of loss of trust and confidence. Petitioner exhibited a continuing propensity for dishonesty which, given his position as a manager, was sufficient basis for Lindberg to lose its trust and confidence in him.³¹

Issue

Did the Court of Appeals commit reversible error in finding that petitioner was validly dismissed from employment?

Ruling

The petition is utterly devoid of merit.

Article 297³² (formerly 282) of the Labor Code authorizes an employer to dismiss an employee by reason of loss of trust and confidence. More so in the case of supervisors and managers,³³ for they hold a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.³⁴ Betrayal of this trust is the essence of the offense for which the employee is penalized.³⁵

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²⁹ Penned by now Supreme Court Associate Justice Rodil V. Zalameda, with Associate Justice Fernanda Lampas Peralta and now Supreme Court Associate Justice Henri Jean Paul B. Inting, concurring.

³⁰ *Rollo*, pp. 26-28.

³¹ *Id.* at 251-255.

³² Art. 297. Termination by employer. — An employee may terminate an employment for any of the following causes:

xxx

- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

xxx.

³³ See *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, 489 Phil. 483, 496 (2005).

³⁴ *Caingat v. NLRC*, 493 Phil. 299, 308 (2005).

³⁵ *Santos v. San Miguel Corp.*, 447 Phil. 264, 266-267 (2003).

For loss of trust and confidence to be a valid ground for dismissal, the employer must establish that: (1) the employee holds a position of trust and confidence; and (2) the act complained against justifies the loss of trust and confidence. Further, the act complained of must be work-related and show that the employee concerned is unfit to continue working for the employer.³⁶

In *Etcuban, Jr. v. Sulpicio Lines, Inc.*,³⁷ the Court distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of loss of trust and confidence is concerned, viz.:

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. **But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.** (emphasis supplied)

Here, it is undisputed that petitioner was a managerial employee who held a position of trust and confidence. That petitioner had breached the trust of his employer is indubitable. Consider:

One. Petitioner used the company's Data Viewer program to access confidential information about his fellow manager. Notably, the Data Viewer was installed only in managers' computers due to the strict confidentiality of the employees' files therein. It ought to be used for the sole purpose of monitoring their respective subordinates' performance. It was not meant to be used by a manager to monitor another manager's performance. As it was though, petitioner surreptitiously accessed the Data Viewer program for the purpose of obtaining his fellow manager Lee's Daily Time Record which he later used to destroy the image and reputation of the latter.

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³⁶ *Prudential Guarantee and Assurance Employee Labor Union v. NLRC*, 687 Phil. 351, 368-369 (2012).

³⁷ *Etcuban, Jr. v. Sulpicio Lines, Inc.*, Supra note 33.

Two. He sent Lindberg's Chief Operating Officer Israelsen an anonymous e-mail, with Lee's Daily Time Record as attachment. In the e-mail, he made it appear it was written by a rank-and-file employee by referring to Lee as "boss" and "Sir Rollie". Petitioner also falsely alleged in the supposed anonymous e-mail that Lee incurred tardiness because he engaged in drinking sprees. As it turned out, however, the company had excused Lee's tardiness because he had to attend to his mother who suffered from dementia.

Three. During the investigation, petitioner denied any involvement in the unauthorized use of the company's Data Viewer and authorship of the anonymous e-mail *twice*.

After finding evidence of petitioner's possible participation in the incident, he was called to a meeting where he was confronted with the accusations against him. He was confronted by the company's officers and the factual circumstances surrounding the charges against him were explained. Petitioner, however, vehemently denied them.

When he was directed to submit a written explanation why he should not be sanctioned for violation of Lindberg's Company Policies and Procedures, petitioner still did not admit sending the anonymous e-mail. Instead, he merely claimed that he saved Lee's Daily Time Record in his computer because he was "*investigating and validating a complaint about the alleged unfair treatment on tardiness.*"³⁸

It was only after the investigation was concluded and he was already admonished for breach of confidentiality that petitioner eventually confessed to Lindberg's Chief Operating Officer Israelsen that he, indeed, was the one who sent the anonymous e-mail.

Clearly, petitioner's act of accessing, without any authority, confidential information to be used to tarnish the image of a co-manager and even sending via an anonymous e-mail this confidential information together with his malicious annotation that his co-manager incurred tardiness because he engaged in drinking sprees was highly unethical and unprofessional. Not only that. Petitioner falsely denied authorship of this e-mail twice and shrewdly waited for the investigation to get terminated, and for admonition to be handed down by the company, before he finally confessed to the chief operating officer that it was he all along who did it. This smacks of dishonesty and deceit. It all boils down to false testimony defined and penalized under Lindberg's company rules and regulations.

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³⁸ CA Decision dated July 31, 2018, p. 4.

Finally. Records show that this was not the first time petitioner had been found guilty of unacceptable conduct and false testimony. Sometime in 2007, petitioner changed the minimum number of stocks in the company's records. When confronted during a meeting, he asserted he was authorized to make changes in stock records. But it was later confirmed he was not. For these offenses, petitioner was suspended for ten (10) days without pay. He was also forewarned that "*a repetition of the same offense in the future will be deal (sic) with much heavier disciplinary action including termination*".³⁹

As it was, despite the previous sanction imposed on him, petitioner still continued with his dishonest and malicious conduct. He exhibited unworthiness of the trust and confidence demanded of his position. As regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.⁴⁰ Here, we find substantial ground for respondents' loss of confidence in petitioner.⁴¹ His dismissal, therefore, is justified.

Surely, there is no substitute for honesty for sensitive positions which call for utmost trust. Fairness dictates that the employer should not be allowed to continue with the employment of an employee who has breached the confidence reposed on him or her. Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible, to regain.⁴²

In sum, the Court of Appeals did not commit reversible error when it nullified the dispositions of the NLRC. Its factual findings conformed with the evidence on record, and its ruling, with law and jurisprudence.

ACCORDINGLY, the petition is **DENIED**. The Decision dated July 31, 2018 and Resolution dated March 5, 2019 of the Court of Appeals in CA-G.R. SP No. 142570 are **AFFIRMED**.

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³⁹ CA Decision, p. 11.

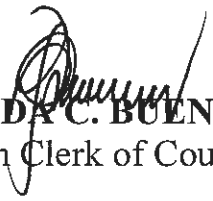
⁴⁰ *Alaska Milk Corp. v. Ponce*, 814 Phil. 975, 986-987 (2017).

⁴¹ *Santos v. San Miguel Corp.*, Supra note 35.

⁴² *Etcuban, Jr. v. Sulpicio Lines, Inc.*, Supra note 33.

SO ORDERED.” *Peralta. C.J., took no part; Leonen, J., designated Additional Member per Raffle dated December 9, 2019.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *pk 11/27*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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