SUPREME COURT
THIRD DIVISION

ADELINO FELIX,
***Petitioner*,**

-versus-

G.R. No. 148256
November 17, 2004

NATIONAL LABOR RELATIONS COMMISSION (NLRC) 3RD DIVISION and REPUBLIC ASAHI GLASS CORPORATION,
***Respondents*.**
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D E C I S I O N

CARPIO MORALES, *J.*:

From the Court of Appeals Decision[1] of May 21, 2001 affirming that of the National Labor Relations Commission which dismissed petitioner Adelino Felix's complaint for illegal dismissal against Republic Asahi Glass Corporation (the company), petitioner comes to this Court on a petition for review on certiorari.

Petitioner was hired by the company on October 1, 1980 as a Cadet Engineer. In 1983 he became a supervisor, a position he held until January 1992.[2] In January 1992, he was designated as Marketing

Officer II, a position at the company's Fabricated Glass Division Marketing (FGD Marketing).[3]

FGD Marketing promotes market expansion, solicits purchase orders, monitors inventory and update of records, finds sources of automotive laminated glass products, regularly visits customers' warehouse and production line, receives customers' complaints, and initiates the return of vacated wooden crates in customers' warehouses.[4] It likewise coordinates with other departments of the company including the Production Planning Control Department for the scheduling of tempered glass production, the Logistics Department for delivery requirements and schedule, and the Credit and Collection Department for establishment of credit lines and terms for new customers.[5]

Sometime in 1992, petitioner was offered a chance to train and qualify for the position of Assistant Manager but as he was content with his position as Marketing Officer II, he declined and waived the opportunity to the one who was next-in-line.[6]

As Marketing Officer II of the FGD Marketing, the bulk of petitioner's functions related to sales, which required him to perform his duties away from the principal place of business of the company.[7] He handled the accounts of Philippine Automotive Manufacturing Corporation (PAMCOR), Universal Motors Corporation (UMC), Honda Cars Philippines, Inc., and Francisco Motors Corporation (FMC) and reported directly to the Manager of FGD Marketing, Ms. Marilyn Encinares.[8]

By petitioner's claim, sometime in July 1994, he was asked by certain officers of the company, particularly Ms. Encinares and Mr. Roberto G. Agustin, Assistant Vice President, Manpower Technical Services, to resign and accept a separation package, failing which he would be terminated for loss of confidence.[9]

Petitioner, however, refused to resign and accept separation benefits, drawing the officers of the company to, by his claim, start harassing him.[10] Thus, he was not given work[11] and another employee, Mr. Elmer Tacata, was assigned to take over his post and function.[12] And

one morning, he found on his desk a newspaper clipping of a job opening for a "Tempering Glass Supervisor" in the Middle East.[13]

Unable to withstand the manner by which he was being treated by the company, he, through his lawyer, warned it by letter of August 16, 1994 about the illegality of its actions. The letter reads:

> Gentlemen:
>
> I am writing in behalf of my client, MR. ADELINO L. FELIX, your Marketing Officer, Fabricated Glass Division.
>
> It appears that you have been unlawfully compelling him to voluntarily resign with a separation package otherwise you will terminate him due to alleged loss of trust and confidence.
>
> I have also been informed that no formal charges have been officially furnished him which constitutes your alleged grounds for termination. My client is also being subjected to undue mental torture because you deliberately refuse to assign any tasks to him these past few weeks despite his being always present at work.
>
> I need not tell you that what you have been doing to my client is illegal and malicious. You are hereby put on notice that unless the necessary rectifications are made to the wrong done to my client, we shall file the necessary legal action/s against you for the redress of his grievances, impleading in the intended case/s your responsible officers.[14]

Upon receipt of petitioner's letter also on August 16, 1994, the company transferred him from his position as Marketing Officer II of the FGD Marketing to Supervisor IV of the Technical Services Division (TSD).[15] And replying to petitioner's letter, the company emphasized that given the series of irresponsible and inefficient acts he had committed which justified the initiation of an administrative proceeding against him,[16] it instead offered him a separation package upon his resignation in order to give him an opportunity to opt for a graceful exit.[17] The company went on to declare that it had finally decided to initiate disciplinary action against him in view of, in

the main, his irresponsibility in sending the August 16, 1994 letter which pre-empted management prerogatives.[18]

Thus the company, by letter of September 27, 1994, directed petitioner to explain in writing within 48 hours from receipt thereof why his services should not be terminated for loss of trust and confidence, viz:

> Dear Mr. Felix:
>
> At the outset, you are reminded that you held a position of trust and confidence as a Marketing Officer of the Fabricated Glass Division.
>
> On various dates and occasions, you breached the trust reposed in you by the Management in that you committed, among other(s), the following:
>
> 1. Absence Without Leave (AWOL) for six (6) working days from May 29 to June 5, 1992.
>
> 2. Lingering unnecessarily or killing time at the place of customers. Worse, engaging employees and officers of the customers in arguments and quarrels to the extent that you were interfering in their functions and antagonizing them.
>
> 3. Going to or visiting UMC (Mandaluyong) only when called upon to do so.
>
> 4. Always not attending the regular morning meetings at FGD Production Office.

The over-all assessment of customers you have dealt with is that you are an irresponsible and ineffective representative of the Company. As a customary management functions (sic), and considering that you are an officer, your case has been discussed, and necessarily your transfer or even your voluntary resignation and other probabilities were mentioned unofficially and informally. In other words, by your own acts, you constrained Management to evaluate you at this stage.

Management then expected you to act as an officer. Instead you wrote that letter dated 12 August 1994 and followed by the letter of your lawyer dated 16 August 1994. These letters are both premature and designed to pre-empt Management prerogative. This merely confirms your irresponsibility. Your action is unworthy of being a trusted officer of the company.

Management has come to the conclusion that you can no longer be vested with functions that are central to the effective operations of the Company. In short, it has lost its confidence in you.

You are hereby directed to explain in writing within 48 hours from receipt hereof why your services should not be terminated for loss of trust and confidence and therefore, for cause. You may engage the advice of your counsel, if you desire, in preparing your explanation. Your failure to submit your explanation in writing within the period required shall be construed as a waiver on your part and the Management will proceed to act accordingly.[19] *(Underscoring and emphasis supplied)*

By letter of September 28, 1994, petitioner denied the charges against him. He explained that his absence for 6 days from May 29 to June 5, 1992 was occasioned by some problems at home which he had to personally attend to, information for which absence he relayed to his office; and that upon reporting for work, he submitted a written explanation to Ms. Encinares who accepted it as shown by her signature on his admission slip.[20]

On the charge that he was "lingering unnecessarily or killing time at the place of customers," he, denying the same, proffered that he valued his work and would not do anything to jeopardize his employment in the company which had given him a good source of income for the past 14 years.[21]

Likewise denying the charge that he visited the UMC plant only when called upon to do so, petitioner proffered that he made it a point to regularly visit the plant, and when technical problems arose, he attended to them immediately.[22]

On the charge that he had not attended the daily 3 minutes meeting[23] at the FGD Production Office, petitioner, denying the same, explained that the Warehouse and Production Department preferred to talk to only one person and if there were matters or concerns that needed to be addressed by the FGD Marketing, he coursed them through Engr. Raymond Santayana who was chosen to act as the representative during those meetings.[24]

Petitioner attributed the company's harassment against him to his being a member of the supervisory union then being formed.[25]

The company subsequently terminated petitioner's services for loss of trust and confidence by letter of September 30, 1994 reading:

> Dear Mr. Felix:
>
> We received on 29 September your letter explanation dated 28 September 1994.
>
> A perusal of your letter-explanation shows that you have not actually clarified much less satisfied management why it should not lose its trust and confidence reposed in you as an officer of the company. You did not even respond to the finding of Management that you were "irresponsible and ineffective representative of the Company" which is disappointing to say the least.
>
> It is amusing but also disappointing that you, like an ordinary rank and filer (sic), is now trying to hide under the skirt of "unionism" to cover your shortcomings. We are not aware of the formation of any such supervisory union. The stand of the Company in unionism is clear. Unionism has nothing to do with your case and you know that.
>
> We regret to advise you therefore that the Company is terminating your services for loss of trust and confidence and therefore for cause effective upon receipt hereof. You are further directed to turn over all papers, documents and other property of the Company to your department head.

For your compliance.[26] *(Underscoring supplied)*

Petitioner thus lodged on October 10, 1994 a complaint for illegal dismissal.[27]

Petitioner claims that he was terminated because of his active participation in the formation of a supervisory union, and that the so-called "due process" afforded to him was a sham because the company had decided to terminate his employment before his receipt of the September 27, 1994 show-cause letter.[28] To support his claim, petitioner referred to a circular dated August 15, 1994 sent by the company to its clients, informing them that petitioner had been relieved of his position as Marketing Officer II effective August 1, 1994.[29]

On the other hand, the company denied that it harassed petitioner and that he was dismissed for his union activities,[30] it maintaining that aside from the 4 grounds it stated in its September 27, 1994 show-cause letter to him, he had incurred frequent absences as early as in 1991 which were not due to emergency reasons but to his personal endeavors such as attending to his duties as barangay kagawad, or to his "palayan" or piggery or "palaisdaan."[31] Additionally, it complained that petitioner did not utilize company time effectively as he would go home directly after making calls on customers even if there remained 3 or 4 hours of company time.[32]

To substantiate its claim that petitioner was dismissed for cause, the company submitted the following documentary evidence.

1. A letter sent to petitioner by M.S. Encinares dated June 16, 1992 regarding the six (6) days vacation leave from May 29 to June 5, 1992.[33]

2. A memorandum dated March 11, 1994 prepared by M.S. Encinares regarding petitioner's absence in the daily three (3) minute meeting of the Marketing Associates and Staff with the Production Group.[34]

3. A report dated August 18, 1994 submitted by M.S. Encinares on a meeting held by Francisco Motors Corp. (FMC) with its

suppliers including Republic Glass Asahi Company, citing the report[35] of Elmer Tacata, the company's representative to the meeting, that FMC complained of delayed deliveries and irregular visits of the company representative.[36]

4. A report dated September 19, 1994 prepared by N.B. Galpa on his trip to Nissan Motors, FMC, Universal Motors, PAMCOR and Honda Cars Philippines about some of its products being rejected and returned due to scratches, distortion, "chipping and no-hole," mispacking and handling procedure.[37]

5. Affidavit of M.S. Encinares dated November 15, 1995 on petitioner's work ethics and behavior.[38]

Relying on the documentary evidence submitted by the company, the Labor Arbiter, by Decision of October 16, 1996, dismissed petitioner's complaint in this wise:

> In the present case, sufficient factual basis has been established to justify the dismissal of complainant on the ground of loss of trust and confidence, Complainant's six-day absence without official leave had been properly documented by the Company in a letter dated 16 June 1992 (Annex "B", Respondent's Position Paper). Complainant's negative attitude towards the daily 3-minute meetings among the FGD Staff was likewise documented in a memorandum dated 11 March 1994 prepared by M.S. Encinares (Annex "C", Position Paper). His inefficiency and lack of sense of responsibility in relation to customer service have likewise been documented in several inter-office reports on problems and complaints from accounts handled by complainant. In a report dated 18 August 1994 submitted by M.S. Encinares regarding the account of Francisco Motors Corporation ("FMC") which was the responsibility of complainant, FMC's complaints about delayed deliveries and irregular visits of RAGC representative were put on record (Annex "B" Reply Position Paper). The aforementioned report dated 18 August 1994 is based on the minutes of a meeting of suppliers which includes the Company, held on 17 August 1994 called by FMC to discuss said problems of delayed deliveries and irregular visits (Annex "C", Reply Position Paper). As to the

> other accounts handled by complainant, complaints on these accounts, regarding rejected glasses and returns due to scratches, distortion, chipping and no-hole, mispacking and handling procedure, were documented in a report dated 19 September 1994 prepared by N.B. Galpa (Annex "D", Reply Position Paper). The said reports were further substantiated by Marilyn S. Encinares, Manager, Fabricated Glass Division-Marketing in her affidavit executed on 15 November 1995.[39] *(Underscoring supplied)*

On appeal, the National Labor Relations Commission (NLRC), quoting extensively from the Decision of the Labor Arbiter, dismissed petitioner's complaint for lack of merit by Decision[40] of March 20, 1998. Petitioner moved for reconsideration of the decision, but it was denied in a resolution[41] of May 7, 1998.

Undaunted, petitioner filed a petition for certiorari with this Court which referred it to the Court of Appeals in accordance with St. Martin Funeral Homes vs. NLRC.[42]

By Decision of May 21, 2001, the Court of Appeals upheld the dismissal of petitioner's complaint, it holding that petitioner performed the function of a salesman and in the position he was holding, loss of trust and confidence is a valid cause for dismissal.

Hence, the present petition.

The issue boils down to whether the company's loss of trust and confidence in petitioner is founded on facts established by substantial and competent evidence.[43]

The petition is impressed with merit.

Undoubtedly, the rule is that high respect is accorded to the findings of fact of quasi-judicial agencies, more so in the case at bar where both the Labor Arbiter and the NLRC share the same findings. The rule is not, however, without exceptions one of which is when the findings of fact of the labor officials on which the conclusion was based are not supported by substantial evidence. *(Austria vs. National Labor Relations Commission, 310 SCRA 293, 300*

[1999]).[44] The same holds true when it is perceived that far too much is concluded, inferred or deduced from bare facts adduced in evidence. *(Marcelo vs. National Labor Relations Commission, 240 SCRA 782, 785 [1995])*.[45]

It is noted that petitioner's appeal to the NLRC raised serious errors in the findings of fact of the Labor Arbiter. The NLRC failed, however, to address them, it rendering an 8-page decision 7 pages of which quoted in full the decision of the Labor Arbiter.

Unlike in other cases where the complainant has the burden of proof to discharge its allegations, the burden of establishing facts as bases for an employer's loss of confidence in an employee — facts which reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his participation therein is such as to render him unworthy of trust and confidence demanded of his position — is on the employer. *(Pilipinas Bank vs. National Labor Relations Commission, 215 SCRA 750, 756 [1992])*.[46] Should the employer fail in discharging this onus, the dismissal of the employee cannot be sustained. This is consonant with the constitutional guarantee of security of tenure, as implemented in what is now Sec. 279 of the Labor Code, as amended. *(Quezon Electric Cooperative vs. National Labor Relations Commission, 172 SCRA 88, 97 [1989])*.[47]

The employer's evidence, although not required to be of such degree as that required in criminal cases, i.e., proof beyond reasonable doubt, must be substantial – it must clearly and convincingly establish the facts upon which loss of confidence in the employee may be made to rest. *(Pilipinas Bank vs. National Labor Relations Commission, 215 SCRA 750, 756 [1992])*.[48]

In the case at bar, the company failed to discharge this burden.

The company complained of petitioner having incurred 6 days of absence without leave from May 29 to June 5, 1992. This complaint had earlier been the subject of a letter[49] addressed to petitioner dated June 16, 1992 wherein Ms. Encinares advised him that communicating through the telephone of a leave of absence is inappropriate. While petitioner's written explanation for his absence

discloses a conflict of interest between his employment with the company and his operation of his rice plantation, he therein made a commitment to improve his over-all performance and reporting habits, drawing the company to conditionally approve his 6 days leave and charge the same to his vacation leave.[50]

The records do not disclose that petitioner incurred any further absences without leave. More importantly, except for that incident in 1992, the company failed to show that there were instances during the 14 years that petitioner had been employed that he incurred absences without leave.

The propriety of petitioner's 6 days of absence having priorly been threshed out by the parties, the company may no longer ask petitioner to, more than two years later by letter of September 27, 1994, re-explain his absence and use the same to justify his dismissal.

As for the charge that petitioner had not been attending the daily 3 minutes meeting of the FGD Marketing, the inter-office correspondence dated March 11, 1994 shows that "the deliberate failure of petitioner in attending the meeting could be attributed to that argument between him and AAN (A.A. Naval), that occurred last January 28, 1994 over the present system of PAMCOR in handling local development of glass components."[51] It bears noting, however, that the company took no action on the matter, nor warned petitioner that his attendance in the meetings was mandatory. It was several months later or on September 27, 1994 when the company first called his attention to it and used it as a basis for dismissing him. It is thus deemed to have overlooked his absence in the daily meetings.

A company is expected to call the attention of an employee to any undesirable act or omission within a reasonable time. In the case at bar, the failure of the company to timely take any disciplinary action against petitioner undermines its claim that petitioner's continued absence in the meetings rendered him unfit for continued employment with it.

That the company hastily dismissed petitioner is clearly apparent. As petitioner argued, he was not given adequate time to prepare for his

defense, but was peremptorily dismissed, even without any formal investigation or hearing.[52]

It is settled that where the employee denies the charges against him, a hearing is necessary to thresh out any doubt. The failure of the company to give petitioner, who denied the charges against him, the benefit of a hearing and an investigation before his termination constitutes an infringement of his constitutional right to due process. So Roche *[Philippines vs. National Labor Relations Commission, [178 SCRA 386 (1989)]*[53] instructs:

> In denying that they have deprived the right of Villareal to due process, the petitioners pointed out that he was informed of the charges against him and he was given the opportunity to explain his side. Citing Associated Citizen's Bank vs. Ople [103 SCRA 130 (1981)], the petitioners attempted to substantiate their argument by mentioning that this Court had previously done away with the holding of a hearing in order to comply with the constitutional requirement of due process.
>
> However, the circumstances obtaining in the above-cited case bears no resemblance to the case at bar. The former contemplates a situation where the employee admits his guilt and all his admissions are corroborated by documentary evidence. Such is not the case in the present controversy where Villareal never admitted the commission of the offense he was being charged of. The records do not indubitably show that Villareal was actually in Cebu City on that day. A hearing was, therefore, necessary to thresh out all doubts as to the conflicting allegations of De la Cruz and Villareal. The failure of petitioner to give private respondent the benefit of a hearing and an investigation before his termination constitutes an infringement of his constitutional right to due process of law [BLTB Bus Co. vs. Court of Appeals, 71 SCRA 470 (1976); see also Batas Pambansa Blg. 130]. *(Roche [Philippines] vs. National Labor Relations Commission, 178 SCRA 386, 393-394 [1989]).*[54] *(Underscoring supplied)*

As for the other two charges – that petitioner as a field officer unnecessarily lingered or killed time at the place of clients and

engaged them in arguments and quarrels, and that he visited UMC (Mandaluyong) only when called upon to do so – the company failed to substantiate the same.

Except for the mere allegation of petitioner's manager[55] that its clients have been complaining of petitioner's work attitude and performance, there is no concrete evidence to show the same.

The inter-office memoranda relied upon by the Labor Arbiter were accomplished only after petitioner's counsel sent the August 16, 1994 cautioning the company that petitioner could not be legally compelled to voluntarily resign and accept a separation package.

It bears emphasis that the matter of determining whether the cause for dismissing an employee is justified on the ground of loss of confidence cannot be left entirely to the employer. Impartial tribunals do not rely only on the statement made by the employer that there is "loss of confidence" unless duly proved or sufficiently substantiated. *(Dosch vs. National Labor Relations Commission, 123 SCRA 296, 317 [1983], citing De Leon vs. National Labor Relations Commission, 100 SCRA 691, 700 [1980]).*[56]

The report[57] of Ms. Encinares dated August 18, 1994, citing a report[58] of Elmer Tacata, that FMC had been complaining about lack of visiting company representative and delayed deliveries for the month of August cannot be attributed to petitioner.

As explained by petitioner, during the later part of July 1994, right after he refused to resign, he was not given work. He could not thus transact business with clients since another employee, Tacata, was assigned to take over his post and function.[59] In his report, Tacata stated that "FMC noted that some suppliers fail to obtain their Delivery Authorization causing delays in their deliveries."[60] He hastened to add, however, that the suppliers who attended the FMC meeting included other companies like Transworld Rubber and UE Automotive Manufacturing.[61]

Tacata's statement that "Arnel Deunida [Supply Superintendent of FMC] requested that our customer service and QA Staffs resume their regular visits to FMC to inspect and evaluate glass rejects"[62] in fact

gives credence to the allegation of petitioner that he regularly visited his client and it was only in late July 1994 that he could no longer do so, Tacata having taken over his position.

Instead of exercising prudence in examining the evidence, the Labor Arbiter hastily attributed fault to petitioner, viz:

> As to the other accounts handled by complainant, complaints on these accounts, regarding rejected glasses and returns due to scratches, distortion, chipping and no-hole, mispacking and handling procedure, were documented in a report dated 19 September 1994 prepared by N.B. Galpa *(Annex "D" Reply Position Paper)*.[63]
>
> Nowhere, however, in the report[64] submitted by N.B. Galpa on his trip to the companies whose accounts were formerly handled by petitioner *(Nissan Motors, FMC, Universal Motors, PAMCOR and Honda Cars)* is it shown that petitioner was directly responsible for the rejected or rejected other glasses and items. The report shows that the alleged defects in the returned items, like those returned to PAMCOR, consisted of scratches – 12 pcs., distortion – 2, chipping – 1, and no hole – 1; for Honda Cars, deep scratch (WS) – 1 pc., no bolt (SR3 FD) – 1 pc., broken (SR4 FD) – 1pc.[65] These defects are not, however, uncommon in a business dealing in glasses.
>
> To attribute these product returns to petitioner and conclude that he is inefficient and irresponsible is unfounded. For as of September 19, 1994, when N.B. Galpa submitted his report, petitioner had long been divested of responsibility over these accounts. In any event, even if the returned items were part of those previously delivered during the period when petitioner was still handling those accounts, the complaints pertain to the quality of the goods delivered or defects caused by mishandling. These complaints should then have been properly directed to the Production Planning and Control Department or the Logistics Department which were tasked to manage product quality and delivery. As admitted by the company, petitioner's function at the FGD Marketing was confined to sales.

That the N.B. Galpa report[66] which was accomplished a month after petitioner was officially transferred from the FGD Marketing to the Technical Services Division, still contained a complaint by FMC that the company "has not been in constant contact with FMC, and in fact [was] ignoring [its] request to settle the issue about F-1300 RQ (deep double curve, but within Specs)"[67] indicates that it was directed against the company. Such notwithstanding, the Labor Arbiter regarded all the complaints contained in the report as proof of petitioner's inefficiency and irresponsibility.

Absent any standard of performance upon which petitioner was rated on the job, loss of confidence has no basis.

Ms. Encinares' accusatory affidavits and inter-office memoranda are then not only self-serving but baseless. Accusation cannot take the place of proof. *(Austria vs. National Labor Relations Commission, 310 SCRA 293, 303 [1999]).*[68]

At all events, even if all the allegations-charges set forth in the September 27, 1994 letter of the company to petitioner are true, they are not of such nature which merit the penalty of dismissal, given petitioner's service for 14 years. Dismissal is unduly harsh and grossly disproportionate to the charges. This rule on proportionality – that the penalty imposed should be commensurate to the gravity of his offense – has been observed in a number of cases. *(Dela Cruz vs. National Labor Relations Commission, 268 SCRA 458, 471 [1997]; Associated Labor Unions-TUCP vs. NLRC, 302 SCRA 708, 715-716 [1999]; Gelmart Industries Phils., Inc. vs. NLRC, 176 SCRA 295, 303 [1989]; Bustillos vs. Inciong, 120 SCRA 262, 267 [1983]; Marcelo vs. National Labor Relations Commission, 240 SCRA 782, 785 [1995]).*[69]

In labor-management relations, there can be no higher penalty than dismissal from employment. Dismissal severs employment ties and could well be the economic death sentence of an employee. Dismissal prejudices the socio-economic well being of the employee's family and threatens the industrial peace. Due to its far reaching implications, our Labor Code

decrees that an employee cannot be dismissed, except for the most serious causes. The overly concern of our laws for the welfare of employees is in accord with the social justice philosophy of our Constitution. *(Cebu Filveneer Corp. vs. NLRC (Fourth Division), 286 SCRA 556, 562-563 [1998]).*[70] *(Underscoring supplied)*

While Article 282 of the Labor Code provides that an employer may terminate an employee based on fraud or willful breach of the trust reposed in him by his employer or duly authorized representative, loss of trust and confidence as a just cause for dismissal was never intended to provide employers with a carte blanche for terminating employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given imprimatur by this Court, could readily reduce to barren the constitutional guarantee of security of tenure. *(Mabeza vs. National Labor Relations Commission, 271 SCRA 670, 682 [1997]).*[71] *As explained in Dela Cruz vs. NLRC [268 SCRA 458 [1997]):*[72]

It is of course settled that an employee may terminate the services of an employee due to loss of trust and confidence. However, the loss must be based not on ordinary breach by the latter of the trust reposed in him by the former, but, in the language of Article 28[2]c of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Elsewhere stated, it must rest on substantial grounds and not on the employer's arbitrariness, whims, caprice or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal of unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must therefore be an actual breach of duty committed by the employee which must be established by substantial evidence. *(Dela Cruz vs. National Labor Relations*

Commission, 268 SCRA 458, 471 [1997]).[73] *(Citations omitted; Emphasis and underscoring supplied)*

There being no basis in law or in fact justifying petitioner's dismissal on the basis of loss of trust and confidence, his dismissal was illegal.

WHEREFORE, the petition is **GRANTED**. The challenged decision of the appellate court is hereby **SET ASIDE** and a new one entered:

(1) **DECLARING** illegal and void petitioner's dismissal from the service of the company; and

(2) **ORDERING** the company to pay petitioner full back wages from the time he was dismissed from the service until the finality of this decision; and separation pay, equivalent to one month salary for every year of service, computed from the time petitioner was first employed and until the finality of this decision, reinstatement being no longer possible due to strained relations of the parties.

SO ORDERED.

PANGANIBAN, *J.*, *(Chairman)*, SANDOVAL-GUTIERREZ and GARCIA, *JJ.* concur.
CORONA, on leave.

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[1] Rollo at 63-69.
[2] Id. at 18.
[3] Id. at 95.
[4] Id. at 135-136.
[5] Id. at 135-136.
[6] Id. at 179.
[7] Id. at 131.
[8] Id. at 18-19.
[9] Id. at 6.
[10] Ibid.
[11] Id. at 71.
[12] Id. at 13.
[13] Id. at 20.

[14] Id. at 71.
[15] Id. at 72.
[16] Id. at 98.
[17] Id. at 99.
[18] Id. at 99.
[19] Id. at 73-74.
[20] Id. at 75.
[21] Ibid.
[22] Id. at 75.
[23] Id. at 139.
[24] Id. at 76.
[25] Id. at 76.
[26] Id. at 77.
[27] Id. at 215.
[28] Id. at 21.
[29] Ibid.
[30] Id. at 24.
[31] Id. at 22.
[32] Id. at 125.
[33] Id. at 137-138.
[34] Id. at 139.
[35] Id. at 152-154.
[36] Id. at 151.
[37] Id. at 155-158.
[38] Id. at 165-170.
[39] Id. at 26-27.
[40] Id. at 38-46.
[41] CA Rollo at 42.
[42] 295 SCRA 494 (1998).
[43] Rollo at 11.
[44] Austria vs. National Labor Relations Commission, 310 SCRA 293, 300 (1999).
[45] Marcelo vs. National Labor Relations Commission, 240 SCRA 782, 785 (1995).
[46] Pilipinas Bank vs. National Labor Relations Commission, 215 SCRA 750, 756 (1992).
[47] Quezon Electric Cooperative vs. National Labor Relations Commission, 172 SCRA 88, 97 (1989).
[48] Pilipinas Bank vs. National Labor Relations Commission, supra at 757.
[49] Rollo at 137-138.
[50] Id. at 137-138.
[51] Id. at 181.
[52] Id. at 238.
[53] [178 SCRA 386 (1989)].
[54] (Roche (Philippines) vs. National Labor Relations Commission, 178 SCRA 386, 393-394 (1989).
[55] Rollo at 84-89.

[56] (Dosch vs. National Labor Relations Commission, 123 SCRA 296, 317 [1983], citing De Leon vs. National Labor Relations Commission, 100 SCRA 691, 700 [1980]).
[57] Rollo at 151.
[58] Id. at 152-154.
[59] Id. at 13.
[60] Id. at 152.
[61] Ibid.
[62] Id. at 153.
[63] Id. at 26-27.
[64] Id. at 155-158.
[65] Id. at 157-158.
[66] Id. at 155-158.
[67] Id. at 155.
[68] (Austria vs. National Labor Relations Commission, 310 SCRA 293, 303 [1999]).
[69] (Dela Cruz vs. National Labor Relations Commission, 268 SCRA 458, 471 [1997]; Associated Labor Unions-TUCP vs. NLRC, 302 SCRA 708, 715-716 [1999]; Gelmart Industries Phils., Inc. vs. NLRC, 176 SCRA 295, 303 [1989]; Bustillos v, Inciong, 120 SCRA 262, 267 [1983]; Marcelo vs. National Labor Relations Commission, 240 SCRA 782, 785 [1995]).
[70] (Cebu Filveneer Corp. vs. NLRC (Fourth Division), 286 SCRA 556, 562-563 [1998]).
[71] (Mabeza vs. National Labor Relations Commission, 271 SCRA 670, 682 [1997]).
[72] 268 SCRA 458 [1997]).
[73] Dela Cruz vs. National Labor Relations Commission, supra at 470.