SUPREME COURT
THIRD DIVISION

ESMENIO MADLOS,
***Petitioner*,**

-versus-

G.R. No. 115365
March 4, 1996

NATIONAL LABOR RELATIONS COMMISSION and THE MANILA HOTEL CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

DAVIDE, JR., *J.*:

This is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court to set aside the decision of 15 February 1994[1] and resolution of 15 March 1994[2] of public respondent National Labor Relations Commission (NLRC) in NLRC NCR Case CA No. 00-2970-93. the former reversed the decision of 14 February 1992 of the Labor Arbiter in NLRC NCR Case No. 03-01576-91 by declaring the petitioner's dismissal as just and valid, while the latter denied the motion to reconsider the former.

NLRC NCR Case No. 03-01576-91 was commenced by the petitioner after the private respondent terminated his employment.

The parties have different versions of the facts. That of private respondent Manila Hotel is summarized in the decision of the NLRC as follows:

Complainant was employed by the respondent on March 17, 1978 as a housekeeper and in 1979 as a floor attendant.

On February 13, 1991 complainant and his co-attendant, Mauricio Adriano, were working together as partners doing their cleaning routine. At about 10:25 a.m., while they were in the corridor, Takashi Goto, a Japanese guest of Room 1610, who does not speak English, came out and made them understand that he needs laundry services. Complainant and Adriano acceded and immediately proceeded to Room 1610. The respondent claim that while complainant was collecting the soiled clothes of Takashi Goto he attempted to steal the latter's ¥100,000. Yen. Immediately thereafter the guest called up the Manager at the lobby of the hotel and reported the matter and executed an affidavit, which reads:

> REPUBLIC OF THE PHILIPPINES)
> CITY OF MANILA)
>
> AFFIDAVIT OF COMPLAINT
>
> I TAKASHI GOTO, Japanese, 46 years old, single, with foreign and postal address at 1-7-2 AZAUU CHINA, MINATO-KU, JAPAN holder of Passport Number ML4359817 and temporarily billeted at ROOM 1610 THE MANILA HOTEL after having been duly sworn to in accordance with law, hereby depose and say:
>
> 1. That around 10:30 a.m. today, February 13, 1991, I requested the roomboy at the 16th floor to get inside my room and collect my Laundry items;
>
> 2. That while the roomboy was putting inside the laundry bag my soiled clothings, I went for a while to the closet to hang my coat and attend to something in there,

leaving my wallet containing, more or less, one million cash Japanese Yen (¥1,000,000.00) atop the night table in my room. The roomboy that time was positioned near the night table;

3. That after a while, I returned to the room proper and noticed that the roomboy was placing a bundle of cash among the dirty clothings inside the laundry bag which prompted me to accost him immediately and to check the item placed inside the laundry bag;

4. That upon checking the contents of the laundry bag in the roomboy's possession, I confirmed that a bundle of my money amounting to ¥100,000.00 in 10 pcs. ¥100,000.00 denomination was among those inside the bag which amount is part of my money in my wallet placed atop the night table in my room;

5. That prior to the placing of the cash inside the laundry bag by the roomboy, all my cash are kept inside my wallet which was placed atop the night table in my room;

6. That after the recovery of my cash from the laundry bag, I got in touch with the hotel manager at the lobby and reported the incident.

(Sgd.) TAKASHI GOTO
13 February 1991

NOTE: THIS STATEMENT WAS INTERPRETED BY MR. YOSHIAKI TAKEDA, THE MANILA HOTEL GINZA RESTAURANT MANAGER.

On the same day, complainant was reassigned to the Linen Room.

On February 14, 1991, complainant was placed under preventive suspension per memorandum issued by the Rooms Director, to wit:

In view of the complaint filed by Mr. TAKASHI GOTO presently billeted at Room 1610, copy attached, which states in part that he caught you in possession of ¥100,000.00, which amount he said came from his wallet, please be informed that you are placed under preventive suspension for 30 days effective immediately pending investigation and final resolution of this case.

You are hereby requested also to submit your written explanation on this matter on or before February 18, 1991 at 10:00 A.M. in person to Mr. Baltazar of HRD so you can have full opportunity to explain your side on this complaint.

You may request your COH delegate to accompany you if you so wish.

On February 18, 1991 complainant submitted his counter-affidavit denying the complaint of Goto. On the same date, complainant was served a notice of investigation scheduled for February 20, 1991.

On February 20, 1991 complainant and Adriano were again asked to narrate the incident of February 13, 1991, which they did.

On February 25, 1991 the respondent's investigating body issued a memorandum requiring the complainant to explain within three (3) days as to why his employment should not be terminated, which complainant did on March 4, 1991.

On March 6, 1991, complainant was served a notice of termination, which reads:

> SUBJECT: NOTICE OF TERMINATION
>
> Dear Mr. Madlos:
>
> After closely evaluating and examining the evidence on record of your administrative case, we have come up with the following factual and legal findings:
>
> 1. That you have breached the trust and confidence reposed upon you by management and you have committed acts inimical to the interest of the Hotel

when you attempted, with deliberate, dishonest intention, to steal cash from a Japanese guest of the Hotel, in patent and gross violation of Section 1, Rule I of the Code of Good Behavior. Were it not for the timely attention of the guest, Mr. Takashi Goto, you could have gotten away with the cash in complete satisfaction of your intent to gain.

2. That by reason of your said act, you likewise committed serious misconduct in violation of Article 282 of the Labor Code of the Philippines.

3. That in the light of the character of the business of the Hotel and the nature of your functions as Floor Attendant, your said act also resulted in the complete loss of the trust and confidence reposed in you by management, another ground for termination, in addition to the foregoing, under Article 282 of the Labor Code.

4. Considering that you had committed an attempted crime during working hours, you had also violated Section 2, Rule III of the Code of Good Behavior of the Hotel

5. That you lied several times, even under oath, when you distorted facts in your Counter-Affidavit to suit your ulterior motive. For one thing, being fully aware of your frequent implication in investigations involving similar acts of dishonesty in the past, you had tried to mislead management that you have not been administratively investigated in the past except for once, contrary to the record of the Hotel which shows that on at least seven (7) occasions, you had been investigated for theft of cash occurring within your area of responsibility. For another thing, you distorted facts regarding the presence of another attendant, Mauricio Adriano, within the room, fully aware that by so alleging, you will be able to have an eyewitness' account of your actuation inside the room.

Unfortunately, Adriano fully corroborated by complainant Goto, controverted in material points your said allegation.

6. That all the foregoing are sufficient grounds for the termination of your employment both under the Code of Good Behavior of the Manila Hotel as well as the Labor Code of the Philippines.

In the light of the above, you are hereby served this notice of termination of your employment with The Manila Hotel effective upon your receipt hereof.

Please turn over your accountabilities to your supervisor upon your receipt of this letter.

For your strict compliance and guidance.[3]

On the other hand, the petitioner asserts that he, together with his co-attendant Mauricio Adriano, entered Goto's room to collect dirty clothes upon Goto's request. The petitioner stood at the foot of the hotel bed, while Mauricio stood by the mini-bar inside Goto's room. Goto stood between them. The three of them were only two to three steps apart. The room was well-lighted, as the lights were on and the windows were wide open. Mauricio then handed a plastic laundry bag to the petitioner; whereupon, the latter proceeded to put into the bag the soiled clothes handed to him by Goto. All this was done in the presence and within the full view of Goto and his co-attendant. After stuffing the laundry bag with soiled clothes and before leaving the room, the petitioner held up the transparent laundry bag and asked Goto whether he wanted express laundry services. Goto noticed some bills inside the bag and ordered the petitioner to unload the contents of the bag. The petitioner complied and found ¥100,000.00 inside the bag among the solid clothes. he found out latter that Goto had charged him with taking the money from his wallet which was allegedly on top of the night table about six to eight feet away from him.

The Labor Arbiter held that the private respondent had failed to discharge the burden of proving that the dismissal of the petitioner

from his employment was for a valid cause. First, the Japanese accuser, Goto, never appeared in the hearing of the case before the Labor Arbiter, let alone in the investigation conducted by the private respondent although, as admitted by the officer who conducted the investigation, Goto was still a guest of the hotel when the investigation was conducted. Goto's affidavit is therefore hearsay. Second, there is no sufficient evidence to show that the statements contained in Goto's affidavit were really his, as the affidavit was typed by the hotel's chief security officer and it was not Goto who narrated the facts to the security officer but another Japanese named Yoshiaki Takeda, the manager of a Japanese restaurant (Ginza) at the Manila Hotel. Per the Labor Arbiter's findings:

> Mr. Takeda testified that at about 11:00 a.m. of 13 February 1991, he received a telephone call from M. Ferrer, the private respondent's Duty Manager stationed at the lobby, requesting him to go to the lobby as there was a Japanese guest (Mr. Goto) who apparently was making a complaint; that the guest did not speak English while Mr. Ferrer could not understand Niponggo; that when he talked to Mr. Goto the latter narrated to him in Nippongo what transpired in his room; that he did not reduce in writing the narrations made by Mr. Goto but merely took down notes; that after the narrations made by Mr. Goto he narrated to Mr. Alberto in English the narrations made by Mr. Goto; that at that time Mr. Goto had already left. (tsn 7 November; pp 17-19)[4]

This being so, the Labor Arbiter opined that the contents of the affidavit are "double hearsay" and declared that the private respondent gravely erred in suspending and dismissing the petitioner. He then ordered the private respondent to reinstate the petitioner to his former position and to pay him full back wages and other benefits which as of the date of the decision (14 February 1992) amounted to P60,132.00, plus the sum equivalent to ten percent thereof as attorney's fees.

Upon appeal, the NLRC reversed the Labor Arbiter's decision reasoning that:

> Between an affirmative assertion and a denial, weight must be accorded to the former. And there being no showing that bad blood and enmity existed between the complainant and Takashi Goto, the Japanese national, nor was there a grudge or an ax to grind against each other, there would be no compelling motive for the Japanese to lie and concoct such a fantastic tale. It is against human nature to accuse one falsely especially if such would result in the loss of one's livelihood. For to do so, would weight heavily in one's conscience.
>
> Considering the charges of attempting to steal cash from a hotel guest, reinstatement with backwages cannot be sustained for the act committed by the complainant is a valid reason for his dismissal. Although as a rule, this Commission leans over backwards to hold workers to continue with their employment or to mitigate the penalties imposed on them, acts of this nature are a different matter.[5]

His motion for reconsideration having been denied, the petitioner invokes the jurisdiction of this Court under Rule 65 of the Rules of Court for the resolution of the following issue:

> WHETHER OR NOT THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT DECLARED VALID PETITIONER'S DISMISSAL FROM THE HOTEL, RELYING SOLELY ON ALLEGATIONS SET FORTH IN A MERE AFFIDAVIT (NOT UNDER OATH), WHOSE AFFIANT WAS NEVER PRESENTED IN ANY OF THE PROCEEDINGS (IN VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS), AND WHICH ALLEGATIONS CONTAINED IN THE AFFIDAVIT WERE NEVER ESTABLISHED BY COMPETENT, CREDIBLE AND SUFFICIENT EVIDENCE.[6]

We find for the petitioner.

It is settled that the findings of facts of quasi-judicial agencies like the NLRC are accorded great respect and at times even finality if supported by substantial evidence.[7] There are, however, exceptions such as when there is a conflict between the factual findings of the NLRC and the Labor Arbiter[8] as in the case at bench.

A painstaking examination of the records leads this Court to conclude that the NLRC gravely abused its discretion in reversing the findings of the Labor Arbiter and in holding that the private respondent had a valid ground to dismiss the petitioner, viz., loss of confidence brought about by the petitioner's alleged dishonesty.

For loss of trust or confidence to be a valid ground for the termination of an employee's services, it must be substantial, and not arbitrary, whimsical, capricious, or concocted. It must rest on an actual breach of duty committed by the employee which must be established by substantial evidence.[9] The burden of proof in connection therewith is on the employer.[10]

We agree with the Labor Arbiter that the "affidavit of complaint"[11] of Goto relied upon by the private respondent cannot, by any stretch of the imagination, be considered as substantial evidence to warrant the petitioner's dismissal from his employment. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[12] That affidavit contains not the statements of Goto but the understanding of Takeda of what Goto allegedly narrated to him in Japanese and which Takeda translated to English. Takeda admitted before the Labor Arbiter that when the security officer who typed his narration handed him the typed complaint to give to Goto for his signature, he did not bother to check it if it was an accurate interpretation of what he remembered to be Goto's narration to him.[13] In short, even the typing by the security officer of Takeda's understanding is of doubtful accuracy. Goto was not presented either before the private respondent's investigator or before the Labor Arbiter to confirm, possibly after a translation into Japanese of his affidavit, if he was correctly understood by Takeda. Verily, the contents of the affidavit are hearsay twice removed. It has absolutely no probative value. To deprive the petitioner of his only source of livelihood because of that doubtful piece of evidence would be cruel, unfair, and unjust. The security of tenure of the working man, which the Constitution[14] guarantees, cannot be impaired by doubtful evidence.

The private respondent claims that the accusation of Goto was corroborated by Mauricio Adriano, the other room attendant present

at that time. We disagree. We have assiduously dissected Mauricio's affidavit as well as his testimony during the hearing before the Labor Arbiter, and we have failed to see how the private respondent concluded that Mauricio corroborated Goto's accusation. In fact, Mauricio's testimony lent truth to the petitioner's version on the following points: (1) there were three of them in that room, namely the petitioner, Goto, and himself; (2) it was he who gave the laundry bag to the petitioner to put the soiled clothes in; (3) the petitioner was positioned at the foot of the bed at the opposite end away from the night table contrary to the allegation in the affidavit that he was positioned near the night table; and (4) they were in each other's slight for the entire time that Goto's soiled clothes were being collected.

Furthermore, the private respondent made it appear in its investigation findings that the petitioner lied when he claimed that he was investigated only once when in fact he was investigated on six different occasions. The petitioner had adequately explained that during the hearing, saying that the nature of his job includes being called to inquiry together with other chambermaids and room attendants every time a hotel guest loses or misplaces something and that he was charged only once in his 13 years of service with the hotel as room attendant and he was completely exonerated from such charge.

A conclusion then that the NLRC acted with grave abuse of discretion in setting aside the decision of the Labor Arbiter is inevitable.

The decision of the Labor Arbiter must then be reinstated. However, pursuant to the rule laid down in Ferrer vs. National Labor Relations Commission,[15] there must be deducted from the back wages and other benefits awarded to the petitioner the amount, if any, which he may have earned from employment elsewhere from the date of his illegal termination from employment up to the date of his reinstatement.

WHEREFORE, the assailed decision of the National Labor Relations Commission in NLRC NCR Case CA No. 00-2970-93 is **SET ASIDE**, and the decision of the Labor Arbiter in NLRC NCR Case No. 03-01576-91 is **REINSTATED**, subject to the modification

that such amounts as the petitioner may have earned from employment elsewhere from the date of his illegal termination from his employment up to the date of his reinstatement should be deducted from the award of back wages and other benefits.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo, Francisco and Panganiban, *JJ.*, concur.

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[1] Rollo, 28-38. Per Zapanta, D., Comm., with Bonto-Perez, E., Pres. Comm., concurring, and Rayala, R.. Comm. dissenting.
[2] Id., 41.
[3] Rollo, 28-33.
[4] Original Records (OR), 413; Rollo, 34.
[5] Rollo, 36.
[6] Id., 13.
[7] Cabalan Pastulan Negrito Labor Association vs. NLRC, 241 SCRA 643 [1995]; Philippine National Construction Corp. vs. NLRC, 245 SCRA 668 [1995]; Tiu vs. NLRC, 215 SCRA 540 [1992]; San Miguel Corp. vs. Javate, Jr., 205 SCRA 469 [1992].
[8] Pantranco North Express, Inc. vs. NLRC, 239 SCRA 272 [1994].
[9] Estiva vs. NLRC, 225 SCRA 169 [1993].
[10] Gesulgon vs. NLRC, 219 SCRA 561 [1993]; Sigma Personnel Services vs. NLRC, 224 SCRA 181 [1993]; Philippine manpower Services, Inc. Vs. NLRC, 224 SCRA 691 [1993]; Mapalo vs. NLRC, 233 SCRA 266 [1994].
[11] OR, 64.
[12] Section 5, Rule 133, Rules 133, Rules of Court. See Rase vs. NLRC, 237 SCRA 523 [1994].
[13] TSN, 7 November 1991, 378-383.
[14] Section 3, Article XIII.
[15] 224 SCRA 410 [1993]. See also Gaco vs. NLRC, 230 SCRA 260 [1994].
