

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**MANILA MIDTOWN COMMERCIAL
CORPORATION,**

Petitioner,

-versus-

**G.R. No. L-57268
March 25, 1988**

**NUWHRAIN (Ramada Chapter),
ALBERTO MASANGKAY, and HON.
VICENTE LEOGARDO, JR., Deputy
Minister, Ministry of Labor and
Employment,**

Respondents.

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DECISION

FELICIANO, J.:

On 22 August 1977, private respondent Alberto Masangkay was hired as a hotel roomboy in the Manila Midtown Ramada Hotel, a commercial establishment owned and operated by petitioner Manila Midtown Commercial Corporation.

On 13 February 1980, petitioner Corporation placed private respondent Masangkay under preventive suspension upon the ground of loss of trust and confidence. Two days later, on 15 February 1980,

petitioner Corporation filed with the then Ministry of Labor and Employment (MOLE) a formal application seeking clearance to place private respondent Masangkay under preventive suspension, effective 13 February 1980 (the date of actual suspension), leading to termination ten (10) days after receipt by the latter of notice of said application.^[1]

On 21 February 1980, private respondents Masangkay and NUWHRAIN (Ramada Hotel chapter), the labor union with which the former was affiliated, filed a Complaint^[2] (docketed as Case No. NCR-STF-2-1256-80) with the MOLE contesting petitioner Corporation's aforesaid application. The parties were subsequently required to submit their respective position papers.

On 18 August 1980, the then Director of the MOLE issued an Order,^[3] the dispositive portion of which reads:

“WHEREFORE, premises considered, let this case be, as it is hereby ordered dismissed for lack of merit. The clearance application for preventive suspension leading to termination is hereby granted.

SO ORDERED.”

Private respondents' Motion for Reconsideration of the Director's Order was treated as an appeal. In an Order dated 5 March 1981,^[4] public respondent, the then Deputy Minister of the MOLE, set aside the Order of the Director in the following manner:

“WHEREFORE, the Order dated August 18, 1980 is hereby set aside and a new judgment entered directing respondent [petitioner Corporation] to reinstate complainant [respondent Masangkay] to his former position with full backwages and without loss of seniority rights and other fringe benefits.

SO ORDERED.”

Petitioner Corporation's Motion for Reconsideration of the Deputy Minister's Order was denied on 1 June 1981. The instant Petition for *Certiorari* was subsequent]y filed with this Court on 2 July 1981.

The record of this case shows that petitioner Corporation suspended and subsequently separated private respondent Masangkay from his employment at the Ramada Hotel primarily on charges that the latter had been criminally involved in and responsible for four (4) — although petitioner Corporation would now claim five (5) — separate incidents of hotel room burglaries reported by hotel occupants as having occurred between the months of January in 1979 and February in 1980. Petitioner Corporation considered especially disturbing the circumstances that said burglaries had been carried out in rooms to which private respondent Masangkay was then assigned as roomboy and that the latter, on at least two instances, had failed to report for work on days immediately succeeding such incidents.

Aside from petitioner Corporation's charges, however, there is nothing in the record to indicate that private respondent Masangkay had in fact been responsible for or participated in any of the reported burglaries. In this connection, the Court notes the following findings of fact and observations of public respondent Deputy Minister:

Records likewise reveal that complainant [private respondent Masangkay] was investigated relative to the aforesaid incidents. The investigation took place during the months of January, June and July 1979 and the fourth or last one was on January 31, 1980. In the four investigations, no evidence was found which would link complainant to the alleged acts of thievery. In all these four instances, respondent [petitioner Corporation] initiated numerous steps to ascertain the complaints of its guests and to find out the guilt or involvement of the employee complained of. Among the steps or measures adopted by respondent was the body search of the suspect, an intensive search of the suspect's belongings and a thorough investigation in respondent's security office. All these steps taken by respondent against complainant produced negative results.

Records further reveal that there were other persons who had free access to the hotel rooms such as the friends or visitors of the guests, janitor, chambermaid and the housekeeper

supervisor who inspects the work of the roomboy, janitor and the chambermaid.

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If respondent was really determined in its quest to find the culprit, it should have investigated not only the roomboy [respondent Masangkay] but also its other employees who likewise had free access to the hotel guest's room. The record is bereft of any evidence relative to this matter."^[5] (Italics supplied)

Petitioner Corporation has neither assailed nor refuted these findings. It would allege, however, as a separate and further justification of its actions in this regard, that private respondent Masangkay, between the months of January and June in 1979, had on several occasions violated the hotel House Rules of Discipline, i.e. he had been late for work and had absented himself from work without official leave.

Petitioner's argument fails to persuade. The record reveals that petitioner Corporation never raised these matters against respondent Masangkay — either in a separate action for preventive suspension or termination, or in MOLE Case No. NCR-STF-2-1256-80 — prior to the issuance on 5 March 1981 by public respondent Deputy Minister of his disputed order. Private respondent Masangkay's alleged violations of hotel rules and regulations were brought to light by petitioner Corporation for the first time, and merely cursorily, only in its Motion for Reconsideration^[6] of said Order. Petitioner Corporation's failure seasonably to allege and act upon these matters at the appropriate time — i.e., before or upon filing of 15 February 1980 with the MOLE of the application for clearance to suspend/terminate — precludes it from now making an issue of the same in the Petition at bar. Petitioner Corporation, at this stage of litigation, cannot be allowed to plead in its favor this new matter and, in the process, amend its clearance application to include an additional ground for termination not previously passed upon by the Director or the MOLE.

We have held in the past that, when adequately proven, the dual grounds of breach of trust and loss of confidence — upon which the dismissal of private respondent Masangkay was based — constitute valid and ample bases to warrant termination of an errant employee.^[7] As a general rule, however, employers are allowed a wider latitude of discretion in terminating the employment of managerial personnel or those of similar rank performing functions which by their nature require the employer's full trust and confidence, than in the case of ordinary rank-and-file employees, whose termination on the basis of these same grounds requires proof of involvement in the events in question;^[8] mere uncorroborated assertions and accusations by the employer will not suffice.^[9]

The job of a roomboy or chambermaid in a hotel is clearly of such a nature as to require a substantial amount of trust and confidence on the part of the employer. Hotel guests are particularly vulnerable to a dishonest or thieving roomboy or chambermaid and hotel guests who are so victimized can very quickly prejudicially affect the reputation and business of a hotel. Private respondent Masangkay, a roomboy at the Manila Midtown Ramada Hotel, was thus holding a sensitive job; but he was also of the hotel rank and file. He was charged, though only administratively, with theft and subsequently investigated by petitioner Corporation to determine his participation in the mentioned hotel room burglaries. As found by public respondent Deputy Minister, petitioner Corporation concentrated all its investigations and inquiries on private respondent Masangkay alone, despite the fact that there were other persons in the hotel who likewise had free access to the rooms burglarized. As things turned out, private respondent Masangkay's criminal involvement in the thefts reported was never established; apart from petitioner Corporation's own suspicions on the matter, no proof whatsoever was presented to implicate private respondent Masangkay in said burglaries. Consequently, the dismissal of private respondent Masangkay on the ground of loss of trust and confidence cannot be sustained.

We conclude that, in view of our finding of illegal dismissal in this case, private respondent Masangkay is entitled to receive, and petitioner Corporation is obligated to pay backwages for three (3) years, without qualification and deduction. Turning to the matter of

reinstatement, considering the sensitive character of the job of a roomboy, the Court believes that substantial justice to both parties would best be served by requiring petitioner to reinstate private respondent Masangkay to a reasonably equivalent but non-sensitive position in the hotel for which the latter would be qualified. Should such a position be non-available or non-existent at this time, or should private respondent Masangkay not find such a position acceptable, then petitioner shall pay him his separation pay in lieu of such reinstatement. The amount of such separation pay — one-half (1/2) month's salary^[10] for every year of service — is to be computed based on the period from 22 August 1977 (date of first employment) to 13 February 1983 (three years after date of illegal dismissal).

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The 5 October 1981 Resolution of this Court giving due course to the Petition is withdrawn, and the Orders dated 5 March 1981 and 1 June 1981 of public respondent Deputy Minister of the MOLE in MOLE Case No. NCR-STF-2-1256-80 are hereby **AFFIRMED**, with the above indicated modifications that: (a) petitioner shall pay private respondent Masangkay three (3) years backwages without qualification or deduction, and (b) petitioner shall reinstate private respondent Masangkay to a nonsensitive position reasonably equivalent in benefits to that of a roomboy, provided that if such a position is not available, or if available is not acceptable to said private respondent, petitioner shall pay said private respondent separation pay, computed as above indicated, in lieu of such reinstatement.

SO ORDERED.

Fernan, Gutierrez, Jr., Bidin and Cortes, JJ., concur.

[1] Rollo, p. 11, Annex "A" of Petition.

[2] Id., pp. 12-14, Annex "B" of Petition.

[3] Id., pp. 26-27, Annex "D" of Petition.

[4] Id., pp. 28A-31, Annex "F" of Petition.

[5] Order, pp. 2 and 3.

[6] Rollo, pp. 32-36, Annex "G" of Petition.

[7] *San Miguel Corporation vs. Deputy Minister of Labor and Employment*, 145 SCRA 196 [1986]. See also *Callanta vs. Carnation Philippines, Inc.*, 145

SCRA 268 [1986]; Reynolds Philippine Corporation vs. Eslava, 137 SCRA 259 [1985]; and New Frontier Mines, Inc. vs. National Labor Relations Commission, 129 SCRA 502 [1984].

[8] Lamsan Trading, Inc. vs. Leogardo, Jr., 144 SCRA 571 [1986]; D. M. Consunji, Inc. vs. National Labor Relations Commission, 143 SCRA 204 [1986]; and Metro Drug Corporation vs. National Labor Relations Commission, 143 SCRA 132 [1986].

[9] Lamsan Trading, Inc. vs. Leogardo, Jr., *supra*.

[10] Including allowances regularly paid by the employer: Santos vs. National Labor Relations Commission, G.R. No. 76721 [21 September 1987]; and Soriano vs. National Labor Relations Commission, G.R. No. 75510 [27 October 1987].