SUPREME COURT
SECOND DIVISION

P. J. LHUILLIER INC. and PHILIPPE J. LHUILLIER,
***Petitioners*,**

-versus-

G.R. No. 158758
April 29, 2005

NATIONAL LABOR RELATIONS COMMISSION and HERMINIA MONTENEGRO,
***Respondents*.**
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D E C I S I O N

CHICO-NAZARIO, *J.*:

The instant Petition seeks to annul the 29 August 2002 Decision[1] of the Court of Appeals and its Resolution[2] dated 06 June 2003 affirming the 20 November 2000 Decision[3] of the National Labor Relations Commission (NLRC) and its Resolution[4] dated 11 July 2001 in the case NLRC NCR CA No. 021288-99. The NLRC Decision in turn partially affirmed the 21 July 1999 Decision[5] of Labor Arbiter Nieves V. De Castro in NLRC NCR Case No. RAB-IV-2-9720-98-B entitled, "Vincent Montenegro, et al. vs. P.J. Lhuillier, Inc./Philippe Lhuillier."

The circumstances which led to herein private respondent's dismissal are narrated hereunder:

> Initially, four employees of herein petitioner company namely: Vincent "Vicente" Montenegro, appraiser/manager; Herminia Montenegro, supervising district manager; Carlos Pedro Sara, appraiser/branch manager; and Marites Noble, branch manager/appraiser, collectively filed a case for illegal dismissal before the Labor Arbiter against herein petitioners.
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> Vincent "Vicente" Montenegro was the appraiser/manager of the petitioner corporation's Bauan Branch in Batangas. Lailanie Palma, a trainee of the company, charged him with sexual harassment. A committee was formed to investigate him for the alleged sexual harassment. On the basis of the formal investigation conducted, the Chairman of the Investigation Committee issued a Notice of Disciplinary Action dated 06 September 1997 wherein said employee was meted a ten (10)-day suspension and transfer of assignment to the CLH-Zobel Branch, Makati City, effective the next working day from receipt thereof for violation of Section 9 of the Handbook on Company Policies and Guidelines and Employee's Code of Conduct, with a warning that a repetition of said violation will be penalized with the supreme sanction of dismissal. Vincent Montenegro claims that for the sexual harassment case, he was meted 35 days suspension which he contends is a violation of the 30-day suspension. Thereafter, he was transferred to Makati.
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> Herminia Montenegro was charged with dishonest acts committed by causing the redemption of two (2) pieces of jewelry specifically described in pawn tickets 008664 and 008665, allegedly, through the use of falsified affidavit of loss. A formal administrative investigation was conducted on 15 October 1997. Findings of said investigation showed that respondent Herminia Montenegro committed dishonesty and misconduct violative of Rule 22, Section 2 of the Handbook on Company Policies, hence, she was dismissed from employment. Herminia Montenegro averred, however, that her only participation was the approval of the redemption of the pawned

items by a certain Agnes Moradas who submitted an affidavit of loss of pawnshop tickets.

Carlos Pedro Sara was charged with incompetence and dishonesty. During the administrative investigation conducted on 05 December 1997, the investigating committee reported that Sara admitted having intentionally overweighed an item in favor of a customer but the report about which he refused to sign. It was also discovered that Sara was directly responsible for the loss of certain jewelry as disclosed in an audit report.

Marites Noble was charged with having involved in the over-appraisal of an item and having accepted a gold plated item. She claims that she had to accept the over-appraised item to attract customers as the branch has just opened. As for the fake item she accepted, Noble avers that the item is so thickly plated that it could not be detected by merely applying the usual procedure. During the formal investigation conducted on 05 December 1997, it was discovered and admitted by Noble that she intentionally over-appraised the subject pawned fake item by increasing their true weights. Later, it turned out that the fake items belong to Noble herself.

The dispositive portion of the Labor Arbiter's decision reads as follows:

WHEREFORE, respondents are hereby directed to reinstate:

1. Vincent Montenegro to his former position at the Bauan Branch effective August 1, 1999 and pay him full backwages in the amount of P173,687.50;

2. Herminia Montenegro to her former position in Batangas/Taal Area effective August 1, 1999 and to pay her full backwages in the amount of P228,562.50;

3. Carlos Sara to his former position at the Lemery, Batangas-Branch effective August 1, 1991 (sic) and to pay him full backwages in the amount of P166,075.00;

4. Marites Noble to her former position effective August 1, 1991 (sic) and to her (sic) pay her partial backwages in the amount of P155,691.25.[6]

From the decision of the Labor Arbiter, the company appealed to the NLRC. The said commission rendered a decision, to wit:

> WHEREFORE, the decision of the Labor Arbiter a quo is hereby REVERSED and SET ASIDE with respect to complainants VICENTE MONTENEGRO, MARITES NOBLE and CARLOS SARA. The case of constructive dismissal and illegal dismissal filed by them respectively are hereby DISMISSED.

However, with respect to complainant MS. HERMINIA MONTENEGRO, the findings of the Labor Arbiter stand and she is entitled to reinstatement with backwages. Considering the strained relations between the parties, in lieu of reinstatement, she is entitled to separation pay computed at one half (1/2) month salary for every year of service, a fraction of six (6) months shall be computed as one full year. Receiving a salary of P10,620.00 based on her complaint, her separation pay is computed at P37,170.00.[7]

The parties thereafter filed their respective motions for reconsideration. For her part, Herminia Montenegro moved to have the part of the said decision awarding her separation pay computed at one-half (1/2) month salary for every year of service be reconsidered.

On 11 July 2001, the NLRC issued a resolution denying the motion of the complainant employees. It held that:

> Finding no palpable or patent error committed to warrant the modification and/or reversal of the same, complainants' Motion for Reconsideration is hereby DENIED for lack of merit.[8]

Thereafter, the petitioners filed a Petition for Certiorari, under Rule 65 of the Revised Rules of Court, before the Court of Appeals, questioning the NLRC Decision only insofar as the declaration of illegality of Herminia Montenegro's dismissal is concerned. Vincent Montenegro, Carlos Pedro Sara and Marites Noble for their part, however, failed to elevate to the appellate court the decision of the

commission which dismissed their complaint altogether. The dismissal of their complaint, thus, attained finality.

The petitioners maintained that the NLRC erred in affirming the finding of illegal dismissal with respect to Herminia Montenegro because of the following reasons:

The Labor Arbiter failed to examine and appreciate the most material evidence: the stark difference in the signature appearing in the Affidavit of Loss and in the pertinent pawnshop tickets.

Even the naked eye can detect the difference and even a feeble mind can conclude that the signature in the affidavit of Loss and in the pawnshop tickets were not made by one and the same person.

If MS. MONTENEGRO was not the one who caused the falsification of such Affidavit of Loss, then she must have detected such discrepancy because she alleged that she was the one who reviewed and approved the redemption of subject items of jewelry. The motive for the redemption by complainant is understandable. Once redeemed, the subject items of jewelry can be sold at a much higher price *vis a vis* the appraisal value for loan granted including interest. Thus, the one who redeemed would reap a windfall from the sale.

MS. MONTENEGRO was thus dismissed primarily due to dishonest and fraudulent acts constituting willful breach of trust on her part and resulting to loss of confidence on the part of respondent corporation. MS. MONTENEGRO, through the use of fake Affidavit of loss effected the redemption of certain pieces of jewelry which should could (sic) have the properties of respondent corporation.

On 29 August 2002, the Court of Appeals rendered a Decision affirming the findings of the NLRC, to wit:

> WHEREFORE, premises considered, the Resolution of the National Labor Relations Commission dated November 20, 2000 in NLRC Case No. RAB IV 2-9720-98-B is hereby AFFIRMED.[9]

Their motion to reconsider the said decision having been denied in the Court of Appeals Resolution of 06 June 2003, petitioners filed the instant petition for review predicated on the following grounds:

I.

> WHETHER OR NOT THE COURT OF APPEALS PATENTLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT SUSPENDING FIRST THE PROCEEDINGS AND IN NOT AWAITING FOR THE RESOLUTION OF THE MOTION FOR RECONSIDERATION OF HEREIN PETITIONERS WHICH IS STILL PENDING AT THE NLRC.

II.

> WHETHER OR NOT, WITHOUT PREJUDICE TO THE RESOLUTION OF THE FIRST ASSIGNMENT OF ERROR, THE COURT OF APPEALS PATENTLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN OUTRIGHTLY DISREGARDING THE FINDINGS OF PETITIONER'S INVESTIGATING COMMITTEE DESPITE JURISPRUDENCE REQUIRING ONLY SUBSTANTIAL DEGREE OF PROOF AND IN FINDING CONTRARY TO THE FACTS OF THE CASE, THE LAW AND PERTINENT JURISPRUDENCE THAT RESPONDENT'S TERMINATION OF EMPLOYMENT WAS ILLEGAL AND THAT RESPONDENTS (SIC) IS ENTITLED TO BACKWAGES AND OTHER BENEFITS.

As to the first issue, the petitioners assert that "in accord with due process, the proceedings of this case should await the resolution of the Motion for Reconsideration filed by Petitioners at the NLRC in connection with its Appeals thereto."[10]

Their position is untenable.

Firstly, petitioners willingly, nay, purposely placed themselves under the jurisdiction of the Court of Appeals by filing a Petition for Certiorari and prayed for reversal and setting aside of the Decision

and Resolution rendered by the NLRC due to the latter's alleged grave abuse of discretion amounting to lack or excess of jurisdiction. When they were denied the prayer which they sought, they cannot now be allowed to question the Court a quo's adverse decision and demand that the case be remanded to the NLRC to await the resolution of the Motion for Reconsideration that they filed.

Secondly, the petitioners are not proscribed from filing another petition for certiorari before the Court of Appeals when the NLRC finally resolves their motion for reconsideration and the situation so warrants.

This Court frowns on the practice of a party's submitting his case for consideration and then accepting the ruling only if favorable, while attacking it for any reason under the sun if it is not to his liking. The party is barred from such conduct not because the judgment or order of the court is valid and conclusive as adjudication, but for the reason that such practice cannot be tolerated for reasons of public policy.[11] Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court.[12] The principle of estoppel squarely applies here. The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[13]

Anent the second issue, the petitioners contend that they lost confidence on the respondent as supervising district manager when the latter caused the redemption of two pieces of jewelry through the use of falsified affidavit of loss, or, if she was not the one who caused the falsification, for her failure to detect the discrepancy because it was her job to review and approve the redemption of jewelry. They maintain that "the ruling of the Court of Appeals in this regard clearly adopted the view that the degree of proof be beyond reasonable doubt,"[14] when, on the contrary, "it should be only substantial in accord with the ruling of the Supreme Court in Ang Tibay vs. CIR[15] that in administrative cases substantial evidence is sufficient."[16] Furthermore, they stressed that the Court of Appeals failed to appreciate "the benefit that accrued to Respondent MONTENEGRO,

that armed with an Affidavit of Loss, she can now redeem the jewelry and sell it at market price which is always much higher than the loan value and that instead of the company profiting from the failure of the pawner to redeem, it is Respondent MONTENEGRO who shall profit."[17]

Conversely, the Court of Appeals held that "granting that there is disparity between the signatures appearing in the pawnshop tickets and the affidavit of loss presented, this alone would not suffice to justify dismissal on the ground of loss of trust and confidence in the absence of proof."[18] It declared that "there was no evidence presented by petitioners that would prove respondent's interest or benefit gained from the redeemed items. It was not also proven that respondent had knowledge or participation in the preparation or execution of said affidavit. Mere accusations will not suffice."[19]

The petition is devoid of merit.

At the onset, it is pertinent to note that the second issue raised in the instant petition inquires into the factual findings of the court a quo. The petitioners are fundamentally raising a question of fact regarding the appellate court's finding that the charge of falsification was not substantially proved. The petitioner would have us sift through the evidence on record and pass upon whether the signatures found on the Affidavit of Loss vis-à-vis the pawn tickets are similar or not. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC.[20]

Elementary is the principle that this court is not a trier of facts. Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest.[21] As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[22] We find no basis for deviating from the aforestated doctrine without any clear showing that the findings of the labor arbiter, as affirmed by the NLRC and the Court of Appeals, are bereft of sufficient substantiation. "Well-settled is the rule that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to

reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record or the assailed judgment is based on a gross misapprehension of facts."[23] What is more, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[24]

In the case at bar, the issue of the veracity of the signature appearing on the questioned Affidavit of Loss has been undoubtedly passed upon by, not one, not two, but three tribunals all having the same findings that there is no evident showing that the said document is indeed falsified.

Be that as it may, we believe it proper to address and clarify petitioners' postulation that the Court of Appeals adopted the view that the degree of proof required in Labor cases is proof beyond reasonable doubt instead of merely substantial evidence.

Petitioners allege that they have lost trust and confidence in the respondent due to the latter's actions. The Labor Arbiter, however, found it hard to see the basis of the loss of trust and confidence in the light of the insufficiency of evidence presented by the petitioners, succinctly put thus:

> There is no showing that the affidavit of loss was a falsified one. Neither is there any competent evidence submitted by the respondents to prove that Mrs. Montenegro was the one who caused the execution thereof, granting that the same is a falsified one. Henceforth, her dismissal from employment based on the charge against her is illegal.[25]

The NLRC, affirming the aforequoted pronouncement of the Labor Arbiter, added that:

> The Affidavit of Loss not having been repudiated by the one who executed the same, said affidavit stands and cannot be said to have been forged or a fake one. Hence, we sustain the findings and ruling of the Labor Arbiter relative to complainant Ms. Montenegro.[26]

The Court of Appeals likewise affirmed the stance of the Labor Arbiter with respect to respondent Herminia Montenegro and for its part held that:

> Granting that there is disparity between the signatures appearing in the pawnshop tickets and the affidavit of loss presented, this alone would not suffice to justify dismissal on the ground of loss of trust and confidence in the absence of proof.
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> There was no evidence presented by petitioners that would prove respondent's interest or benefit gained from the redeemed items. It was not also proven that respondent had knowledge or participation in the preparation or execution of said affidavit. Mere accusations will not suffice.[27]

Considering that the insufficiency of evidence to justify the dismissal of the respondent due to the loss of trust and confidence reposed upon her by the petitioners has been passed upon numerous times, we cannot help but agree that the petitioners' anemic allegations have failed to effectively sustain the charges against the respondent.

It is fairly well-settled in this jurisdiction that loss of trust and confidence can constitute a just and valid cause for an employee's dismissal. In fact, Article 282 of the Labor Code provides the basis for the right of an employer to dismiss his/her employee based on loss of trust and confidence. The law provides that:

> Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:
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> x x x
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> Proof beyond reasonable doubt is not needed to justify the loss. It is sufficient that there be some basis for the same, or that the employer has reasonable ground to believe that the employee is

> responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.[28]

Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature,[29] as in the case at bar, and the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.[30]

Verily, in the case of Tiu and/or Conti Pawnshop vs. NLRC and Ancheta,[31] we held that the language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice; it must be willful. Such 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. Elsewise stated, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer.

We see no reasonable grounds to provide sufficient basis for the alleged "loss of trust and confidence" being tweedled by the petitioners.

In fine, we find no compelling reason to disturb the findings of fact respecting the illegality of Herminia Montenegro's dismissal. We, however, deem it necessary to modify the award of the separation pay in lieu of reinstatement in the amount of one-half month for every year of service, granted by the NLRC, to one month pay for every year of service. In the case of Gaco vs. NLRC,[32] we said:

> Again, we sustain the ruling of the Labor Arbiter granting separation pay in the amount of one (1) month pay for every

year of service. This has been our consistent ruling in numerous decisions awarding separation pay to an illegally dismissed employee in lieu of reinstatement.

WHEREFORE, premises considered, the instant petition is **DENIED** for lack of merit. The assailed Decision of 29 August 2002 of the Court of Appeals and its Resolution of 06 June 2003 in CA-G.R. SP No. 68924 are hereby **AFFIRMED** subject to the **MODIFICATION** that separation pay, in lieu of reinstatement, be computed at one month pay for every year of service. No costs.

SO ORDERED.

Puno, *J.*, *(Chairman)*, Austria-Martinez, and Tinga, *JJ.*, concur.
Callejo, Sr., *J.*, no part.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Romeo J. Callejo, Sr. and Danilo B. Pine concurring; Rollo, p. 38.
[2] Rollo, p. 49.
[3] Penned by Commissioner Alberto R. Quimpo with Commissioners Roy V. Señeres and Vicente S. E. Veloso concurring; Rollo, p. 122.
[4] Rollo, p. 217.
[5] Rollo, p. 133.
[6] Rollo, pp. 140-141.
[7] Rollo, p. 131.
[8] Rollo, p. 218.
[9] Rollo, p. 48.
[10] Rollo, p. 206.
[11] Tijam vs. Sibonghanoy, G.R. No. L-21450, 15 April 1968, 23 SCRA 29.
[12] Pease vs. Rathbun-Jones etc., 243 U.S. 273, 61 L. Ed. 715, 37 S. Ct. 283; St. Louis etc. vs. McBride, 141 U.S. 127, 35 L. Ed. 659.
[13] PNB vs. CA, G.R. No. L-30831, November 21, 1979, 94 SCRA 368.
[14] Rollo, p. 208.
[15] 169 Phil. 642.
[16] Ibid.
[17] Rollo, p. 209.
[18] Rollo, p. 46.
[19] Ibid.
[20] CBL Transit, Inc. vs. NLRC, et al., G.R. No. 128425, 11 March 2004, 425 SCRA 367.
[21] Supra.

[22] Progressive Development Corp. vs. NLRC, G.R. No. 138826, 20 October 2000, 344 SCRA 512.
[23] Magellan Capital Management Corporation vs. Zosa, G.R. No. 129916, 26 March 2001, 355 SCRA 157.
[24] Miralles vs. Go, G.R. No. 139943, 18 January 2001, 349 SCRA 596.
[25] Rollo, p. 138.
[26] Rollo, p. 130.
[27] Rollo, p. 46.
[28] Reyes vs. Zamora, G.R. No. L-46732, 05 May 1979, 90 SCRA 92.
[29] Hernandez vs. NLRC, G.R. No. 84302, 10 August 1989, 176 SCRA 269.
[30] Labor vs. NLRC, et al., G.R. No. 110388, 14 September 1995, 248 SCRA 183.
[31] G.R. No. 83433, 12 November 1992, 215 SCRA 540.
[32] G.R. No. 104690, 23 February 1994, 230 SCRA 260, 268.