SUPREME COURT
THIRD DIVISION

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, ANTONIO O. COJUANGCO, JOSE P. DE JESUS, ENRIQUE D. PEREZ, ANTONIO R. SAMSON, RAUL J. PALABRICA, JOSE V. LADIA and NICANOR E. SACDALAN,
***Petitioners*,**

-versus-

G.R. No. 143171
September 21, 2004

ARTURO RAYMUNDO TOLENTINO,
***Respondent*.**
x----------x

D E C I S I O N

CORONA, *J.*:

This is a Petition to Review, under Rule 45 of the Revised Rules of Court, the Decision[1] of the Court of Appeals[2] in C.A. – G.R. SP No. 50081 finding that respondent Arturo R. Tolentino was illegally dismissed and reversing the decision of the National Labor Relations Commission (NLRC). The dispositive portion of the Court of Appeals decision reads:

> WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE. Accordingly, the decision dated 30 April 1997, of Labor Arbiter Eduardo J. Carpio is REINSTATED.[3]

Respondent Tolentino was employed in petitioner PLDT for 23 years. He started in 1972 as an installer/helper and, at the time of his termination in 1995, was the division manager of the Project Support Division, Provincial Expansion Center, Meet Demand Group. His division was in charge of the evaluation, recommendation and review of documents relating to provincial lot acquisitions. Sometime in 1995, Jonathan de Rivera, a supervisor directly under respondent Tolentino, was found to have entered into an "internal arrangement" with the sellers of a parcel of land which he recommended for acquisition under PLDT's expansion program. Quirino Donato, the attorney-in-fact of the landowner, executed an affidavit disclosing his "internal arrangement" with de Rivera. The "internal arrangement" consisted of the following:

1. out of P4,100,000.00 purchase price, only P3,400,000.00 will be automatically released to Mrs. Albay;

2. the P3,400,000.00 is net of all documentation and transfer expenses;

3. payment will be released according to the following schedule:

    a) the first amount will be released to PNB Ilagan Branch to pay off Mrs. Albay's outstanding loan;

    b) the second amount will be released to Mrs. Lourdes Albay upon completion of the transfer; and

    c) the final amount will be released and delivered personally by de Rivera and company subject to the "internal arrangement."[4]

Donato's affidavit revealed that all follow-up calls regarding the transaction were to be directed to the office of respondent and de Rivera. Upon being apprised of this "internal arrangement," PLDT

dismissed de Rivera. After he was dismissed, de Rivera submitted a sworn statement to PLDT implicating respondent as the person behind the anomalous "internal arrangement." Respondent, in an affidavit, denied this and pointed out that his authority to approve real estate acquisitions was limited to land valued below P200,000.

Petitioner PLDT sent a notice of dismissal, effective October 27, 1995, to respondent Tolentino. Attached to this notice was a handwritten note from Nicanor E. Sacdalan, Vice-President of the Provincial Expansion Center, Meet Demand Group, giving respondent Tolentino the option to resign. Petitioner did not grant respondent's request for a formal hearing but delayed the implementation of his dismissal. On December 4, 1995, petitioner informed respondent that his dismissal was already final and effective on December 5, 1995.

Respondent then filed a complaint for illegal dismissal, moral and exemplary damages and other monetary claims against petitioner PLDT in January, 1996. The labor arbiter found that petitioner PLDT failed to prove and substantiate the charges against respondent and ruled that:

> WHEREFORE, judgment is hereby rendered declaring as illegal the termination of complainant, and ordering respondent PLDT to reinstate him to his former position with full backwages and other benefits which as of March 31, 1997 has already amounted to P656,800.00 (P41,000.00 x 16 mos.) which amount is subject to further adjustment until the complainant has been reinstated physically or in the payroll. Further, respondent PLDT is hereby ordered to pay herein complainant the amount of P1,000,000.00 for moral damages and P100,000.00 for exemplary damages plus attorney's fees in the amount which is equivalent to 10% of the total amount due the complainant.[5]

On appeal, the NLRC reversed the labor arbiter's decision on the ground that respondent was a managerial employee and that loss of trust and confidence was enough reason to dismiss him.

Respondent's petition for certiorari was referred by this Court to the Court of Appeals[6] which rendered the assailed decision reinstating

the decision of the labor arbiter, that is, ordering respondent's reinstatement.

The issue before us is whether the Court of Appeals erred in ruling that the dismissal was not founded on clearly established facts sufficient to warrant separation from employment. Petitioner argues that, in the case of respondent Tolentino who was a managerial employee, loss of trust and confidence was sufficient to warrant dismissal.

The petition is without merit. PLDT's basis for respondent's dismissal was not enough to defeat respondent's security of tenure.

There is no dispute over the fact that respondent was a managerial employee and therefore loss of trust and confidence was a ground for his valid dismissal. The mere existence of a basis for the loss of trust and confidence justifies the dismissal of the employee[7] because:

> When an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, she gives up some of the rigid guaranties available to ordinary workers. Infractions which if committed by others would be overlooked or condoned or penalties mitigated may be visited with more severe disciplinary action. A company's resort to acts of self-defense would be more easily justified.[8]

Proof beyond reasonable doubt is not required provided there is a valid reason for the loss of trust and confidence, such as when the employer has a reasonable ground to believe that the managerial employee concerned is responsible for the purported misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.[9]

However, the right of the management to dismiss must be balanced against the managerial employee's right to security of tenure which is not one of the guaranties he gives up. This Court has consistently ruled that managerial employees enjoy security of tenure and, although the standards for their dismissal are less stringent, the loss of trust and confidence must be substantial and founded on clearly established facts sufficient to warrant the managerial employee's

separation from the company.[10] Substantial evidence is of critical importance and the burden rests on the employer to prove it.[11] Due to its subjective nature, it can easily be concocted by an abusive employer and used as a subterfuge for causes which are improper, illegal or unjustified.[12]

In the case at bar, this Court agrees with the Court of Appeals that the petitioner's dismissal was not founded on clearly established facts sufficient to warrant separation from employment. The factual findings of the court a quo on the issue of whether there was sufficient basis for petitioner PLDT to dismiss respondent Tolentino are binding on this Court. In the exercise of the power of review, the factual determinations of the Court of Appeals are generally conclusive and binding on the Supreme Court.[13] And they carry even more weight when they affirm those of the trial court or labor arbiter (in this case).[14] After a thorough review of the records, we also came to the same factual conclusion as the Court of Appeals. The evidence relied upon by petitioner PLDT — de Rivera's sworn statement and Donato's affidavit — does not, in our view, establish respondent Tolentino's complicity in the "internal arrangement" engineered by his subordinate de Rivera. We quote the labor arbiter's incisive observation:

> Undoubtedly, when respondents received the raw information regarding complainant's involvement in the anomalous transaction, there existed a plethora of possibilities. But we do not dwell on possibilities, suspicion and speculation. We rule based on hard facts and solid evidence. Thus, the dismissal of the complainant cannot justifiably be sustained since the findings in this case and the investigation of respondent Company failed to establish either complicity or culpability on the part of complainant. While dishonesty of an employee is not to be condoned, neither should a condemnation on that ground be tolerated based on suspicion spawned by speculative inferences. x x x True, complainant is a possible suspect, after all it was in his division where the said anomalous transaction emanated. However, the records are bereft of any showing that complainant is solely or partly responsible therefore (sic). Suspicion has never been a valid ground for the dismissal of an employee. The employee's fate cannot, in justice, be hinged

> upon conjectures and surmises (quoting San Miguel Corporation vs. NLRC, 18 SCRA 281). Evidently, respondents [petitioner PLDT] miserably failed to prove that the dismissal of complainant [respondent Tolentino] was for cause. The respondent's evidence, although not required to be of such degree as is required in criminal cases, must be substantial. The same must clearly and convincingly establish the facts upon which loss of trust and confidence in the employee may be made to rest (quoting Plastic Starlite Industries Corp. vs. NLRC, 171 SCRA 315).[15]

To be sure, respondent Tolentino was remiss in his duties as division manager for failing to discover the "internal arrangement" contrived by his subordinate. However, we disagree that dismissal was the proper sanction for such negligence. It was not commensurate to the lapse committed, especially in the light of respondent's unblemished record of long and dedicated service to the company. In Hongkong Shanghai Bank Corporation vs. NLRC,[16] we had occasion to rule that:

> The penalty imposed must be commensurate to the depravity of the malfeasance, violation or crime being punished. A grave injustice is committed in the name of justice when the penalty imposed is grossly disproportionate to the wrong committed.
>
> Dismissal is the most severe penalty an employer can impose on an employee. It goes without saying that care must be taken, and due regard given to an employee's circumstances, in the application of such punishment.
>
> Certainly, a great injustice will result if this Court upholds Tolentino's dismissal.

An employee illegally dismissed is entitled to full backwages and reinstatement pursuant to Article 279 of the Labor Code, as amended by RA 6715:

> An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of

> allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
>
> Although a managerial employee, respondent should be reinstated to his former position or its equivalent without loss of seniority rights inasmuch as the alleged strained relations between the parties were not adequately proven by petitioner PLDT which had the burden of doing so. In Quijano vs. Mercury Drug Corporation,[17] we ruled that strained relations are a factual issue which must be raised before the labor arbiter for the proper reception of evidence. In this case, petitioner PLDT only raised the issue of strained relations in its appeal from the labor arbiter's decision. Thus, no competent evidence exists in the records to support PLDT's assertion that a peaceful working relationship with respondent Tolentino was no longer possible. In fact, the records of the case show that PLDT, through VP Sacdalan, gave respondent Tolentino the option to resign.[18] Such a deferential act by management makes us doubt PLDT's claim that its relations with respondent were "strained." The option to resign would not have been given had animosity existed between them.
>
> Furthermore, respondent was dismissed in December, 1995 when petitioner PLDT was still under the Cojuangco group. PLDT has since then passed to the ownership and control of its new owners, the First Pacific group which has absolutely nothing to do so with this controversy. Since there are no strained relations between the new management and respondent, reinstatement is feasible.

This ruling is in line with the earlier pronouncement of the Court in Quijano that the strained relations doctrine should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. To quote it fully:

> Well-entrenched is the rule that an illegally dismissed employee is entitled to reinstatement as a matter of right. Over the years, however, the case law developed that where reinstatement is not feasible, expedient or practical, as where reinstatement

> would only exacerbate the tension and strained relations between the parties, or where relationship between the employer and employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement. Some unscrupulous employers, however, have taken advantage of the overgrowth of this doctrine of "strained relations" by using it as a cover to get rid of its employees and thus defeat their right to job security.
>
> To protect labor's security of tenure, we emphasize that the doctrine of "strained relations" should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. Every labor dispute almost always results in "strained relations" and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.[19]

This Court is cognizant of management's right to select the people who will manage its business as well as its right to dismiss them. However, this right cannot be abused. Its exercise must always be tempered with compassion and understanding. As former Chief Justice Enrique Fernando eloquently put it:

> Where a penalty less severe would suffice, whatever missteps may be committed by labor ought not to be visited with consequence so severe. It is not only because of the law's concern for the workingmen. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances of a case, the workers should not be deprived of their means of livelihood. Nor is this to condone what has been done by them.[20]
>
> To reinstate respondent is not to condone his "misstep" since his participation in the "internal arrangement" was not

sufficiently established to warrant his dismissal from PLDT which he served faithfully for 23 years.

The moral and exemplary damages awarded by the labor arbiter are hereby deleted since the dismissal of respondent was not attended by bad faith or fraud. Neither did it constitute an act oppressive to labor nor was it done in a manner contrary to morals, good customs or public policy.[21]

The Court affirms the award of attorney's fees on the basis of quantum meruit but reduces it to 5% of the total monetary award. Considering the circumstances of this case, the award is reasonable considering the explicit provisions of Article III of the Labor Code and Rule VIII, Section II, Book III of the Omnibus Rules Implementing the Labor Code.[22]

WHEREFORE, the petition is hereby denied. The Court of Appeals decision reinstating the labor arbiter's decision is **AFFIRMED** with **MODIFICATION**. The award of attorney's fees is reduced to 5% of the total amount due respondent Tolentino. The award of moral and exemplary damages is deleted for reasons already explained.

SO ORDERED.

Sandoval-Gutierrez and Carpio-Morales, JJ., concur.
Panganiban, *J., (Chairman),* no part. Former counsel of a party.

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[1] Penned by Associate Justice Artemio G. Tuquero.
[2] Eleventh Division composed of Associate Justices Eubolo G. Verzola (Chairman), Elvi John S. Asuncion and Artemio G. Tuquero.
[3] Rollo, p. 58.
[4] Rollo, p. 51.
[5] Rollo, p. 202-203.
[6] Pursuant to the ruling in St. Martin Funeral Homes vs. NLRC, 295 SCRA 494 [1998].
[7] Del Val vs. NLRC, 296 SCRA 283 [1998]; Caoile vs. NLRC, 299 SCRA 76 [1998]; Kwikway Engineering Works vs. NLRC, 195 SCRA 526 [1991].
[8] Villanueva vs. NLRC, 293 SCRA 259, 265 [1998] citing Metro Drug Corporation vs. NLRC, 143 SCRA 132 [1986].

[9] Caoile, Del Val, supra note 7.
[10] Cruz vs. NLRC, 324 SCRA 770 [2000]; Philippine Savings Bank vs. NLRC, 261 SCRA 409 [1996].
[11] Midas Touch Food Corp. vs. NLRC, 259 SCRA 652 [1996].
[12] Cruz, supra note 10.
[13] Landignon vs. Court of Appeals, 336 SCRA 42 [2000]; Security Bank and Trust Company vs. Triumph Lumber and Construction Corp., 301 SCRA 537 [1999].
[14] Langkaan Realty Development Inc. vs. UCPB, 347 SCRA 542 [2000]; Development Bank of the Philippines vs. Court of Appeals, 302 SCRA 362 [1999]; Borromeo vs. Sun, 317 SCRA 176 [1999].
[15] Rollo, p. 57.
[16] 260 SCRA 49 [1996].
[17] 292 SCRA 109 [1998].
[18] Records, p. 111.
[19] Supra note 17 at 116.
[20] Almira vs. B.F. Goodrich Philippines, 58 SCRA 120 [1974].
[21] National Sugar Refineries Corporation vs. NLRC, 308 SCRA 599 [1999]; Mendoza vs. NLRC, 310 SCRA 846 [1999].
[22] Airline Pilots Association of the Philippines vs. NLRC, 259 SCRA 459 [1996].