SUPREME COURT
THIRD DIVISION

JOSE V. SALVADOR,
***Petitioner*,**

-versus-

G.R. No. 148766
January 22, 2003

PHILIPPINE MINING SERVICE CORPORATION,
***Respondent*.**
x----------x

D E C I S I O N

PUNO, *J.*:

Respondent PHILIPPINE MINING SERVICE CORPORATION was established in 1980 by Japanese investors Kawatetsu Mining Co., Ltd. and Kawasaki Steel Corporation to develop dolomite deposits in Cebu. Respondent exports quality dolomite ore for use in the manufacture of steel, glass and fertilizer.

Ore undergoes the following process: first, it is extracted and loaded to respondent's dump trucks. It then goes through a series of crushing process by heavy equipment. Thereafter, three (3) products are produced: lumpy ore, fine ore and-8 mesh. Each product is then deposited in three (3) separate stockpiles for sale.

The lumpy ore stockpile and the fine ore stockpile are adjacent to each other, separated only by a concrete dividing wall to prevent contamination or spillage from one side to the other.[1] Contamination usually results during pushing or scraping of the product by a bulldozer in the ground level.[2] In cases of contamination or spillage, the foreman, after his shift, accomplishes a report regarding the details thereof. Contaminated ore products are likewise segregated and stored in a separate stockpile for sale by respondent or for use in its civil works. Hence, contaminated ore is also categorized as a product of the respondent.

Petitioner JOSE V. SALVADOR was first employed by respondent in 1981. He rose from the ranks and assumed the position of Plant Inspection Foreman in 1991. He was tasked to: (1) supervise plant equipment and facility inspection; (2) confirm actual defects; (3) establish inspection standards and frequency; (4) analyze troubles and recommend counter measures; and (5) prepare weekly/monthly inspection schedule.[3]

As early as March 1, 1985, respondent instituted the "shift boss" scheme whereby the foreman from the Plant Section and the foreman from the Mining, Section rotate as shift boss throughout their night shift to oversee and supervise both the mining and plant operations. The shift boss was entrusted with the care, supervision and protection of the entire plant.[4]

Aside from his employment with respondent, petitioner co-owned and managed LHO-TAB Enterprises, with his partner Ondo Alcantara. They were engaged in the manufacture and sale of hollow blocks.[5]

On September 29, 1997, petitioner's employment relation with respondent was tainted with charges of pilferage and violation of company rules and policy, resulting to loss of confidence.

Respondent's evidence disclose that on September 29, 1997, at about 9:30 a.m., Koji Sawa, respondent's Assistant Resident Manager for Administration, was on his way back to his office in the plant. He and his driver, Roberto Gresones, saw petitioner operating respondent's payloader, scooping fine ore from the stockpile and loading it on his

private cargo truck. As the truck was blocking the access road leading to the stockyard's gate, Sawa's car stopped near the stockpile and the driver blew the horn thrice. Petitioner did not hear him because of the noise emanating from his operation of the payloader. Sawa's driver found a chance to pass through when the payloader maneuvered to get another scoop from the fine ore stockpile.

As it was contrary to respondent's standard operating procedure for the plant foreman to operate the payloader, Sawa went to the administration office to check the delivery receipt covering the loading operation of petitioner that morning. However, sales-in-charge Eduardo Guangco was in the wharf, overseeing the loading of respondent's product. Hence, it was only in the afternoon that Sawa was able to verify the delivery receipt covering petitioner's loading transaction. The delivery receipt showed that it was dolomite spillage that was purchased by buyer Ondo Alcantara, not the fine ore that he saw petitioner loading on his truck. The receipt also showed it was not the respondent but Alcantara, the buyer, who was responsible for loading the spillage he purchased from the plant.

On the same day and on the basis of his initial findings, Sawa instructed Antonio Plando, Assistant Department Manager for Administration, to investigate the incident. The investigation established the following:

(1) petitioner owned the private cargo truck used by the buyer, Alcantara; petitioner, during company time, loaded the fine ore on his truck using respondent's payloader;

(2) dolomite spillage was purchased and supposed to be picked up by Alcantara that day and not fine ore, as shown in the delivery receipt, dated September 18, 1997;

(3) it was noted on the delivery receipt that the purchase was "care of (petitioner) Salvador" which facilitated the release of the products from the compound;

(4) as the buyer, Alcantara, was supposed to pick up the dolomite spillage his company purchased, he should have provided his own manpower to manually haul the product

on the private truck; petitioner should not have used respondent's payloader; and

(5) the hauling witnessed by Sawa and his driver on said date was Alcantara's sixth (6th) withdrawal as he has already withdrawn six (6) tons of respondent's product on previous occasions.

In a Show-Cause Letter,[6] dated September 30, 1997, respondent formally charged petitioner with the following: (1) doing personal or unofficial work on company time using respondent's equipment and materials; (2) defrauding the respondent by loading fine ore, instead of dolomite spillage; and (3) breach of trust and confidence reposed on him by respondent.

In Reply,[7] petitioner explained that, on said date and time, while he was clearing the contaminated area near the divider of the two (2) stockpiles, his private cargo truck arrived as it was supposed to withdraw two (2) tons of dolomite spillage ordered by Alcantara. Petitioner claimed that to save time, he deemed it best to dump the contaminated fine ore, classified as spillage, on his private truck, instead of using the payloader in going back and forth to the stockpile and spillage area. When he noticed Sawa in the vicinity of the stockpiles, petitioner alleged that he stopped what he was doing as he was sure that Sawa would misunderstand the situation. Petitioner also expressed his apologies to respondent about the incident. He further explained that his action in personally cleaning up the contamination was pursuant to the instruction he received from his department head, Engineer Tan, to monitor and clean any contamination in the area.

A formal investigation regarding the incident was conducted by respondent on October 14, 1997. Petitioner appeared with the labor union president and representative and an FFW representative. Nothing came out of it as petitioner and his companions questioned the propriety of going through the investigation without first submitting the issue to the grievance procedure. The investigation was reset to October 16, 1997.[8]

In the next scheduled investigation, petitioner and his companions reiterated their objection to its continuance. With petitioner's adamant refusal to proceed with the formal investigation, respondent was left with no choice but to consider him to have waived his right to be afforded due process. The parties agreed that respondent could proceed to evaluate the documents on hand and base its decision thereon.[9]

Accordingly, on November 7, 1997, respondent found petitioner guilty of fraud, serious misconduct, breach of trust and confidence, violation of the company's rules and regulations and violation of his contractual obligations with respondent company. Petitioner's services were terminated.[10]

Petitioner filed a complaint for illegal dismissal with the Labor Arbiter. According to petitioner, on September 29, 1997, he reported for work at the plant at 7:00 a.m. and was on duty as shift boss until 12:00 midnight. At about 9:00 to 9:30 a.m., he went to the stockyard for inspection. While checking the stockpiles, he saw that some lumpy ore mixed with and spilt over the fine ore near the divider of the two stockpiles. Further examination revealed that there was a cluster of lumpy ore buried at the base of the fine ore stockpile. Petitioner immediately took action to clean the contamination. He left the stockyard and went to the plant across the highway to secure his dust foe. When he returned to the stockyard, he saw that his private cargo truck has arrived. His truck was hired by his business partner, Ondo Alcantara, to haul dolomite spillage which their business purchased from respondent. Petitioner claimed that, in order to save time, he personally operated respondent's payloader, scooped the contaminated fine ore in the stockpile and loaded it on his private cargo truck. It was while he was hauling the contaminated fine ore that Sawa saw him.

After evaluating the pleadings and position of the parties, the Labor Arbiter found for the petitioner. However, considering the antagonistic relations between the parties, reinstatement of the petitioner was not ordered. Instead, the labor arbiter awarded petitioner separation pay of one half month for every year of service. No backwages were awarded as the labor arbiter noted that petitioner committed indiscretions amounting to gross neglect of duty which

rendered him undeserving of the benefit. The dispositive portion of said Decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered declaring the complainant's dismissal illegal and directing the Philippine Mining Service Corporation to pay complainant the sum of One Hundred Four Thousand Five Hundred Eighty. (P104,580.00) Pesos in concept of separation pay and Ten Thousand Four Hundred Fifty-Eight (P10,458.00) Pesos as attorney's fees.
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> x x x
>
> SO ORDERED."[11]

Both parties appealed to the National Labor Relations Commission (NLRC). Petitioner claimed for payment of a higher amount of separation pay (equivalent to one month pay for every year of service), backwages and moral and exemplary damages.[12] Respondent, on the other hand, insisted that petitioner's dismissal was for just causes as he was guilty of all the charges when he loaded on his truck fine ore from the stockpile. Respondent claimed that petitioner's excuse that what he loaded was contaminated fine ore was an afterthought.[13]

In its Decision, dated October 29, 1999,[14] the NLRC upheld the illegal dismissal findings of the labor arbiter and partially granted petitioner's appeal, thus:

> "WHEREFORE, premises considered the appeal filed by the complainant is PARTIALLY GRANTED and the appeal filed by the respondent PMSC is DISMISSED. The decision of the Executive Labor Arbiter Reynoso A. Belarmino dated 30 September 1998 is MODIFIED, to wit:
>
> > Ordering respondent Philippine Mining Service Corporation (PMSC) to reinstate the complainant without loss of seniority rights and to his full backwages and allowances computed from 7 November 1997 up to the time of his actual reinstatement. Should reinstatement is

(sic) no longer feasible for whatever reason, the respondent may opt to pay complainant separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service. The respondent is likewise ordered to pay complainant attorney's fees equivalent to ten (10%) percent of the total award.

The backwages due complainant as of October 31, 1999 is in the total amount of P345,767.57 as computed per Annex 'A' hereof.

SO ORDERED."

Assailing the NLRC Decision, respondent appealed[15] to the Court of Appeals.

On March 13, 2001, the Court of Appeals reversed and set aside the NLRC decision. It ruled that there was valid and just cause for petitioner's dismissal as it was proved that he was guilty of pilferage, serious misconduct and dishonesty.[16]

Petitioner thus sought recourse to this Court and raised the following issues:

"I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENT HAD PROVED BY PREPONDERANCE OF EVIDENCE THAT PETITIONER'S DISMISSAL WAS LEGAL AND FOR JUST CAUSE, WHICH COLLIDES WITH THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC BASED ON SUBSTANTIAL EVIDENCE THAT PETITIONER'S DISMISSAL WAS ILLEGAL. MOREOVER, THE APPELLATE COURT OVERLOOKED THE PRINCIPLE THAT PREPONDERANCE OF EVIDENCE AS A QUANTUM OF PROOF DOES NOT APPLY TO LABOR CASES BUT ONLY TO CIVIL CASES.

II

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT EVEN IF CONTAMINATED ORE WAS LOADED ON THE CARGO TRUCK AND NOT THE FINE ORE, STILL PETITIONER WAS GUILTY OF PILFERAGE SINCE THE SALE WAS FOR DOLOMITE SPILLAGE, AND IN NOT GIVING CREDENCE TO PETITIONER'S CLAIM THAT CONTAMINATED ORE IS CLASSIFIED AS SPILLAGE.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENT'S ALLEGATION THAT PETITIONER LOADED FINE ORE ON SEPTEMBER 29, 1997 WAS SUPPORTED BY OTHER CONVINCING EVIDENCE.

IV

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT PERSONAL INTEREST HAD LED PETITIONER TO HAUL THE CONTAMINATED ORE HIMSELF WHICH WAS AGAINST COMPANY PROCEDURE.

V

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT IT WAS NOT NECESSARY THAT THE MANAGEMENT SHOULD BE ABLE TO ACCOST PETITIONER RED-HANDED IN THE ACT OF PILFERAGE BECAUSE PETITIONER ADMITTED THAT HE WAS LOADING CONTAMINATED ORE ON THE CARGO TRUCK WHEN WHAT WAS BOUGHT WAS DOLOMITE SPILLAGE AND THAT NUMEROUS EVIDENCE WAS PRESENTED TO SHOW THAT PETITIONER WAS LOADING FINE ORE AND NOT CONTAMINATED ORE AS HE CLAIMED."

We find no merit in the petition.

The main issue before this Court is whether or not the charge of pilferage against petitioner was supported by substantial evidence to warrant his dismissal from the service.

We rule in the affirmative.

Preliminarily, the Labor Code provides that an employer may terminate the services of an employee for just cause and this must be supported by substantial evidence.[17] The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient.[18] Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[19] Thus, substantial evidence is the least demanding in the hierarchy of evidence.

In the case at bar, our evaluation of the evidence of both parties indubitably shows that petitioner's dismissal for loss of trust and confidence was duly supported by substantial evidence.

As the first, third, fourth and fifth issues raise interrelated arguments, we shall discuss them jointly. Petitioner insists that the charge against him of stealing ore was not conclusively proved by respondent to warrant his dismissal from service. He maintains that: (1) Sawa should have alighted from his car when he saw petitioner allegedly loading fine ore on his truck and verify if the material being loaded was really contaminated fine ore as maintained by petitioner; and (2) Sawa should have instructed the guard to stop the truck from leaving respondent's premises pending verification of the delivery receipt covering the hauling he witnessed as he was then already suspicious that there was a violation of company rules and procedure. Petitioner argues that these actions would have established beyond doubt the charge against him. He further maintains that Sawa relied only on circumstantial evidence in concluding that what was loaded on the truck and released by the guards was fine ore and not spillage.

We find no merit in petitioner's contentions.

First. At the time Sawa saw petitioner hauling fine ore from the stockpile, Sawa had no idea yet that pilferage was being committed by petitioner. He merely checked the covering delivery receipt of said transaction as he was curious why it was petitioner, not the heavy equipment operator, who was operating the payloader. Unfortunately, the person-in-charge of the delivery receipts was out of the office that morning and it was already in the afternoon that Sawa discovered that the product supposed to be picked up that morning was dolomite spillage, not fine ore.

Second. Several instances belie petitioner's claim that there was contamination of fine ore on September 29, 1997 that necessitated his hauling of the contaminants from the fine ore stockpile. Petitioner as shift foreman made no report of contamination of fine ore on said date. Specifically, at 11:00 a.m. that day, he reported: "ROUTINE INSPECTION OF PLANT OPERATION, OK." Neither can we give credence to his claim that a report of contamination is accomplished only were the contamination is voluminous. An examination of the records reveals that during his plant inspection on September 17 and October 3, 1997, he indicated in his reports the presence of some contaminants in the stockpile, although clearly the amount of contamination was negligible. Moreover, petitioner's superior, Engr. Tan, reported that no stripping or clearing works were done in the vicinity of the fine ore and lumpy ore stockpiles in the morning of September 29, 1997 which could have caused the alleged contamination in the stockpile as maintained by petitioner. Finally, the pictures submitted by respondent show that the track marks of the payloader on that day were found only at the fine ore stockpile, not near the divider of the fine ore and lumpy stockpiles where petitioner alleged the contamination occurred.[20]

Upon the other hand, a number of disturbing circumstances disproved petitioner's version of the incident and substantially proved his act of pilferage.

First. The security guard's logbook shows that petitioner entered respondent's stockyard at 9:37 a.m., just a minute after his private truck arrived in the stockyard to pick up the dolomite spillage ordered by his business partner, Ondo Alcantara. The same record shows that

petitioner left the stockyard at 9:45 a.m. and his truck exited the compound a minute later at 9:46 a.m. Petitioner's presence in the stockyard during those crucial eight (8) minutes when his private truck arrived to pick up his partner's order of dolomite spillage arouses curiosity.

Second. Respondent lucidly illustrated that petitioner could not have performed the specific acts he claimed to have done during the span of eight (8) minutes that he was in the stockyard, thus:

(a) petitioner inspected the 10,000 square meter stockyard, checking the three [3] separate stockpiles of fine ore, lumpy ore and -8 mesh;

(b) after discovering, the alleged contamination, he walked the 40-foot high, 300-meter long conveyor walkway connecting the stockyard to the main plant located across the national highway;

(c) in the plant, he walked a distance of 50 meters to reach his office at the 2nd floor, opened his locker and got his dust foe;

(d) he then went down to the parking lot and drove respondent's van to the plant's gate (about 300 meters away) to allow the security guard to spot-check the van;

(e) the guard at the plant then crossed the national highway to open the opposite gate of the stockyard to enable petitioner to enter; petitioner then parked the van near the stockpile of fine ore.

We reiterate that proof beyond reasonable doubt of the employee's misconduct or dishonesty is not required to justify loss of confidence. It is sufficient that there is substantial basis for the loss of trust.[21] In the case at bar, respondent has proved by substantial evidence the charge of pilferage against petitioner.

On the second issue, petitioner claims that the Court of Appeals failed to give weight to his position that contaminated fine ore is classified

as spillage and as the product purchased by Alcantara that day was dolomite spillage, petitioner could not be held guilty of pilferage when he loaded the contaminated fine ore on his private truck.

We disagree. Respondent clarified that dolomite spillage is different from pure or contaminated fine ore, the latter being one of its regular products. The collection and sale of the ore is exclusively handled by respondent's General Affairs Office, not the Plant Section to which petitioner belonged. Dolomite spillage, on the other hand, is not a regular product of respondent. These are the dolomite materials that spill out of the conveyor lines due to overflowing. The spillage occurs prior to the pouring and storage of the ore products in their separate stockpiles. Thus, clearly, petitioner was guilty of pilferage whether or not it was fine ore or contaminated fine ore that he hauled that day.

Finally, petitioner argues that assuming there was evidence to support the charges against him, his dismissal from service is unwarranted, harsh and grossly disproportionate to his act, considering his long years of service with the company.

To be sure, length of service is taken into consideration in imposing the penalty to be meted an erring employee. However, the case at bar involves dishonesty and pilferage by petitioner which resulted in respondent's loss of confidence in him. Unlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain. Moreover, petitioner was not an ordinary rank-and-file employee. He occupied a high position of responsibility. As foreman and shift boss, he had over-all control of the care, supervision and operations of respondent's entire plant. It cannot be over-emphasized that there is no substitute for honesty for sensitive positions which call for utmost trust. Fairness dictates that respondent should not be allowed to continue with the employment of petitioner who has breached the confidence reposed on him.[22] As a general rule, employers are allowed wider latitude of discretion in terminating the employment of managerial employees as they perform functions which require the employer's full trust and confidence.[23]

In the case at bar, respondent has every right to dismiss petitioner, a managerial employee, for breach of trust and loss of confidence as a

measure of self-preservation against acts patently inimical to its interests. Indeed, in cases of this nature, the fact that petitioner has been employed with the respondent for a long time, if to be considered at all, should be taken against him,[24] as his act of pilferage reflects a regrettable lack of loyalty which he should have strengthened, instead of betrayed.

IN VIEW WHEREOF, the Petition is **DENIED**. The Decision of the Court of Appeals, dated March 13, 2001, in C.A. G.R. No. 59559 is affirmed.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona and Carpio Morales, *JJ.*, concur.

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[1] The -8 mesh product is deposited in a covered stockpile as it is sensitive to moisture.
[2] Page 23 of Petition; Rollo, p. 25.
[3] Table of Job Description, Rollo, p. 322.
[4] CA Rollo, p. 76.
[5] Rollo, p. 366.
[6] Id., p. 328.
[7] See petitioner's letter-explanation, Rollo, p. 329.
[8] Minutes of the Investigation; Rollo, pp. 333–336.
[9] Id., pp. 337–339.
[10] Notice of Termination; Rollo, p. 340.
[11] Decision, dated September 30, 1998, Executive Labor Arbiter Reynoso A. Belarmino; Rollo, pp. 63–73.
[12] Rollo, pp. 74–78.
[13] Respondent's Memorandum of Partial Appeal; Rollo, pp. 80–94.
[14] Rollo, pp. 97–107.
[15] Id., pp. 247–286.
[16] Id., pp. 47–60.
[17] Pili vs. NLRC, 217 SCRA 338 (1993).
[18] Pangasinan III Electric Cooperative, Inc. vs. NLRC, 215 SCRA 669 (1992).
[19] Lansang vs. Garcia, 42 SCRA 480 (1971); Ang Tibay vs. CIR, 69 Phil. 642(1939).
[20] Rollo, pp. 243–245.
[21] Gonzales vs. National Labor Relations Commission, 355 SCRA 195 (2001).
[22] Galsim vs. Philippine National Bank, 29 SCRA 293 (1969).
[23] Gonzales vs. National Labor Relations Commission, 355 SCRA 195 (2001).

[24] Flores vs. National Labor Relations Commission, 219 SCRA 350 (1993).