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**SUPREME COURT  
FIRST DIVISION**

**SURIGAO DEL NORTE ELECTRIC  
COOPERATIVE AND/OR EUGENIO  
BALUGO/CIRIACO MESALUCHA,  
*Petitioners,***

***-versus-***

**G.R. No. 125212  
June 28, 1999**

**NATIONAL LABOR RELATIONS  
COMMISSION (5<sup>th</sup> DIVISION) AND  
ELSIE ESCULANO,  
*Respondents.***

X-----X

**DECISION**

**YNARES-SANTIAGO, J.:**

This Special Civil Action for *Certiorari* seeks to annul the Resolution,<sup>[1]</sup> dated January 31, 1996, of the Fifth Division of the National Labor Relations Commission in NLRC Case No. M-001940-

94, ordering petitioner cooperative to reinstate private respondent Elsie Esculano (hereinafter referred to as private respondent), without loss of seniority rights and to pay backwages and allowances, plus attorney's fees; as well as the Resolution,<sup>[2]</sup> dated April 30, 1996, denying petitioners' Motion for Reconsideration. The challenged ruling reversed the Decision<sup>[3]</sup> of the Labor Arbiter, dated March 7, 1994, which declared private respondent's dismissal as valid and legal.

The facts of the case are as follows:

On December 3, 1991, a former employee of petitioner cooperative, Cosette O. Quinto, sent a Letter<sup>[4]</sup> of even date addressed to its General Manager, petitioner Eugenio A. Balugo, with copies furnished to petitioner cooperative's Board of Directors and National Electrification Administration Project Supervisor, Engr. Decoroso B. Padilla. The contents of her letter are hereby reproduced, as follows —

December 3, 1991

MR. EUGENIO A. BALUGO  
General Manager  
SURNECO  
Surigao City

Dear General Manager:

This is in reference to my nine (9) years continuous service with SURNECO.

Last 1988, I decided to be separated with (sic) SURNECO due to my pressing personal problems. Considering my faithful and loyal services with SURNECO, I am supposed to be entitled with (sic) separation benefits and incentives.

Hence, I am humbly requesting for consideration that I may be granted with separation benefits and all other incentives due for (sic) me.

Hoping for your very fine consideration.

Thank you very much.

Very truly yours,

*(Signed)*  
COSETTE O. QUINTO

- cc: 1. The Board of Directors  
SURNECO
2. Engr. Decoroso B. Padilla  
NEA Project Supervisor

No action was taken on this matter by either petitioner Balugo, petitioner cooperative's Board of Directors or NEA Project Supervisor.

Nearly four months later, or on March 30, 1992, private respondent Elsie Esculano, being then the Personnel Officer of petitioner cooperative sent a Letter<sup>[5]</sup> to petitioner Balugo regarding Quinto's letter-request, after the latter asked her to review her case. Attached to her letter was a report containing her findings and recommendations. Copies of the letter were furnished the following: "file, PS and 201."

In her attached report, private respondent concluded that petitioner cooperative had not properly accorded Quinto due process before terminating her services, enumerating the circumstances evidencing such lack of due process. Thus, private respondent recommended that petitioner cooperative grant Quinto separation pay, otherwise, the latter would be entitled to reinstatement without loss of seniority rights and other privileges and benefits.

Meanwhile, on July 2, 1992, with no action taken by petitioner cooperative on her letter-request, Quinto filed a Complaint<sup>[6]</sup> for Illegal Dismissal with prayer for Reinstatement and Payment of Full Backwages, Damages and Attorney's Fees against petitioner

cooperative before the Surigao Provincial Extension Unit of the Department of Labor and Employment. Without a doubt, the Complaint was based largely on the report submitted to petitioner Balugo by private respondent. Indeed, attached to Quinto's Position Paper<sup>[7]</sup> was a copy of said report. The Position Paper, itself, extensively quoted portions of private respondent's report, particularly her finding of lack of due process in the termination of Quinto and her recommendation for the grant of separation pay. While not quoted, the narration of antecedent facts showing illegal dismissal as well as the grounds supporting the finding thereof, appearing in private respondent's report, were also adopted by Quinto.

Quinto's case was, however, dismissed on October 22, 1992, for being barred by prescription.

On account of the filing of the illegal dismissal case against petitioner cooperative, based largely on private respondent's report, petitioner Balugo issued a Memorandum<sup>[8]</sup> to private respondent on November 27, 1992, the contents of which are hereby reproduced, as follows —

27 November 1992

**MEMORANDUM NO. 063**  
**Series of 1992**

To: MS. ELSIE B. ESCULANO  
*Personnel Officer*

SUBJECT: Submission of Written Explanation

Appended to the complaint of Ms. Cosette O. Quinto against the company was your internal memorandum addressed to the undersigned.

You were never commissioned by management to make a review of Ms. Quinto's case as the company felt that the latter had already admitted her dismissal from the service as evidenced by her letter of December 3, 1991.

For no apparent reason, and with no one authorizing you to review the case of said Miss Quinto, you proceeded to do so. What made the matter worse is that you apparently furnished Miss Quinto with a copy thereof. Necessarily, Miss Quinto utilized your alleged recommendation against the company. Fortunately, however, the NLRC dismissed the complaint. It is, however, on appeal but the appeal is still grounded on your unauthorized recommendation.

Your unauthorized action has dragged the company into a protracted litigation not to mention the unnecessary expense that the company had to spend to defend itself.

In this connection, therefore, you are directed to explain in writing within 72 hours from receipt hereof why no disciplinary action shall be taken against you for acts unbecoming of a ranking employee and for acts prejudicial to the best interest of the company.

For compliance.

(SGD.)  
EUGENIO A. BALUGO  
*General Manager*

Noted by:

(SGD.)  
CIRIACO B. MESALUCHA  
NEA Project Supervisor

Cc: The SURNECO Board  
Atty. Catre  
DOLE file  
201 file

Private respondent submitted her Written Explanation<sup>[9]</sup> to petitioner Balugo on December 2, 1992. She reasoned out that it was inherent in her job as Personnel Officer “to assist Management in formulating and evaluating plans, policies and procedures on personnel related

matters, and recommend to Management and (the) Board of Directors wage, salary and other benefits.” She referred to her case review as a “feedback” on a problem with the corresponding recommendation to Management to take “corrective measures.” Private respondent also drew attention to the fact that management took eight (8) months to react to her review of Quinto’s case and opined that perhaps she was being used as a “scapegoat.” She also said that the “protracted litigation” could have been avoided if management had “exercised its prerogatives in strategic planning and decision-making.” To be sure, the tone of private respondent’s Written Explanation was far from apologetic.

On December 15, 1992, petitioner Balugo wrote another Letter<sup>[10]</sup> to private respondent requesting her to inform the office whether or not she had additional evidence to present apart from her written explanation. She was there informed that if management does not hear from her within three (3) days, they would consider her case submitted for resolution.

Private respondent sent in her Reply<sup>[11]</sup> on December 18, 1992, stating that she had no idea that she had a “case” and requesting for information thereon.

Petitioner cooperative, however, through its Board of Directors, proceeded to act on the case of private respondent and on February 6, 1993, issued a Resolution<sup>[12]</sup> terminating the services of the latter. The Board found that private respondent furnished Quinto with a copy of her internal memorandum addressed to petitioner Balugo, noting that private respondent never denied having done the same; that as a result of such internal memorandum, Quinto was emboldened to file a case for illegal dismissal against the cooperative, using the memorandum of private respondent as basis; that this dragged the cooperative into an unnecessary labor case and exposed it to tremendous expenses for its defense. According to the Board, it was lamentable that private respondent, whose duty was to protect the interest of the cooperative, was the one who provided Quinto with “weapons and ammunition” to wage a war against the cooperative.

The Board also found that private respondent prepared the said memorandum without having been commissioned by management;

that she undertook a review of Quinto's case simply because the latter personally talked to her to review the same. According to management, the review, apart from being unauthorized, was unnecessary since as early as December 3, 1991, Quinto herself admitted that she "decided to be separated from Surneco due to (my) pressing personal problems."

The Board, thus, found private respondent's act of releasing and/or divulging the contents of her internal memorandum to Quinto as contrary to norms of decency as far as protection of the interest of the cooperative is concerned as well as violative of Section 9 of their Code of Ethics and Discipline, which provides as follows —

"9-2.2 Without proper authority, revealing, releasing or divulging confidential information to individuals other than authorized persons."<sup>[13]</sup>

On the other hand, it found private respondent's unauthorized review of the case of Quinto, merely on the basis of the latter's request, as violative of Section 10 of their Code of Ethics and Discipline, which provides as follows —

"10-2.1 Having any engagement, participation or involvement, direct or indirect, in any transaction involving any person, firms, corporation or any business, or other coops, where such act is in conflict with or is improper/undesirable to interest of the REC."<sup>[14]</sup>

The Board concluded that —

"Certainly, advancing the interest of Miss Quinto instead of the Cooperative is an undesirable or improper conduct which merits the imposition of sanction. The respondent is a confidential officer of the Cooperative being the Personnel Officer. Her actuations as aforesaid does not merit the continuation of the confidence reposed on her as such.

"In fine, we find the respondent guilty of the offense charged, and considering the prejudice she has caused to the

Cooperative, this Board hereby imposes the penalty of dismissal from the service effective 17 February 1993.”<sup>[15]</sup>

The Board Resolution was followed by a Letter<sup>[16]</sup> from petitioner Balugo, dated February 15, 1993, notifying private respondent that she had been terminated from the service for cause, effective at the close of office hours on February 19, 1993.

On March 2, 1993, private respondent filed a Complaint for illegal dismissal, reinstatement with backwages, service incentive leave and moral damages before the Surigao Provincial Extension Unit, Regional Office No. 10, Department of Labor and Employment. A similar Complaint<sup>[17]</sup> was filed on April 30, 1993 by private respondent with the Sub-Regional Arbitration Branch No. X of the NLRC, as Case No. SRAB 10-04-01020-93. Proceedings were had on this second Complaint.

Petitioner cooperative filed its Answer<sup>[18]</sup> to the Complaint on May 12, 1993 and, with no settlement arrived at, the Labor Arbiter directed the parties to file their respective Position Papers.<sup>[19]</sup> Additionally, private respondent filed her Complainant’s Affidavit Re: Damages,<sup>[20]</sup> in support of her prayer for moral damages. To this, petitioner cooperative filed its Comments and Rejoinder.<sup>[21]</sup>

On March 7, 1994, the Labor Arbiter, Hon. Marissa Macaraig-Guillen, rendered her Decision<sup>[22]</sup> declaring private respondent’s dismissal as valid and legal but ordering petitioner cooperative to pay the latter P3,000.00 as financial indemnity for not having provided private respondent with a hearing to air her side and for not complying with the one month notice requirement provided for in Batas Pambansa Blg. 130.

A copy of the Decision was received by private respondent’s counsel, Atty. Enrique Tandan, on March 22, 1994. On April 5, 1994, he filed, by registered mail, a Notice of Appeal,<sup>[23]</sup> which was one day late from the last day to file appeal. On April 8, 1994, however, Atty. Tandan filed a Manifestation<sup>[24]</sup> explaining that he was not able to file the Notice on April 4, 1994, a Monday, because typhoon Besing hit Surigao City on that date, for which reason the Post Office was closed. Attached to his Manifestation was a Certification<sup>[25]</sup> issued by Zosima

M. Lagura, Officer-in-Charge of the Philippine Postal Corporation, Region X, Surigao City, confirming that they had no official transaction on April 4, 1994 because of typhoon Besing.

On July 29, 1994, however, the NLRC dismissed the appeal of private respondent for having been filed out of time.<sup>[26]</sup> Private respondent promptly filed a Motion for Reconsideration,<sup>[27]</sup> dated September 12, 1994, in which she reiterated the contents of their aforesaid Manifestation as well as the Certification from the Surigao Post Office.

Finally, on January 31, 1996, the NLRC issued its now questioned Resolution<sup>[28]</sup> reinstating private respondent's appeal, setting aside the Decision of the Labor Arbiter and entering new judgment declaring private respondent as having been illegally dismissed. The dispositive portion of the questioned Resolution provides, as follows

—

“WHEREFORE, foregoing considered, the decision appealed from is hereby SET ASIDE AND VACATED and a new one entered declaring complainant illegally dismissed. Respondent is directed to reinstate complainant to her previous position without loss of seniority rights, and to pay backwages and allowances computed from the date of her dismissal until duly reinstated, plus attorney's fees equivalent to 10% of the total monetary awards.

“SO ORDERED.”<sup>[29]</sup>

Petitioners filed their Motion for Reconsideration<sup>[30]</sup> dated February 23, 1996, to which private respondent filed her corresponding Opposition<sup>[31]</sup> dated February 29, 1996. On April 30, 1996, the NLRC issued its second questioned Resolution<sup>[32]</sup> denying petitioners' Motion for Reconsideration.

Hence, the instant Petition<sup>[33]</sup> charging the NLRC with having acted with grave abuse of discretion in reinstating the appeal of private respondent and in declaring private respondent's dismissal as illegal.

On the first issue, We find that the NLRC did not abuse its discretion in reinstating the appeal of private respondent. Petitioners argue that since private respondent's Notice of Appeal was filed late, the same should not have been entertained. In *Kathy-O Enterprises vs. National Labor Relations Commission*,<sup>[34]</sup> however, it was explained that —

“When proper, no serious impediment bars the allowance of tardy appeals under the Rules of Court in recognition of this Court's inherent power to suspend adjective rules. It is a different matter, however, when the period to appeal is provided by statute, as in labor cases. For obvious reasons, this Court cannot ordinarily suspend the statute's operation. Article 223 of the Labor Code expressly provides that: '[d]ecisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders.' While Section 1 of Rule VI of the New Rules of Procedure of the National Labor Relations Commission provides that 'If the 10<sup>th</sup> day falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day.' Nevertheless, if only to be able to dispense with substantial justice, strict observance of the period to appeal may not be exacted. Thus, in *Firestone Tire and Rubber Co. of the Philippines vs. Lariosa* (148 SCRA 496, 504), an appeal in a labor dispute was given due course despite the lapse of fourteen (14) days from notice of the decision, due to the fact that the Notice of Decision received by Lariosa's lawyer advised the parties that the appeal could be taken to the NLRC within ten (10) 'working' days — not calendar days — from notice of the decision. For the same reason was the appeal in *Chong Guan Trading vs. NLRC* (172 SCRA 831, 839) allowed. While in *City Fair Corporation vs. NLRC* (243 SCRA 572, 576), we ruled that the NLRC did not commit grave abuse of discretion when it entertained an appeal filed one (1) day late considering that the 'facts and circumstances of the case warrant liberality considering the amount and the issue involved'.” (Emphasis Ours)

As in *City Fair Corporation*, cited above, We find the NLRC's reinstatement of the appeal filed merely one day late far from an abuse of discretion. Liberality in labor cases, alone, considering further that the issue is illegal termination, justifies such reinstatement.

Then, too, private respondent adequately explained the one-day delay in filing as occasioned by typhoon Basing, which caused the Surigao Post Office to close on the fateful 10<sup>th</sup> or last day for her to file her appeal. Petitioners' contention that the Certification filed by private respondent in support of her explanation should not be given evidentiary value for not having been signed by the issuing Officer-in-Charge of the Surigao City Post Office, fails in light of the duly signed copy.<sup>[35]</sup> We find in the records before the NLRC.

We now come to the more important issue of whether or not petitioner cooperative was guilty of illegal dismissal. In dismissing private respondent, petitioner cooperative relied on the following two grounds: (1) serious misconduct based on private respondent's unauthorized review of Quinto's case; and (2) loss of confidence because of private respondent's breach of the rules of confidentiality, by furnishing Quinto a copy of her internal memorandum.<sup>[36]</sup>

After a thorough examination of the records, We find no grave abuse of discretion on the part of the NLRC in finding that private respondent was illegally dismissed.

First, there is no basis for petitioner cooperative's charge of serious misconduct on the part of private respondent. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.<sup>[37]</sup>

Tested by these standards, private respondent's review of Quinto's case hardly qualifies as serious misconduct.

As acknowledged by petitioners, private respondent, as Personnel Officer, holds a managerial position.<sup>[38]</sup> As such, her authority is not merely routinary or clerical in nature but requires independent

judgment.<sup>[39]</sup> Indeed, those occupying managerial positions are considered vested with a certain amount of discretion and independent judgment.<sup>[40]</sup>

It is established that Quinto was a former employee of petitioner cooperative who was asking for a reconsideration of her request for separation pay benefits. It cannot be denied that this matter, i.e., recommendations for separation pay benefits, is within private respondent's line of work as Personnel Officer. Thus, when Quinto approached private respondent to request for assistance on her case, it was acceptable for the latter to act thereon even if the first request of Quinto was not addressed to her but to the General Manager. As Personnel Officer, private respondent could very well take charge of matters involving employees, even former ones, and proceed to make recommendations thereon. This is precisely what private respondent did. To require private respondent to wait for management authorization before acting on matters already obviously within her job jurisdiction would be tantamount to making her a mere rank and file employee stripped of discretionary powers.

Petitioners claim that in proceeding with her alleged unauthorized review of Quinto's case, private respondent violated Section 10-2.1 of their Code of Ethics which proscribes employees from "(H)aving any engagement, participation or involvement, direct or indirect, in any transaction involving any person, firms, corporation or any business, or other coops, where such act is in conflict with or is improper/undesirable to interest of the (corporation)."<sup>[41]</sup> We find this argument devoid of merit. Indeed, there is no transaction, whatsoever, involved in private respondent's review of Quinto's case. Neither may private respondent be absolutely proscribed from taking the side of labor, Quinto in this case, in her review of personnel cases.

All told, We agree with the NLRC that private respondent functioned within the sphere of her job when she acted on Quinto's request and drew recommendations thereon. Stated simply, private respondent was merely doing her job. We fail to see any transgression of established and definite rule of action, any forbidden act, any dereliction of duty, willful in character, nor wrongful intent on the part of private respondent as to hold her liable for serious misconduct.

Neither do We find private respondent's dismissal justified on the basis of loss of confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts.<sup>[42]</sup> A 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. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion, otherwise, the employee would eternally remain at the mercy of the employer.<sup>[43]</sup>

Petitioners' basis for claiming loss of confidence is private respondent's alleged act of furnishing Quinto a copy of her internal memorandum. We have searched the records and found no direct proof that private respondent did furnish a copy of her report to Quinto. On the other hand, We agree with the NLRC that Quinto could have very well obtained her copy from other sources. In other words, that private respondent allowed Quinto to obtain a copy of her report has not been clearly established. As such, petitioners cannot validly rely on loss of confidence as a ground to dismiss private respondent.

It could be argued that, as found by the Labor Arbiter, private respondent should have maintained the secrecy and confidentiality of her report by furnishing the same only to petitioner Balugo.<sup>[44]</sup> Yet, in furnishing "file, PS and 201" with copies of her report, private respondent can hardly be said to have circulated the same, as concluded by the Labor Arbiter. If at all, private respondent can only be said to have acted "carelessly, thoughtlessly, heedlessly or inadvertently," and not "intentionally, knowingly, purposely, or without justifiable excuse" as to make her guilty of a willful breach of trust.

**WHEREFORE**, premises considered, the Petition is **DISMISSED** for lack of merit. The Resolutions of the National Labor Relations Commission dated January 31, 1996 and April 30, 1996 are hereby **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**

**Davide, Jr., C.J., Melo, Kapunan and Pardo, JJ., concur.**

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- [1] Penned by Presiding Commissioner Oscar N. Abella and concurred in by Commissioners Leon G. Gonzaga, Jr. and Musib N. Buat; Records, Vol. II, pp. 85-102.
- [2] Records, Vol. II, pp. 198-199.
- [3] Penned by Labor Arbiter Marissa Macaraig-Guillen, NLRC Case No. SRAB-10-04-01020-93, NLRC Sub-Regional Arbitration Br. X, Butuan City; Records, Vol. I, pp. 187-204.
- [4] Petition, Annex “C”; Rollo, p. 55.
- [5] Petition, Annex “D”; Rollo, pp. 56-58.
- [6] Records, Vol. I, p. 87.
- [7] *Id.*, pp. 79-83.
- [8] Petition, Annex “E”; Rollo, p. 59.
- [9] Petition, Annex “F”; Rollo, p. 60.
- [10] *Id.*, Annex “G”; Rollo, p. 61.
- [11] *Id.*, Annex “H”; Rollo, p. 62.
- [12] Records, Vol. I, pp. 23-32.
- [13] *Id.*, p. 31.
- [14] *Id.*, p. 32.
- [15] *Id.*
- [16] *Id.*, p. 22.
- [17] *Id.*, pp. 18-32.
- [18] *Id.*, pp. 34-47.
- [19] See Records, Vol. I, pp. 65-86 and 89-103.
- [20] Records, Vol. I, pp. 152-168.
- [21] *Id.*, pp. 176-178.
- [22] See Note 3.
- [23] Records, Vol. II, p. 1.
- [24] *Id.*, pp. 46-48.
- [25] *Id.*, p. 48.
- [26] *Id.*, pp. 60-61.
- [27] *Id.*, pp. 72-75.
- [28] See Note 1.
- [29] Records, Vol. II, p. 101.
- [30] *Id.*, pp. 128-142.
- [31] *Id.*, pp. 190-195.
- [32] See Note 2.
- [33] Rollo, pp. 3-168.
- [34] G.R. No. 117610, 286 SCRA 729, 737-739 (1998).
- [35] See Note 25.
- [36] See Petition, p. 24; Rollo, p. 26.
- [37] *Cosep vs. NLRC*, G.R. No. 124966, 290 SCRA 704, 715 (1998).
- [38] See Memorandum, p. 11; Rollo, p. 259.

- [39] Magos vs. NLRC, G.R. No. 123421, 28 December 1998.
- [40] Black's Law Dictionary, 5th ed., on "management", p. 865.
- [41] See Note 14.
- [42] Brent Hospital, Inc. vs. NLRC, G.R. No. 117593, 10 July 1998.
- [43] Atlas Consolidated Mining and Development Corporation vs. NLRC, G.R. No. 122033, 290 SCRA 479, 488 (1998).
- [44] See Decision, NLRC Case No. SRAB-10-04-01020-93, p. 13; Records, Vol. I, p. 199.

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