



Republic of the Philippines
Supreme Court
Manila

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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
AUG 17 2015

THIRD DIVISION

**COPY CENTRAL DIGITAL COPY
SOLUTION and/or VIRGILIO
MONTANO,**

Petitioners,

- versus -

**MARILYN DOMRIQUE and
CARINA LEAÑO,**

Respondents.

G.R. No. 193219

Present:

VELASCO, J., *Chairperson*,
PERALTA,
VILLARAMA, JR.
PEREZ,* and
JARDELEZA, JJ.

Promulgated:

July 27, 2015

Wilfredo V. Lapitan

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DECISION

PERALTA, J.:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision¹ of the Court of Appeals (CA), dated February 16, 2010 and its Resolution² dated July 20, 2010 in CA-G.R. SP No. 110614.

The pertinent facts of the case, as summarized by the CA, are as follows:

* Designated Additional Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

¹ Penned by Associate Justice Ramon R. Garcia, with Associate Justices Rosalinda Asuncion-Vicente and Rodil V. Zalameda, concurring; Annex "B" to Petition, *rollo*, pp. 36-52.

² Annex "A" to Petition, *rollo*, pp. 34-35.

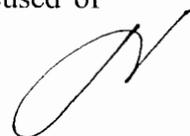
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[Respondents] Marilyn Domrique and Carina Leaño started working for [petitioners] as [photocopy] machine operators on February 21, 1993 and January 1996, respectively. They were assigned at [petitioners'] branch located at Brgy. 10, A.G. Tupaz Ave., Laoag City. [Respondent] Domrique received a salary of ₱145.00 per day or ₱200.00 per day [which includes an allowance of P55.00], while [respondent] Leaño received [a salary of] ₱120.00 per day. They also earn 7% of the total earnings of the branch per month and were provided with free board by [petitioners]. [Respondent Domrique] was assigned to handle one (1) liquid and one (1) powder photocopier machine. She was also tasked as the custodian of photocopier materials such as bond papers and toners. [Respondent] Leaño, on the other hand, handled one (1) liquid photocopier and was assigned to keep the money collected from the customers for the period covering October 1-31, 2005.

On October 12, 2005, [respondent] Leaño, together with another employee, Grace Lorenzo, sent a formal letter to the Regional Director of the Department of Labor and Employment (DOLE), San Fernando City, La Union complaining about the alleged labor standards violations committed by [petitioners]. Consequently, on October 18, 2005, the Labor Inspector of the DOLE conducted an inspection of the company premises and based on his inspection report, there were certain labor standards violations committed by [petitioners, among which are underpayment of wages, 13th month pay, overtime pay, holiday pay and service incentive leaves].

On November 2, 2005, Susana Montano, the manager of the establishment and the wife of [herein petitioner] Virgilio Montano, ordered an audit of their branch in Laoag City. As the manager of [petitioner] Copy Central, she makes routine check up and inspections of its branches to check the meter readings attached to the photocopier machines. Such meter readings indicate the number of documents being copied at the rate of ₱1.00 per powder-type copy and ₱.50 per liquid-type copy. It was claimed that after the said audit of the meter readings done by a certain Cliezelle Jane "Kleng" Jacinto, it was discovered that there were discrepancies in the reading reports that were submitted by [respondents] Domrique and Leaño. Susana Montano then concluded that the [respondents] conspired with each other to cheat on the meter readings in order to pocket the difference [between] their ending report and the actual meter reading. Based on the report of Jacinto and another technician by the name of Albert Alviz, from October 1-30, 2005, [respondent] Domrique allegedly pocketed ₱31,472.50, while [respondent] Leaño pocketed ₱3,501.00. On November 3, 2005, Susana Montano proceeded to the police station to have the incident recorded in the police blotter. Also, on the same day, [respondents] were each required to execute a document in the Ilocos dialect entitled "*Naiget Nga Kari*", which literally means *Solemn Promise*.

On November 4, 2005, Susana Montano issued a termination letter to [respondent] Domrique. The letter states that the company had lost its trust and confidence on [respondent] Domrique who was found to have defrauded the company by making a false meter reading report thereby incurring deficit in the amount of ₱15,059.00. She was also accused of



having misappropriated 195 reams of bond paper. Susana Montano likewise issued on November 4, 2005, a termination letter to [respondent] Leaño informing the latter of her dismissal from employment on the ground that she also defrauded the company by making a false meter reading report thereby incurring deficit amounting to ₱3,501,00.

On November 9, 2005, [respondents] Domrique and Leaño filed separate complaints for illegal dismissal and money claims against [petitioners] before the Arbitration Branch of the NLRC, claiming to have been dismissed from employment, without just cause and without affording them due process.

[Respondents] essentially denied having misappropriated sums of money belonging to the company. They claimed that there was an allowed arrangement in their company that they could render photocopying services to deserving school employees wherein the payments are collected only on a weekly or monthly basis. When Susana Montano conducted an audit of their branch on November 2, 2005, it was a declared non-working holiday. As such, [respondents] still have receivables from their customers and they could not yet remit the said amounts for the same reason that it was a non-working holiday. Also, the meter readings which they submitted on October 31, 2005 necessarily resulted in discrepancies on the meter readings taken at the end of the day on November 2, 2005 because they still performed photocopying jobs in the afternoon of October 31, 2005 and on November 1-2, 2005. At any rate, they agreed to sign a document entitled "*Naiget Nga Kari*" wherein they promised to remit the amount of their receivables in order to put an end to the controversy. Pursuant to such promise, [respondents] Domrique and Leaño delivered to [petitioners] on November 8, 2005, the amounts of ₱17,000.00 and ₱1,600.00, respectively, which they collected from their customers. Despite compliance with their promise, [petitioners] failed to reinstate [respondents] to their positions. They were also dismissed without having been given the chance to explain their side of the controversy.

In their traverse, [petitioners] contended that [respondents] were dismissed from employment for loss of trust and confidence after it was discovered that they defrauded the company by making false meter reading report with the intention of pocketing the payments made by their clients. [Respondent] Domrique was also found to have misappropriated several reams of bond paper. The matter was duly reported to the Laoag City Police Station and a complaint for qualified theft was filed against [respondents] which is now pending before the Regional Trial Court, Branch 16, Laoag City. [Respondents] only made partial payments on November 8, 2005 but their balance remained unpaid. It was only after a thorough investigation and notices to [respondents] informing them of their infractions that [petitioners] decided to dismiss them from their employment. [Petitioners] also pointed out that [respondent] Domrique had already defrauded the company in the year 2001 but out of compassion, [petitioners] allowed her to continue with her employment.³

³ Rollo, pp. 37-41. (Citations omitted)

On February 28, 2006, the Labor Arbiter (*LA*) assigned to the case rendered a Decision in favor of respondents. The dispositive portion of the said Decision reads, thus:

IN VIEW THEREOF, judgment is hereby rendered declaring that the complainants were illegally dismissed. Consequently, respondent VIRGILIO MONTANO and COPY CENTRAL DIGITAL COPY SOLUTION [are] hereby directed to pay in solidum the complainants Domrique and Leaño the total amount of TWO HUNDRED FORTY-THREE THOUSAND SIX HUNDRED & 76/100 (₱243,600.76), representing the underpayment of their wages, backwages and separation pay, plus 10% of the award as attorney's fees.

SO ORDERED.⁴

The LA ruled that: petitioners failed to afford respondents due process because the latter were not given notice of the charges against them as well as the opportunity to explain their side before they were dismissed from their employment; the statements of petitioners' alleged witnesses who reported that respondents were involved in illegal activities are mere hearsay because they did not execute sworn statements to confirm their allegations; even respondents' written acknowledgment of their indebtedness and their separate undertakings to return the amounts due to petitioners is not substantial evidence to justify their dismissal from employment.

Herein petitioners appealed the Decision of the LA before the NLRC.

On February 12, 2008, the NLRC promulgated its Decision⁵ denying petitioners' appeal and affirming the assailed Decision of the LA.

The NLRC held that: there is nothing in the document entitled as "Naiget Nga Kari" to show that respondents misappropriated any amount due to petitioners; the mere fact that a criminal information for theft was filed against respondents does not justify their dismissal from employment; respondents were dismissed before they were afforded their right to explain their side.

Petitioners moved for the reconsideration of the NLRC Decision.

⁴ *Id.* at 108.

⁵ Annex "J" to Petition, *id.* at 109-121.



On May 29, 2009, the NLRC rendered a new Decision⁶ granting petitioners' motion for reconsideration. The NLRC reversed and set aside its earlier Decision dated February 12, 2008 and dismissed the complaint against herein petitioners. This time, the NLRC ruled that the document entitled "Naiget Nga Kari," which was executed by respondents, and their subsequent acts of paying petitioners are construed as admission on their part that they have committed the alleged illegal acts which they were accused of having perpetrated and this is sufficient basis to dismiss respondents from their employment for loss of trust and confidence.

Respondents filed a motion for reconsideration, but the NLRC denied it in its Resolution⁷ dated August 14, 2009.

Respondents then filed a petition for *certiorari* with the CA.

On February 16, 2010, the CA promulgated its assailed Decision, the dispositive portion of which reads as follows:

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision dated May 29, 2009 and Resolution dated August 14, 2009 of public respondent National Labor Relations Commission are hereby **SET ASIDE**. Accordingly, the Decision dated February 28, 2006 of the Labor Arbiter is **REINSTATED**.

SO ORDERED.⁸

The CA held that there is insufficient evidence to prove the validity of respondents' dismissal from employment, both on the substantive and procedural aspects of the case.

Petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution dated July 20, 2010.

Hence, the instant petition based on the following assignment of errors:

1. THE COURT OF APPEALS ERRED AND MISAPPRECIATED FACTS, LAW AND ESTABLISHED JURISPRUDENCE IN CONCLUDING THAT RESPONDENTS WERE ILLEGALLY

⁶ Annex "C" to Petition, *id.* at 53-60.

⁷ Annex "D" to Petition, *id.* at 61-62.

⁸ *Rollo*, p. 51. (Emphasis in the original)



DISMISSED FROM THEIR EMPLOYMENT AS THERE WAS NO JUST CAUSE AS PROVIDED FOR BY THE LABOR LAW WHICH WOULD WARRANT THEIR DISMISSAL.

2. THE COURT OF APPEALS ERRED AND MISAPPRECIATED FACTS, LAW AND ESTABLISHED JURISPRUDENCE IN REINSTATING THE DECISION OF THE LABOR ARBITER DATED FEBRUARY 28, 2006 DESPITE THE PRESENCE OF JUST CAUSE WHICH WOULD WARRANT THE DISMISSAL OF HEREIN RESPONDENTS, THUS, NOT ENTITLED FOR WAGE DIFFERENTIALS, BACKWAGES, SEPARATION PAY AND ATTORNEY'S FEES.⁹

Petitioners' basic contention is that respondents are guilty of theft in misappropriating the income from the photocopying machines under their care and custody and that these acts of misappropriation constitute serious misconduct and fraud or willful breach of the trust reposed in them by petitioners which are just causes for termination of employment under Article 282 of the Labor Code.

Petitioners likewise argue that they informed respondents of the nature and cause of their dismissal and have afforded them the opportunity to answer the charges hurled against them.

The petition lacks merits.

The Court finds no cogent reason to depart from the findings of the CA that petitioners failed to present substantial evidence to prove their allegation that respondents are guilty of theft.

To support their contention, petitioners rely primarily on the documents both entitled "Naiget nga Kari"¹⁰ which were executed by respondents. Petitioners argue that, through the said documents, respondents have admitted guilt of their supposed infraction.

The Court is not convinced.

A meticulous examination of the above documents would show that nothing therein would prove that respondents admitted having committed theft against petitioners and that, as a consequence of such theft, they have made partial restitution of the amount they allegedly embezzled. On the

⁹ *Id.*, at 22.

¹⁰ See *CA rollo*, pp. 61-62.



contrary, respondents simply promised to return the amounts stated in the document which they have acknowledged as having been entrusted to them by petitioners, without admitting that they took the same. There was neither any admission by respondents of any wrongdoing which they have allegedly committed in 2001.

Neither were the subsequent payments made by respondents sufficient evidence to prove that they are guilty of theft. As correctly pointed out by the CA, the acknowledgment receipts executed by the representative of petitioners merely stated that the amounts separately paid by respondents represent receivables and collectibles for photocopying services.¹¹ This is consistent with respondents' claims that, at the time that they were made to account for the income of the photocopying machines which they were operating, there were still outstanding accounts from their customers which were yet to be collected. The acknowledgment receipts neither show that the payments made by respondents were intended as restitution for the company funds which they allegedly misappropriated.

Moreover, the fact that the Assitant City Prosecutor of Laoag found probable cause to indict respondents for the crime of qualified theft does not necessarily mean that there exists a valid ground for their termination from employment.

Citing the case of *Nicolas v. National Labor Relations Commission*,¹² this Court held in *Lynvil Fishing Enterprises, Inc. v. Arriola, et al.*,¹³ that a criminal conviction is not necessary to find just cause for employment termination. Otherwise stated, an employee's acquittal in a criminal case, especially one that is grounded on the existence of reasonable doubt, will not preclude a determination in a labor case that he is guilty of acts inimical to the employer's interests.¹⁴ In the reverse, the finding of probable cause is not followed by automatic adoption of such finding by the labor tribunals.¹⁵ In other words, whichever way the public prosecutor disposes of a complaint, the finding does not bind the labor tribunal.¹⁶

In the instant case, petitioners cannot argue that, since the Assistant City Prosecutor found probable cause for qualified theft and subsequently filed criminal information against respondents, the LA must follow the

¹¹ *Id.* at 190-191.

¹² 327 Phil. 883, 886-887 (1996).

¹³ 680 Phil. 696 (2012).

¹⁴ *Lynvil Fishing Enterprises, Inc. v. Arriola, et al.*, *supra*, at 709-710.

¹⁵ *Id.* at 710.

¹⁶ *Id.*



finding as a valid reason for their termination from employment. The proof required for purposes that differ from one and the other are likewise different.

Hence, aside from the allegation of theft which was not substantiated, absent any other ground for petitioners to lose trust and confidence in respondents, the Court agrees with the LA and the CA that respondents' termination from employment is illegal.

As to the procedural aspect of the case, the Court likewise agrees with the findings of both the LA and the CA that petitioners failed to observe the proper procedure in terminating respondents' services.

Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides:

Section 2. *Standard of due process: requirements of notice.* – In all cases of termination of employment, the following standards of due process shall be substantially observed.

I. For termination of employment based on just causes as defined in Article 282 of the Labor Code:

- (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
- (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; and
- (c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

Jurisprudence has expounded on the guarantee of due process, requiring the employer to furnish the employee with two written notices before termination of employment can be effected: a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee



of the employer's decision to dismiss him.¹⁷ In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.¹⁸

In the present case, how could petitioners' claim that they afforded respondents their right to procedural due process when records show that petitioners' letters, dated November 4, 2005, which apprised respondents of the charges against them, were the same letters which informed them of their dismissal from employment.¹⁹ Moreover, petitioners allege that, in the same letters, they gave respondents the opportunity to explain their side. However, a careful reading of these letters would show that there is no statement therein which gives respondents the chance to refute petitioners' allegations.²⁰ On the contrary, the letter merely stated the conclusions already drawn by petitioners after their alleged investigation of the supposed infractions committed by respondents. Neither was there any other evidence to prove that respondents were, in fact, given the opportunity to be heard.

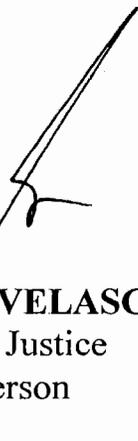
WHEREFORE, The Decision of the Court of Appeals, dated February 16, 2010 and its Resolution dated July 20, 2010 in CA-G.R. SP No. 110614, are **AFFIRMED.**

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



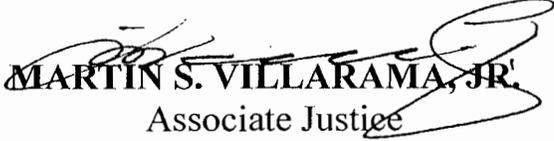
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

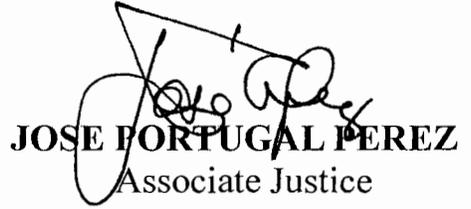
¹⁷ *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, G.R. No. 173189, February 13, 2013, 690 SCRA 534, 544.

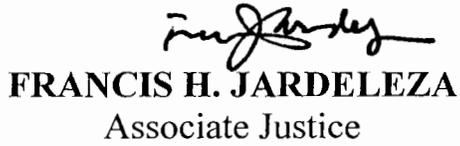
¹⁸ *Id.*

¹⁹ Annexes "H", "H-1" and "H-2" to Petition, *rollo*, pp. 88-90.

²⁰ *Id.*

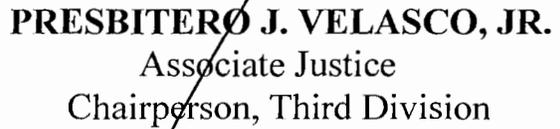

MARTIN S. VILLARAMA, JR.
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice

ATTESTATION

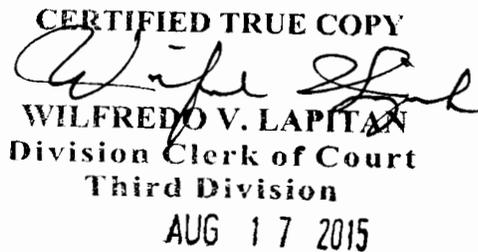
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Acting Chief Justice

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