



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SALVACION A. LAMADRID,
Petitioner,

G.R. No. 200658

- *versus* -

**CATHAY PACIFIC AIRWAYS
LIMITED AND VIVIAN LO,**
Respondents.

Present:

LEONEN, J., *
HERNANDO,
Acting Chairperson,
LAZARO-JAVIER, **
DELOS SANTOS, and
LOPEZ, J. Y., JJ.

Promulgated:

June 23, 2021

X-----

X

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ assails the September 16, 2011 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 114964, which reversed and set aside the February 24, 2010 Decision³ and the April 20, 2010 Resolution⁴ of the National Labor Relations Commission in NLRC LAC No. 07-001814-09.

The appellate court found petitioner's dismissal from employment as valid and thus, dismissed her complaint for illegal dismissal lodged against respondents Cathay Pacific Airways Limited (Cathay) and Vivian Lo (Lo).

* On Wellness Leave.

** Designated as additional member per raffle dated July 17, 2019 vice J. Inting who recused himself; his sister, J. Socorro B. Inting, had prior participation in the proceedings in the Court of Appeals.

¹ *Rollo*, Vol. 1, pp. 8-28

² Id. at 29-49; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Stephen C. Cruz and Socorro B. Inting.

³ Id. at 312-326.

⁴ Id. at 362-364.

The Antecedents:

In 1990, Cathay hired Salvacion A. Lamadrid (Lamadrid) as a cabin crew. Cathay's Conditions of Service⁵ stipulated that all its cabin crew shall be based in Hong Kong. Prior to her termination in 2007, Lamadrid had rendered about 17 years of service in Cathay, and held the position of Senior Purser with a monthly salary of HK\$26,613.00.⁶ Her duties as a flight attendant consisted as follows:

- (a) [Providing] support to the In-flight Service Manager.
- (b) Ensuring that in-flight information received during the Section leaders' briefing is fully conveyed to the Cabin Crew working in their assigned area.
- (c) Ensuring that the service provided to passengers is carried out in accordance with the service plan and is consistent with the company service philosophy of Service Straight from the Heart.
- (d) Ensuring that the Cabin Crew in their assigned area are competent in safety, security and service procedure since Senior Purfers are responsible for the performance and behavior of crew in their respective area.
- (e) Ensuring that the In-flight Service Manager is informed of any crew or passenger related problems, irregularities, cabin defects, defective or missing equipment.⁷

On May 19, 2007, Donald Lal (Lal), Airport Services Officer of Cathay in Sydney Airport, received a report from Customer Officer Mary Greiss (Mary) that some crew members of Cathay flight CX 139, including Lamadrid, were caught in possession of goods after alighting from the aircraft. Mary handed to Lal a plastic bag containing a 1.5 liter Evian water bottle and a pile of magazines confiscated from Lamadrid as well as the photocopy of the latter's passport. The confiscated items were turned over to Cindy Lowe (Lowe), the Airport Services Supervisor, who then finally surrendered the items to Brian Davis (Davis), Cathay's Airport Services Manager in Sydney Airport, after Lowe recorded the confiscated items on Lamadrid's passport.⁸

On May 21, 2007, Lamadrid and a certain Yvette Tsang (Tsang) met with Davis and pleaded him not to report the incident to their Hong Kong office. They also mentioned their 17 years of service with Cathay. Davis, however, responded that a report was already relayed and the confiscated items had already been sent to Hongkong via flight CX 100.⁹

⁵ Id. at 194-203.

⁶ Id. at 66.

⁷ Id.

⁸ Id. at 469; Affidavit of Donald Lal; id. at 472; Affidavit of Cindy Lowe.

⁹ Id. at 475; *Affidavit of Brian Davis*.

In a letter¹⁰ dated May 22, 2007, Cathay requested Lamadrid to submit a written explanation regarding the May 19, 2007 incident aboard flight CX 139 and to show cause why no disciplinary action should be imposed against her since removal of company property without authorization is considered a serious misconduct. On May 28, 2007, Lamadrid submitted her reply-letter¹¹ denying the allegations against her. She claimed that the Hello magazine which was confiscated from her was not Cathay's property. As regards the other items, she claimed that another cabin crew already admitted having taken those items.

In another letter¹² dated June 21, 2007, Cathay once again informed Lamadrid that it received reports that she was found to have taken a large bottle of Evian water and a pile of magazines during flight CX 139 on May 19, 2007. She was again requested to explain her side. Consequently, Lamadrid sent a reply-letter¹³ dated June 23, 2007 clarifying that she brought and declared the bottle of Evian water as her own. She denied having committed serious misconduct, and demanded that the items taken from her be preserved following a fair and transparent investigation.

On July 10, 2007, Cathay informed Lamadrid of the termination of her services effective immediately for committing serious misconduct by removing company property without authorization.¹⁴ According to Cathay, it could no longer repose its trust and confidence on petitioner considering the seriousness of her violation.

Hence, Lamadrid instituted a complaint for illegal dismissal and money claims against Cathay and Lo.

In her Position Paper,¹⁵ Lamadrid insisted that her termination was without just cause because she bought the Evian water from Hong Kong. Granting that she took the bottle, the act was not prohibited by Cathay. She also contended that the penalty of termination was too harsh considering her 17 years of service and her clean record. Lamadrid prayed for reinstatement, payment of backwages, damages and attorney's fees.

In their Position Paper,¹⁶ Cathay and Lo initially asserted that the Labor Arbitrator had no jurisdiction to hear the dispute since the incident occurred in a foreign jurisdiction involving foreign nationals. Also, they maintained that Lamadrid had no cause of action against them because they complied with the

¹⁰ Id. at 536-537.

¹¹ Id. at 73-75.

¹² Id. at 76-77.

¹³ Id. at 78-83.

¹⁴ Id. at 549 and 551.

¹⁵ Id. at 52-65.

¹⁶ Id. at 499-516.

requirements of substantive and procedural due process in labor cases. They further insisted that petitioner's position was imbued with trust and confidence, and her violation justified the termination of her services on the basis of loss of trust and confidence.

Ruling of the Labor Arbiter:

In a Decision¹⁷ dated April 29, 2009, the Arbiter ruled that it has jurisdiction over the case since Cathay, even if a foreign corporation, is licensed and is actually doing business in the Philippines. Moreover, the employment contract between Lamadrid and Cathay was executed in the Philippines as well. It was also resolved that Lamadrid could not be considered a managerial employee based on her duties and responsibilities. Thus, there was no sufficient basis for the airline to terminate the worker's employment on the ground of loss of trust or confidence. It was also emphasized that the employee's outright dismissal was too harsh a penalty in view of her untarnished service record of 17 years. Finally, the Arbiter deemed it proper that separation pay be awarded in lieu of reinstatement in view of the parties' strained relations.

The *fallo* of the Decision reads in this wise:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring respondents guilty of illegal dismissal.

Respondent CATHAY PACIFIC AIRWAYS LIMITED is hereby ordered to pay complainant, as per attached computation from Computation and Examination Unit of this office.

All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

SO ORDERED.¹⁸

Both Lamadrid and Cathay elevated the case to the NLRC by filing their Partial Appeal Memorandum and Memorandum of Appeal, respectively.

Lamadrid argued that there was no showing of strained relationship between her and Cathay, and that she was entitled to damages since her termination was attended with bad faith.¹⁹ On the other hand, respondents maintained that the Arbiter had no jurisdiction over the case. They argued that the Arbiter erred in ruling that Lamadrid was not a managerial employee and in finding that the termination was a harsh penalty. They alleged that the

¹⁷ Id. at 260-272.

¹⁸ Id. at 272.

¹⁹ Id. at 317.

amount received by Lamadrid in the course of her separation should have been taken into consideration.²⁰

Ruling of the National Labor Relations Commission:

In its Decision²¹ dated February 24, 2010, the NLRC sustained the jurisdiction of the Labor Arbiter over the case. It anchored its ruling on Section 10 of the Migrant Workers and Overseas Filipinos Act of 1995 or Republic Act No. 8042 (RA 8042). It declared that the Arbiter has jurisdiction over claims arising from employer-employee relationship of Overseas Filipino Workers (OFW) deployed abroad. Lamadrid never became a permanent resident of Hong Kong.²² The NLRC likewise did not give credence to Cathay's position that Lamadrid's employment did not pass through any Philippine placement agency. Hence, as she was an OFW based in Hong Kong at the time, the Arbiter properly took cognizance of her complaint.

The NLRC concurred as well with the arbiter that the penalty of dismissal was too harsh considering the worker's untarnished record of 17 years, the value of property stolen, and Cathay's failure to establish that Lamadrid was holding a managerial or a position of trust.²³

Finding no strained relations between Lamadrid and her employer, the NLRC ruled for the reinstatement of Lamadrid to her previous position as Senior Purser instead of payment of separation pay.²⁴ Lastly, it held that Lamadrid is not entitled to damages since there was no showing of bad faith on the part of the respondents. However, the benefits and bonuses she received during her separation amounting to HK\$622,077.54 should be deducted from the final monetary award that would be given to her.²⁵

The decretal portion of the NLRC's Decision reads:

WHEREFORE, premises considered, the appealed Decision is AFFIRMED with modification as follows:

(1) Respondent CATHAY PACIFIC AIRWAYS LIMITED is ordered to immediately reinstate complainant Salvacion Lamadrid to her former position without loss of seniority rights within ten (10) days from receipt hereof; and

(2) Respondent CATHAY PACIFIC AIRWAYS LIMITED is ordered to pay complainant Salvacion Lamadrid the amount of Six Thousand Six Hundred

²⁰ Id. at 317-318.

²¹ Id. at 312-326.

²² Id. at 318-319.

²³ Id. at 320.

²⁴ Id. at 323.

²⁵ Id.

Seventy[-]Five and 41/100 Hong Kong Dollars, or its Peso equivalent at the time of payment, plus ten percent (10%) thereof as attorney's fees.

SO ORDERED.²⁶

Cathay's Motion for Reconsideration was denied by the NLRC in its Resolution²⁷ dated April 20, 2010. Thus, Cathay filed a Petition for *Certiorari* (With Urgent Application for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)²⁸ before the CA raising the following issues, to wit:

I.

PUBLIC RESPONDENT NLRC ACTED WITHOUT JURISDICTION. UNDER REPUBLIC ACT 8042[.] THE NLRC HAS NO JURISDICTION OVER LABOR CLAIMS BY OVERSEAS WORKERS WHO ARE PERMANENT RESIDENTS OF A FOREIGN COUNTRY.

II.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE APPEAL FILED BY CATHAY. PRIVATE RESPONDENT LAMADRID WAS NOT THE SUBJECT OF ILLEGAL DISMISSAL. THE PUBLIC RESPONDENT FAILED TO CONSIDER PETITIONER CATHAY'S EVIDENCE IN THE PROCEEDINGS A QUO, WHICH WOULD HAVE ESTABLISHED THAT:

1.) LAMADRID'S PILFERAGE AND SUBSEQUENT UNTRUSTWORTHY BEHAVIOR WERE PROVEN BY SUBSTANTIAL EVIDENCE. THUS, PETITIONER CATHAY WAS WELL WITHIN ITS RIGHTS WHEN IT DECIDED TO TERMINATE HER EMPLOYMENT.

2.) HER JOB DESCRIPTION, DUTIES AND RESPONSIBILITIES CLEARLY SHOW THAT SHE WAS AT LEAST A CONFIDENTIAL EMPLOYEE, WHOSE POSITION WAS VESTED WITH TRUST AND CONFIDENCE. SHE WAS NOT A MERE RANK-AND-FILE EMPLOYEE.

3.) CONSEQUENTLY, THE ACT SHE PERPETRATED, PILFERAGE, IS INHERENTLY PUNISHABLE AND REPREHENSIBLE REGARDLESS OF THE VALUE OF THE PROPERTY OR THE LENGTH OF SERVICE OF THE EMPLOYEE.

4.) THE DIRECTIVE TO REINSTATE LAMADRID TO HER FORMER POSITION IS NOT JUSTIFIED UNDER THE CIRCUMSTANCES. THE RELATIONSHIP BETWEEN THE PARTIES IS SO STRAINED AS TO FORECLOSE

²⁶ Id. at 324-325.

²⁷ Id. at 362-364.

²⁸ *Rollo*, Vol. II, pp. 642-680.

REINSTATEMENT. THE NLRC HAD ABSOLUTELY NO BASIS FOR REVERSING THE LABOR ARBITER'S FINDING OF STRAINED RELATIONS.²⁹

Ruling of the Court of Appeals:

In its September 16, 2011 Decision,³⁰ the appellate court granted Cathay's petition and dismissed the illegal dismissal complaint filed against it.

The appellate court sustained the jurisdiction of both the Labor Arbiter and the NLRC in hearing the case based on Article 217 [224] of the Labor Code of the Philippines,³¹ Section 10 of RA 8042,³² and the Omnibus Rules and Regulations Implementing RA 8042.³³

As regards the issue of illegal dismissal, the appellate court ruled that the airline validly terminated the employment of Lamadrid on grounds of theft and dishonesty. Regardless of the value of the property pilfered, Cathay had the right to dismiss erring employees as a measure of protection against actions inimical to its interest.³⁴

The dispositive portion of the appellate court's Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us REVERSING and SETTING ASIDE the Decision dated February 24, 2010 and the Resolution dated April 20, 2010 issued by the Seventh Division of the National Labor Relations Commission in NLRC LAC No. 07-001814-09. Consequently, the Decision of Labor Arbiter Lutricia F. Quitevis-Alconcel on April 29, 2009 in NLRC NCR Case No. 03-04048-08 is likewise REVERSED and SET ASIDE. Accordingly, the Complaint filed by the private respondent Salvacion Lamadrid against herein petitioner for illegal dismissal is hereby DISMISSED for lack of merit.

SO ORDERED.³⁵

²⁹ Id. at 652-653.

³⁰ Supra note 2.

³¹ ARTICLE 224 [217]. *Jurisdiction of Labor Arbiters and the Commission.* – x x x, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x, the following cases x x x, x x x:

x x x x;

2. Termination disputes;

x x x x;

³² SECTION 10. *Monetary Claims.* – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

³³ *Rollo*, Vol. 1, pp. 41-43.

³⁴ Id. at 44-48.

³⁵ Id. at 48.

The appellate court denied Lamadrid's Motion for Reconsideration in a Resolution³⁶ dated February 17, 2012.

Issue

Thus, Lamadrid brought the case before Us via this Petition for Review on *Certiorari*³⁷ on the sole ground that -

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISIONS OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) FINDING THE PETITIONER TO HAVE BEEN ILLEGALLY DISMISSED.³⁸

Otherwise stated, the principal issue before Us is whether or not Lamadrid was illegally dismissed.

Contentions of the petitioner:

Lamadrid argues that Cathay failed to substantiate its allegation that she committed pilferage of company property. She claims that there was no proof that flight attendants are prohibited from bringing water during long-haul flights. The burden of proving theft of company property rests with Cathay, and the same should be proven by clear and convincing evidence. Petitioner also emphasizes that Cathay deviated from procedural due process because she was denied the opportunity to confront or refute the evidence against her.³⁹

Also, loss of trust or confidence as ground for dismissal applies only to managerial employees or those employees charged with the care and custody of employer's money or property. Lamadrid insists that her position as a Senior Purser is not a position imbued with trust and confidence.⁴⁰

Arguments of the respondents:

Respondents, in their Comment,⁴¹ counter that Lamadrid already attained a permanent residency status in Hong Kong on the strength of the Affirmation of Virginia Ho Mi Han (Virginia) dated September 9, 2008.⁴² Moreover, she was entrusted with and had custody of company properties in her assigned section in the aircraft such as chinaware, glassware, cutlery, champagne, wine, amenity kits, and in-flight reading materials, among others. These company properties were under her exclusive control and safekeeping. Cathay stressed

³⁶ Id. at 50-51.

³⁷ Id. at 8-28.

³⁸ Id. at 16.

³⁹ Id. at 17-20.

⁴⁰ Id. at 20-25.

⁴¹ Id. at 373-402.

⁴² Id. at 450-451.

that its Uniform Disciplinary and Grievance Policy disclosed that removal of company property may be meted with the penalty of summary dismissal.⁴³

Furthermore, respondents maintain that they discharged their burden of proof and the termination was supported by substantial evidence pointing to the employee's pilferage of company property and dishonesty which eroded Cathay's trust and confidence reposed on her.⁴⁴ The bottle of Evian water could not have been bought from Hong Kong as the production code showed that it was part of those exclusively distributed to Cathay.⁴⁵ Virginia's Affirmation belied Lamadrid's protestation that Tsang already admitted to have taken the enumerated items indicated in the letters addressed to Lamadrid. In fact, Tsang, in her conversation with Lamadrid, did not itemize the things she admitted to have taken.⁴⁶

Respondents insist that Lamadrid was afforded due process.⁴⁷ Based on the Affirmation of Ip Tak Chau (Kevin), Lamadrid was routinely in-charge of company properties in-flight and supervises two to four cabin crew whose performances are under her appraisal rating for promotion purposes. This points to her position as one impressed with trust and confidence; that her employment was chiefly based on Cathay's continuing confidence in her, and once tainted, the reason for her employment ceased to exist. In fine, they posit that based on Lamadrid's commission of serious misconduct, the company lost its trust and confidence leading to her termination.⁴⁸

Incidentally, respondents aver that despite Lamadrid's abuse of their trust and confidence, she was still paid her full retirement benefits and long service payment which amounted to HK\$622,077.50.⁴⁹

Our Ruling

The Petition is impressed with merit.

We sustain both the Labor Arbiter's and the NLRC's jurisdiction over the illegal dismissal case of Lamadrid. Article 224 [217] of the Labor Code provides that the Labor Arbiter has original and exclusive jurisdiction to hear and decide termination disputes involving all workers. This provision must be read together with Section 10 of RA 8042 as amended by RA 10022,⁵⁰ as well as Section 3 of RA 10022.⁵¹

⁴³ Id. at 216.

⁴⁴ Id. at 383-386.

⁴⁵ Id. at 379.

⁴⁶ Id. at 479.

⁴⁷ Id. at 386-388.

⁴⁸ Id. at 388-395.

⁴⁹ Id. at 380.

⁵⁰ SEC. 10. *Money Claims.* – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear

SECTION 2. Section 3, paragraph (a) of Republic Act No. 8042, as amended, is hereby amended to read as follows:

(a) "Overseas Filipino worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker.

Under the foregoing definition, Lamadrid is considered an Overseas Filipino Worker (OFW). She had been engaged in a remunerated activity in a state where she is not a citizen. Cathay's cabin crew are all based in Hong Kong, and in fact Lamadrid resided and leased an apartment in Hong Kong during her stint with Cathay. As an OFW faced with a termination dispute, Lamadrid's case may be heard and decided by the Arbitrator under Article 224 [217] of the Labor Code in relation to RA 8042 as amended by RA 10022.

Lamadrid's position as a Senior Purser is imbued with trust and confidence.

Jurisprudence classify positions of trust and confidence into two categories. The first consists of those managerial employees or those "vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees" as defined under Article 219 [212] (m) of the Labor Code.⁵² By the nature of their position, managerial employees are expected to exhibit utmost fidelity to the employer as they are entrusted with confidential and sensitive matters.⁵³ The second category involves those who in the normal and routine exercise of their functions regularly handle significant amounts of the employer's money or property, such as but not limited to cashiers, auditors, and property custodians.⁵⁴

Based on the Affirmation⁵⁵ of Kevin, the Cabin Crew Line Manager of Cathay, the nature of Lamadrid's duties and obligations required the highest

and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

⁵¹ An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipino Act of 1995.

⁵² PRESIDENTIAL DECREE NO. 442 OF 1974, As Amended and Renumbered.

⁵³ *Baguio Central University v. Gallente*, 722 Phil. 494, 505 (2013).

⁵⁴ *Lopez v. Keppel Bank Philippines, Inc.*, 672 Phil. 370, 379 (2011), citing *Mabeza v. National Labor Relations Commission*, 338 Phil. 386 (1997).

⁵⁵ *Rollo*, Vol. I, pp. 453-454.

degree of trust and confidence because she had in her control properties of Cathay. The Affirmation specifically demonstrates in detail, *viz.*:

12. In the management of the section of aircraft she [Lamadrid] is responsible for, she is basically unsupervised as she is empowered by the ISM to assist by overseeing the service and ensuring the Company's property is protected that no items of Company property are removed from the aircraft without authorization. She has custody of various company properties in her section of aircraft such as all service equipment including chinaware, glassware, cutlery and linenware, expensive items of Champagne, wine and liquor, amenity kits for passenger and inflight reading materials for passengers such as newspaper and magazines. There are long intervals of time inflight during which these company properties are under her exclusive safekeeping and control.

13. Sally's position and duties required that the company have the highest degree of trust and confidence in her.⁵⁶

Taking this Affirmation into consideration, together with the declared duties and responsibilities of a flight attendant,⁵⁷ We hold that indeed the nature of Lamadrid's position was imbued with trust and confidence. She had in her custody and control company properties which are of significant value, and she also had the responsibility of informing the In-flight Service Manager whether there was defective or missing equipment. Moreover, she had oversight over two to four cabin crew members assigned in her section of the aircraft and rated their performance for promotion purposes.⁵⁸ She had been entrusted with the custody and control of valuable company properties in the normal and routine exercise of her duties.

Lamadrid's termination was not commensurate to the infraction committed.

Employees can be terminated only for just or authorized cause.⁵⁹ Article 297 [282] of the Labor Code enumerates the just causes for dismissal, to wit:

ARTICLE 297. [282] *Termination by Employer.* — An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;**

⁵⁶ Id. at 454.

⁵⁷ Supra note 6.

⁵⁸ *Rollo*, Vol. I, p. 454.

⁵⁹ *SME Bank, Inc. v. De Guzman*, 719 Phil. 103, 114 (2013).

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing. (Emphasis Supplied)

There is loss of trust and confidence when an employee fraudulently and willfully committed acts or omission in breach of the trust reposed in her/him by the employer. Two requisites must be complied with to justify this ground for termination. First, the employee must be holding a position of trust, and second, the employer shall sufficiently establish the employee's act that would justify loss of trust and confidence. The act must be characterized as real wherein the facts that brought about such act were clearly established, and that the employee committed the same without any justifiable reason.⁶⁰

Cathay has complied with the two aforementioned requisites for loss of trust and confidence. We have already settled that Lamadrid's position was imbued with trust and confidence. Likewise, the airline clearly demonstrated that she committed an infraction of company policy that breached its trust and confidence on her.

Pilferage of company property is an act characterized by fraud or dishonesty which may be meted with summary dismissal as specifically provided in Cathay's *Disciplinary & Grievance Policy*,⁶¹ viz.:

9.4 Examples of misconduct in which a Cabin Crew member may be summarily dismissed include, but not limited to, the following:

x x x x

x x x x

* Is found guilty of fraud or dishonesty, e.g. removing Company property, selling travel benefit for advantage, intentionally divulging confidential information or personal data, forged medical certificate, illegal amendment of medical certificate.⁶² (Emphasis Supplied)

Cathay attached a confirmation from Danone Imported Water Asia that the batch number of the Evian water confiscated from Lamadrid belonged to the batch of Evian water that was exclusively shipped to Cathay.⁶³ This certainly established that the bottle of water confiscated from her was Cathay's property. Admittedly, Lamadrid transgressed Cathay's Disciplinary and Grievance Policy by taking out the bottle of water without authorization.

⁶⁰ *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423-438 (2017).

⁶¹ *Rollo*, Vol. I, pp. 204-223.

⁶² Id. at 216.

⁶³ Id. at 164.

Lamadrid's infraction was clearly a case of misconduct considering that it is "a 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."⁶⁴ It evidently eroded Cathay's trust and confidence in her.

However, while the weight of evidence points to Lamadrid's infraction of company policy, We should also consider that this is Lamadrid's first infraction in her 17 years of service in the airline which involved a mere bottle of water. Concededly, the company laid down the penalties for violation of its policies; however, the evaluation of an employee's infraction should be dealt with fairness and reason. Simply put, all surrounding circumstances must be considered and the penalty must be commensurate to the violation committed by an employee. Termination of the services of an employee should be the employer's last resort especially when other disciplinary actions may be imposed, considering the employee's long years of service in the company, devoting time, effort and invaluable service in line with the employer's goals and mission, as in Lamadrid's case. Thus, We emphasize the principle of totality of infractions, *viz.:*

x x x . It is here that totality of infractions may be considered to determine the imposable sanction for her current infraction. In *Merin v. National Labor Relations Commission*, the Court explained the principle of "totality of infractions" in this wise:

The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. X x x.⁶⁵ (Citation Omitted)

During Lamadrid's span of employment, she did not commit any infraction or was ever sanctioned except in the incident subject of the present controversy. To impose a penalty as grave as dismissal for a first offense and considering the value of the property allegedly taken would be too harsh under the circumstances. Therefore, Lamadrid was illegally dismissed from service.

In the recent case of *Foodbev International v. Ferrer*,⁶⁶ We held that:

x x x A less severe penalty of suspension should have been imposed considering that the respondents have been in the service for several years. The Court also observes that this is the first time in the long years of service that respondents failed to follow the cleaning procedure. Thus, a more compassionate penalty of suspension is deemed appropriate.

⁶⁴ *Nagkakaisang Lakas ng Manggagawa sa Keihin v. Keihin Philippines Corporation*, 641 Phil. 300, 310 (2010).

⁶⁵ *Villanueva v. Ganco Resort and Recreation, Inc.*, G.R. No. 227175, January 8, 2020.

⁶⁶ G.R. No. 206795, September 16, 2019.

In *Philippine Long Distance Company v. Teves*, the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affects the employee concerned, but also those who depend on his livelihood.

While management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements. **The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion.** Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.

Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner. (Emphases in the original; citations omitted)

As consequences of Lamadrid's illegal dismissal, she is entitled to the payment of full backwages and separation pay in lieu of reinstatement since the latter is no longer feasible considering the time that has lapsed and the strained relations between the parties.⁶⁷

WHEREFORE, the Petition is hereby **GRANTED**. The assailed September 16, 2011 Decision of the Court of Appeals in CA-G.R. SP No. 114964 is **REVERSED AND SET ASIDE**.

Respondent Cathay Pacific Airways Limited is **ORDERED** to PAY petitioner Salvacion A. Lamadrid full backwages and separation pay based on her salary rate at the time of her termination. Let this case be remanded to the Labor Arbiter for this purpose. The benefits and bonuses she received during her separation amounting to HK\$622,077.54 should be deducted from the final monetary award that would be given to her.

⁶⁷ *Genuino Agro-Industrial Development Corporation v. Romano*, G.R. No. 204782, September 18, 2019, citing *Advan Motor, Inc. v. Veneracion*, 848 SCRA 421, 434 (2017).

SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

WE CONCUR:

On Wellness Leave.

MARVIC M. V. F. LEONEN
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

A T T E S T A T I O N

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.



RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.



ALEXANDER G. GESMUNDO
Chief Justice