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Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 9, 2014 which reads as follows:

***“G.R. No. 190774 - MICAH MOTOR, INC., FLORENTINO QUEROL AND JOHN HERNANDEZ, Petitioners, v. JANNETH B. TENORIO, Respondent.*”**

The petition for review on *certiorari* before this Court seeks the reversal of the Decision dated August 25, 2009 and Resolution dated December 22, 2009 of the Court of Appeals in CA-G.R. SP No. 107630.

Daniel Motor, Inc. previously employed Janneth B. Tenorio (Tenorio) as a sales consultant on a probationary status. On July 1, 2005, Micah Motor, Inc. absorbed Tenorio as a permanent showroom sales consultant also on a probationary status. Said companies had the same owners and were engaged in the same business of distributing Chevrolet motor vehicles.

On August 31, 2005, Tenorio asked permission from John Hernandez, her immediate supervisor, to allow her to leave the office at 2:00 p.m. She needed to pay her due car loan amortization so she would not incur a penalty of ₱2,400.00. Hernandez refused and ordered her to report back at exactly 2:00 p.m. Tenorio then approached Florentino Querol, the vice president for operations, but to no avail. Still, Tenorio left the office to pursue her errand.

On September 1, 2005, the guard on duty prevented Tenorio from entering the office upon the orders of Hernandez and Querol. When Tenorio was able to enter the premises, Hernandez uttered defamatory words against her and made her leave. She had the incident blotted in a

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police station. On September 5, 2005, Tenorio filed a complaint against Micah Motor, Inc., Querol, and Hernandez for illegal suspension, damages, and attorney's fees.

On September 8, 2005, Tenorio went to their office to claim her unpaid salary and commission. There, she was served two letters signed by Querol. The *first letter* dated September 1, 2005 required her to explain why no disciplinary action should be meted against her for the August 31, 2005 incident when she disobeyed Hernandez's order not to leave the company premises as well as displaying unpleasant behavior towards Querol. In the *second letter* dated September 8, 2005, Tenorio was asked to explain her unauthorized absences from September 2-8, 2005.

On September 9, 2005, Tenorio submitted her written explanations. She stated that she sought her superiors' permission to leave the office before 2:00 p.m. on August 31, 2005 and promised to return as soon as possible. However, they denied her request and insulted her. She added that Querol even told her to leave and not to return anymore. As to her alleged absences, Tenorio said that on September 1, 2005, she reported for work but the security guard barred her from entering the office. As she was humiliated and embarrassed that day, she did not report to the office since.

In a memorandum dated September 23, 2005 signed by Querol, Tenorio's employment was terminated on the grounds of blatant disregard of duties and gross insubordination. Aside from the August 31, 2005 incident, the memorandum narrated the following instances that supposedly showed Tenorio's negative attitude towards her work: (1) on August 29, 2005, Tenorio was allegedly permitted to leave early because she said that she was sick. However, Hernandez saw her at the office later that day with her friends; (2) on August 30, 2005, Tenorio allegedly did not report for work but she showed up at the office in the afternoon with her friends; and (3) on September 1, 2005, when the guard told her that she had to talk to Hernandez first before she could begin to work, she made a scene by raising her voice and talked ill of Querol to her co-employees.

On October 23, 2005, Tenorio filed an amended complaint for illegal dismissal against Micah Motor, Inc., Querol, and Hernandez.

In a Decision dated December 15, 2006, the Labor Arbiter ruled that Tenorio was illegally dismissed as Micah Motor Inc. failed to justify the grounds therefor. The Labor Arbiter ordered Micah Motor Inc., Querol, and Hernandez to reinstate Tenorio to her former position without loss of

seniority rights and to pay her ₱233,103.86 representing her full backwages, service incentive leave, 13th month pay, ECOLA, and attorney's fees.

On appeal by Micah Motor Inc., the National Labor Relations Commission (NLRC) reversed the judgment of the Labor Arbiter in a Decision dated December 19, 2007. The NLRC held that Tenorio was guilty of (1) gross neglect of duties, in light of her behavior on August 29, August 30 and August 31, 2005; and (2) insubordination, since she left the office on August 31, 2005 despite not being allowed to do so. However, as the company's act of barring her entry into the office could only be construed as a dismissal, the NLRC ruled that Tenorio's right to due process was violated. Tenorio was awarded ₱30,000.00 as nominal damages. The NLRC subsequently denied Tenorio's motion for reconsideration and the company's motion for partial reconsideration.

Tenorio then filed a petition for *certiorari* before the Court of Appeals. In a Decision dated August 25, 2009, the appellate court reversed the NLRC decision and reinstated the judgment of the Labor Arbiter. The Court of Appeals denied the motion for reconsideration filed by Micah Motor, Inc.

Micah Motor, Inc., Querol, and Hernandez (petitioners), thus, filed the instant petition. Petitioners argue that Tenorio's disregard of the lawful orders of her superiors constituted serious misconduct. Assuming that there was no valid order to disobey, Tenorio's outbursts that scandalized the company showroom on August 31, 2005 and September 1, 2005 also constituted serious misconduct. Petitioners further posit that Tenorio breached the trust reposed upon her when she committed the acts complained of.

The petition lacks merit.

In termination cases, the burden of proving the just cause of dismissing an employee rests upon the employer, and his failure to do so would result in a finding that the dismissal is not justified.¹ To constitute a valid dismissal from employment, the employer must prove the following requisites: (1) the dismissal must be for any of the causes provided in Article 282 of the Labor Code; and (2) the employee must be given an opportunity to be heard and to defend himself or herself.²

¹ *Lopez v. National Labor Relations Commission*, 358 Phil. 141, 150 (1998).

² *Janssen Pharmaceutica v. Silayro*, 570 Phil. 215, 226 (2008).

We uphold the ruling of the Court of Appeals that Micah Motor, Inc. failed to discharge its burden of proving the validity of Tenorio's dismissal.

Misconduct is defined as 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.³ To be categorized as serious, the misconduct must be of such grave and aggravated character and not merely trivial and unimportant. And to constitute just cause for an employee's separation, it must be in connection with his or her work.⁴

On the other hand, to justify the termination of an employee's services, loss of trust and confidence must be based on a willful breach of the trust reposed in the employee by his or her employer. Ordinary breach will not suffice.⁵ 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.⁶

Petitioners anchor the validity of Tenorio's dismissal on the fact that she supposedly defied the orders of Hernandez and Querol that disallowed her from leaving the office early on August 31, 2005 and her heated outburst in the company premises before she left. Tenorio also allegedly made a scene again inside their office on September 1, 2005 when the security guard barred her entry to their office upon the instructions of her superiors.

The Court agrees with the findings of the Court of Appeals that Tenorio's refusal to abide by the orders of Hernandez and Querol was insufficient an act that would justify her dismissal. As held by the appellate court, Tenorio appeared to have a good reason for leaving the office early on August 31, 2005, *i.e.*, she needed to pay her due car loan amortization, otherwise, she would incur penalty. Due to the urgency of the situation, Tenorio was constrained to pursue her errand without her superiors' permission. Tenorio's isolated act can hardly be considered as willful defiance.

Moreover, petitioners' allegation that Tenorio created a scene at the company premises and grossly disrespected her superiors before she left the office on August 31, 2005 is totally bereft of any corroboration. Similarly, petitioners did not adduce any evidence, documentary or otherwise, to support their contention that Tenorio again created a scene and scandalized their company showroom on September 1, 2005.

³ *Autobus Workers' Union (AWU) v. National Labor Relations Commission*, 353 Phil. 419, 428 (1998).

⁴ *Echeverria v. Venutek Medika, Inc.*, 544 Phil. 763, 770 (2007).

⁵ *Id.* at 771.

⁶ *Eastern Telecommunications Phils., Inc. v. Diamse*, 524 Phil. 549, 556 (2006).


As petitioners failed to establish by concrete evidence the acts which supposedly constituted the grounds for Tenorio's dismissal, the termination of the latter's employment is illegal.

The Court further notes that petitioners' act of dismissing Tenorio was aggravated by their failure to observe due process. The due process contemplated by the law requires twin notices. The first notice apprises the employee of the particular acts or omissions for which his or her dismissal is sought, which may be loosely considered as the proper charge; while the second informs the employee of the employer's decision to dismiss him or her.⁷ In this case, petitioners failed to adequately comply with the first notice required by law. While Tenorio was indeed required to explain her side regarding the incidents that occurred on August 31, 2005, petitioners failed to apprise Tenorio of the fact that her alleged actuations on September 1, 2005 were also being considered as a ground for her dismissal. Neither did it appear from the record that Tenorio was given notice of the charges of habitual tardiness and other purported unexplained absences during her employment. She was, thus, deprived of the opportunity to explain herself and respond to these charges.

WHEREFORE, the instant petition is **DENIED** for lack of merit.

SO ORDERED." **REYES, J.**, on leave; **MENDOZA, J.**, acting member per S.O. No. 1715 dated July 1, 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court *et alii*

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⁷ *National Mines and Allied Workers' Union v. San Ildefonso College-RVM Sisters Administration*, 359 Phil. 341, 359 (1998).

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