Department of Labor and Employment
National Labor Relations Commission
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No. II **N L R C L A W R E P O R T** **February 2013**

GROSS & HABITUAL NEGLECT OF DUTIES; "TOTALITY OF INFRACTIONS" DOCTRINE; PENALTY OF DISMISSAL

Cavite Apparel, Inc. vs. Marquez
G.R. No. 172044, February 06, 2013

Facts:

Petitioner is a domestic corporation engaged in the manufacture of garments for export. On August 22, 1994, it hired respondent as a regular employee in its Finishing Department. Respondent enjoyed, among other benefits, vacation and sick leaves of seven (7) days each per annum. Prior to her dismissal on June 8, 2000, respondent committed the following infractions (with their corresponding penalties): (a) First Offense: Absence without leave (AWOL) on December 6, 1999 – written warning; (b) Second Offense: AWOL on January 12, 2000 – stern warning with three (3) days suspension; (c) Third Offense: AWOL on April 27, 2000 – suspension for six (6) days. On May 8, 2000, respondent got sick and did not report for work. When she returned, she submitted a medical certificate. Petitioner, however, denied receipt of the certificate. Respondent did not report for work on May 15-27, 2000 due to illness. When she reported back to work, she submitted the necessary medical certificates. Nonetheless, petitioner suspended respondent for six (6) days (June 1-7, 2000). When respondent returned on June 8, 2000, petitioner terminated her employment for habitual absenteeism. Thus, respondent filed a complaint for illegal dismissal with prayer for reinstatement, backwages and attorney's fees. The LA dismissed the complaint, and ruled that respondent's four absences without official leave are considered as habitual and constitutive of gross neglect of duty.

Issues:

(a) Do respondent's four absences without official leave constitute gross and habitual neglect of duty?
(b) Is the respondent's penalty of dismissal proportionate to the infractions committed?

Ruling:

(a) No. Neglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual ***(Nissan Motor Phils., Inc. vs. Angelo, G.R. No. 164181, September 14, 2011)***. Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances ***(Valiao vs. Court of Appeals, 479 Phil. 459 [2004])***. Under these standards and the circumstances obtaining in the case, the respondent is not guilty of gross and habitual neglect of duties. Petitioner insists that there was no evidence on record supporting respondent's claim, thereby removing the doubt on her being on absence without official leave for the fourth time, an infraction punishable with dismissal under the

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company rules and regulations. Based on the records, there simply cannot be a case of gross and habitual neglect of duty against respondent. Even assuming that she failed to present a medical certificate for her sick leave on May 8, 2000, the records are bereft of any indication that apart from the four occasions when she did not report for work, respondent had been cited for any infraction since she started her employment with the company in 1994. Four absences in her six years of service, to the Court's mind, cannot be considered gross and habitual neglect of duty, especially so since the absences were spread out over a six month period.

(b) No. Respondent's penalty of dismissal is too harsh or not proportionate to the infractions she committed. Although respondent was fully aware of the company rules regarding leaves of absence, and her dismissal might have been in accordance with the rules, it is well to stress that the Court are not bound by such rules. In ***Caltex Refinery Employees Association vs. NLRC, 316 Phil. 335 (1995)*** and in the subsequent case of ***Gutierrez vs. Singer Sewing Machine Company, 458 Phil. 401 (2003)***, the Court held that "[e]ven when there exist some rules agreed upon between the employer and employee on the subject of dismissal, x x x the same cannot preclude the State from inquiring on whether [their] rigid application would work too harshly on the employee." The Court will not hesitate to disregard a penalty that is manifestly disproportionate to the infraction committed. Respondent might have been guilty of violating company rules on leaves of absence and employee discipline, still the Court found the penalty of dismissal imposed on her unjustified under the circumstances. As earlier mentioned, respondent had been in petitioner's employ for six years, with no derogatory record other than the four absences without official leave in question, not to mention that she had already been penalized for the first three absences, the most serious penalty being a six-day suspension for her third absence on April 27, 2000.

While previous infractions may be used to support an employee's dismissal from work in connection with a subsequent similar offense (*De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 204 {1999]), the Court, cautioned employers in an earlier case that although they enjoy a wide latitude of discretion in the formulation of work-related policies, rules and regulations, their directives and the implementation of their policies must be fair and reasonable; at the very least, penalties must be commensurate to the offense involved and to the degree of the infraction ***(Moreno vs. San Sebastian College-Recoletos Manila, G.R. No. 175283, March 28, 2008)***. As earlier expressed, the Court do not consider respondent's dismissal to be commensurate to the four absences she incurred for her six years of service with the company, even granting that she failed to submit on time a medical certificate for her May 8, 2000 absence. The Court note that she again did not report for work on May 15 to 27, 2000 due to illness. When she reported back for work, she submitted the necessary medical certificates. The reason for her absence on May 8, 2000 – due to illness and not for her personal convenience – all the more rendered her dismissal unreasonable as it is clearly disproportionate to the infraction she committed. Finally, the Court found no evidence supporting petitioner's claim that respondent's absences prejudiced its operations; there is no indication in the records of any damage it sustained because of respondent's absences. Also, the Court is not convinced that allowing respondent to remain in employment even after her fourth absence or the imposition of a lighter penalty would result in a breakdown of discipline in the employee ranks. What the company fails to grasp is that, given the unreasonableness of respondent's dismissal – *i.e.*, one made after she had already been penalized for her three previous absences, with the fourth absence imputed to illness – confirming the validity of her dismissal could possibly have the opposite effect. It could give rise to belief that the company is heavy-handed and may only give rise to sentiments against it. In fine, petitioner failed to discharge the burden of proving that respondent's dismissal was for a lawful cause. As a final point, the Court reiterate that while it recognize management's prerogative to discipline its employees, the exercise of this prerogative should at all times be reasonable and should be tempered with compassion and understanding. Dismissal is the ultimate penalty that can be imposed on an employee. Where a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe for what is at

stake is not merely the employee's position, but his very livelihood and perhaps the life and subsistence of his family ***(****See* ***PLDT vs. Teves, G.R. No. 1435511, November 15, 2010)*** .

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RETREMENT & SEPARATION BENEFITS

Heirs of Manuel H. Ridad, et. al. vs. Gregorio Araneta University Foundation
G.R. No. 188659, February 13, 2013

Facts:

Petitioners were former officers and employees of respondent, as below indicated, with the corresponding dates of hiring and retirement, basic salaries, and amount of retirement benefits received, to wit:

	Last Position	**Date of Hiring**	**Date of Retirement**	**Amount Received**	**Basic Salaries**
M. Ridad	Rel. Off.	6/1/74	10/16/00	193,359.50	14,217.61
A. Bactol	Head	8/20/69	1/16/01	268,103.49	16,548.71
E. Gulinao	Director	6/11/73	11/11/00	337,917.97	24,846.92
L. Jusay	Dean	6/67	5/31/00	187,315.57	None indctd

It appears that petitioners were retrenched in view of the RRR Program but were re-hired in January 1984. Consequently, respondent set the reckoning period for the computation of petitioners' retirement benefits to January 1984. Section 374, Article CVI of respondent's Manual of Policies provided for a computation of the retirement benefits. Petitioners signed individual quitclaims upon receipt of their retirement pay. Claiming that the computation of their retirement benefits should be reckoned from the date of their original hiring, petitioners filed a Complaint before the LA. Petitioners alleged that they were not paid separation benefits during the implementation of the RRR Program. They likewise sought the inclusion of their monthly honorarium in the computation of their 13th month pay. In its position paper, respondent averred that pursuant to the RRR Program, petitioners were all separated from employment in 1984 and paid their separation benefits in the form of off-setting of their outstanding obligations to respondent such as tuition fees and the value of the lots owned by respondent and sold to petitioners. The said settlement was embodied in a compromise agreement. Respondent added that petitioners were re-employed on January 1, 1984, hence this date should be the reckoning point for the purpose of computing the separation pay. The Labor Arbiter's award of retirement pay pertained to the period when petitioners were originally hired until December 31, 1983 because he found that the records were bereft of any proof that the petitioners were paid their retirement benefits before January 1, 1984. The LA merely confirmed the existence of respondent's receivables from petitioner consisting of tuition fees of the latter's dependents and the value of the lots sold by respondent. The LA ruled that these receivables should be offset against the retirement benefits due to each employee. The LA also held that the honoraria received by petitioners are not considered as part of the basic salary for the computation of the 13th month pay. With respect to the retirement benefits of petitioners from January 1, 1984 until the effectivity of their retirement or separation, the LA approved the amount as computed and submitted by respondent. Petitioners however argue that they could not be considered severed from their employment in 1984 because they were not paid separation benefits during the implementation of the RRR program. To the contrary, respondent insists that petitioners received in full their retirement benefits.

Issue:

Did petitioners received in full their retirement benefits?

Ruling:

Yes. Well-settled is the rule that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment ***(De Guzman vs. NLRC, G.R. No. 167701, December 12, 2007)***. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents—which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid—are not in the possession of the worker but in the custody and absolute control of the employer ***(E.G. & I. Construction Corporation vs. Sato, G.R. No. 182070, February 16, 2011)***.

In this case, there are supposed to be two (2) payments in the form of retirement/separation pay made by respondent to petitioners—first, in 1984 and second, in 2000-2001. The first payment is the subject of the instant petition. The retirement pay of petitioners in 1984 should be reckoned from the date of their hiring and computed in accordance with Section 374, Article CVI of respondent's Manual of Policies. Moreover, the basic pay of petitioners should be based on the amount of their last pay in December 31, 1983. The correct computation should be: Retirement/Separation Pay = Basic Pay (Percentage depending on the years of service) x Years of Service. To illustrate:

	Basic Pay (1983)	**%**	**Years of Service**	**Retirement/ Separation Pay**
M. Ridad	P1,237	50%	9	P5,556.50
A. Bactol	P1.486	70%	13	P13,522.60
E. Gulinao	P1.486	60%	10	P8,916.00
L. Jusay	P2,132	50%	7	P7,462.00

Respondent claims to have paid the following amounts to the petitioners:

	Retirement/Separation Pay under the law	**Amount given by respondent**
M. Ridad	P5,556.50	P7,422.00
A. Bactol	P13,522.60	P14,562.80
E. Gulinao	P8,916.00	P9,807.60
L. Jusay	P7,462.00	P16,781.60

The actual amounts given by respondent were clearly more than the amounts mandated by law. As to whether these amounts were given to petitioners, respondent insisted that they have in fact fully settled these obligations through offsetting of receivables in accordance with the compromise agreement. While this agreement bears the seal of judicial approval, the enforcement of this agreement is another matter. The NLRC uncovered that matters pertaining to settlement in kind which involved several parcels of lands were not complied with because the titles to said lands were subject of then ongoing litigation and was later on rescinded by the trial court. Therefore, these amounts relating to receivables on parcel of lands cannot be given credit. However, the receivables pertaining to tuition fees remain uncontested. Petitioners never questioned these amounts and in fact, they argued before the Labor Arbiter that the tuition fees of their dependents "have been applied to their money claims, such as wage increases, but

which were never paid." Thus, these tuition fee receivables can be offset to the separation pay due to the employees. They are as follow: *M. Ridad – P10,788.66; A. Bactol – P9,036.10; E. Gulinao – P8,517.25; and L. Jusay – P7,883.30.*

It is therefore evident that respondent had granted petitioners their separation pay in amounts more than what they are entitled to receive under the law. Thus, there was full compliance with the RRR Program for the payment of separation pay. The amounts adjudged by the Labor Arbiter were clearly arbitrary. He did not provide a detailed computation as to how the monetary awards were arrived at. Respondent was correct in surmising that the amounts were more or less computed on the basis of their actual and latest salaries in 2000, less the amount of receivables, which is a clear error.

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PETITION FOR CERTIORARI; CASH/SURETY BOND
SUBSTANTIVE & PROCEDURAL DUE PROCESS

Sang-an vs. Equator Knight Detective & Security Agency, Inc.
G.R. No. 173189, February 13, 2013

Facts:

Petitioner was the Assistant Operation Manager of respondent. He was tasked, among others, with the duty of assisting in the operations of the security services; he was also in charge of safekeeping respondent's firearms. On April 21, 2001, respondent discovered that two firearms were missing from its inventory. The investigation revealed that it was petitioner who might have been responsible for the loss. On April 24, 2001, petitioner was temporarily suspended from work pending further investigation. On May 8, 2001, while petitioner was under suspension, a security guard from respondent was apprehended by policemen for violating the COMELEC's gun ban rule. The security guard stated in his affidavit that the unlicensed firearm had been issued to him by petitioner. On May 24, 2001, petitioner filed with the NLRC a complaint for illegal suspension with prayer for reinstatement. In his position paper, however, he treated his case as one for illegal dismissal and alleged that he had been denied due process when he was dismissed. Respondent, on the other hand, argued that petitioner's dismissal was not illegal but was instead for a just cause. On July 30, 2001, the LA rendered a decision dismissing the complaint. It declared that no illegal dismissal took place as petitioner's services were terminated pursuant to a just cause. The LA found that petitioner was dismissed due to the two infractions he committed: The basis for the termination was first, when he was suspended when he issued a firearm to a security guard and then replaced it with another one, then took the respondent's firearm with him and since then both firearms were lost. His second offense which resulted in his being terminated was when he issued an unlicensed firearm to a Security Guard stationed in one of the business establishment. The NLRC sustained the findings of the LA that there had been just cause for his dismissal. However, it found that petitioner had been denied his right to due process when he was dismissed. The CA reversed the decision of the NLRC, finding that respondent substantially complied with the procedural requirements of due process. Petitioner now contends that when respondent filed a petition for certiorari under Rule 65 of the Rules of Court alleging grave abuse of discretion by the NLRC, it failed to post a cash or surety bond as required by Article 223 of the Labor Code.

Issues:

(a) Is cash/surety bond required for the filing of a petition for certiorari under Rule 65?
(b) Was petitioner validly dismissed?

Ruling:

(a) No. The requirement of a cash or surety bond as provided under Article 223 of the Labor Code only applies to appeals from the orders of the LA to the NLRC. It does not apply to special civil actions such as a petition for *certiorari* under Rule 65 of the Rules of Court. In fact, nowhere under Rule 65 does it state that a bond is required for the filing of the petition. A petition for *certiorari* is an original and independent action and is not part of the proceedings that resulted in the judgment or order assailed before the CA. It deals with the issue of jurisdiction, and may be directed against an interlocutory order of the lower court or tribunal prior to an appeal from the judgment, or to a final judgment where there is no appeal or any plain, speedy or adequate remedy provided by law or by the rules.

(b) No. In order to validly dismiss an employee, it is fundamental that the employer observe both substantive and procedural due process – the termination of employment must be based on a just or authorized cause and the dismissal can only be effected, after due notice and hearing *(See **Bughaw, Jr. vs. Treasure Island Industrial Corporation, G.R. No. 173151, March 28, 2008)***. The Court found that respondent complied with the substantive requirements of due process when petitioner committed the two offenses. Article 282(A) of the Labor Code provides that an employee may be dismissed on the ground of serious misconduct or willful disobedience of the lawful orders of his employer or representative in connection with his work. Misconduct is improper or wrongful 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 of judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such grave and aggravated character and not merely trivial or unimportant. It is also important that the misconduct be in connection with the employee's work to constitute just cause for his separation ***(PLDT vs. The Late Romeo Bolso, G.R. No. 159701, August 17, 2007)***. By losing two firearms and issuing an unlicensed firearm, petitioner committed serious misconduct. He did not merely violate a company policy; he violated the law itself (Presidential Decree No. 1866 or *Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes*), and placed respondent and its employees at risk of being made legally liable. Thus, respondent had a valid reason that warranted petitioner's dismissal from employment as Assistant Operation Manager.

The Court, however, finds that respondent failed to observe the proper procedure in terminating petitioner's services. Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides that: 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 ***(**See also **Aliling vs. Feliciano, G.R. No. 185829, April 25, 2012)***.

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. 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. A review of the

records shows that petitioner was not furnished with any written notice that informed him of the acts he committed justifying his dismissal from employment. The notice of suspension given to petitioner only pertained to the first offense, *i.e*., the loss of respondent's firearms under petitioner's watch. With respect to his second offense (*i.e*., the issuance of an unlicensed firearm to respondent's security guard – that became the basis for his dismissal), petitioner was never given any notice that allowed him to air his side and to avail of the guaranteed opportunity to be heard. That respondent brought the second offense before the LA does not serve as notice because by then, petitioner had already been dismissed.

In order to validly dismiss an employee, the observance of both substantive and procedural due process by the employer is a condition *sine qua non*. Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termmat1on ***(New Puerto Commercial vs. Lopez, G.R. No. 169999, July 26, 2010)***. Since petitioner had been dismissed in violation of his right to procedural due process but for a just cause, respondent should pay him nominal damages of P30,000.00, in accordance with *Agabon* ruling.

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DEATH COMPENSATION BENEFITS

Sy vs. Philippine Transmarine Carriers, Inc.
G.R. No. 191740, February 11, 2013

Facts:

On June 23, 2005, AS was hired by respondent. In their contract of employment, AS was assigned to work as Able Seaman (AB) on board the vessel M/V/ Chekiang for the duration of ten months. Considered incorporated in AS Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) is a set of standard provisions established and implemented by the POEA, called the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.* On October 1, 2005, while the vessel was at the Port of Jakarta, Indonesia, AS went on shore leave and left the vessel at about 1300 hours. At 1925 hours, the vessel's agent from Jardine received an advice from the local police that one of the vessel's crew members died ashore. Based on the initial investigation conducted by the local police, AS was riding on a motorcycle when he stopped the driver to urinate at the riverside of the road. Since AS had not returned after a while, the motorcycle driver went to look for him at the riverside, but the former was nowhere to be found. AS corpse was found. A forensic pathologist certified that AS death was an accident due to drowning, and that there was "alcohol 20mg%" in his urine. Petitioner SS, widow of AS, demanded from respondent payment of her husband's death benefits and compensation. Respondent denied such claim, since As' death occurred while he was on a shore leave, hence, his death was not work-related and, therefore, not compensable. Thus, SS filed a complaint for death benefits. The LA found that AS was still under the respondent's employ at the time he drowned although he was on shore leave; that while on shore leave, he was still under the control and supervision of the master or captain of the vessel as it was provided under Section 13 of the Contract that the seafarer before taking a shore leave must secure the consent of the master of the vessel; and his leave was conditioned on "considerations of operations and safety" of the vessel; that another indication that a seafarer is considered to be doing work-related functions even when on shore leave is found in subparagraph 4, paragraph B, Section 1 of the Contract where the duties of the seafarer are not limited to his stay while on board, but extend to his stay ashore. On appeal, the NLRC affirmed the LA's finding that AS death was compensable.

Issue:

Is petitioner entitled to death compensation benefits from respondent?

Ruling:

No. The terms and conditions of a seafarer's employment is governed by the provisions of the contract he signs with the employer at the time of his hiring, and deemed integrated in his contract is a set of standard provisions set and implemented by the POEA, called the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, which provisions are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels ***(Nisda vs. Sea Serve Maritime Agency, G.R. No. 179177, July 23, 2009)***. The issue of whether petitioner is entitled to death compensation benefits from respondent is best resolved by the provisions of their Employment Contract which incorporated the *2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*. Section 20 (A) of the Contract provides: "COMPENSATION AND BENEFITS FOR DEATH: (1) In the case of work-related death of the seafarer during the term of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment". x x x.

Clearly, to be entitled for death compensation benefits from the employer, the death of the seafarer (1) must be work-related; and (2) must happen during the term of the employment contract. Under the Amended POEA Contract, work-relatedness is now an important requirement. The qualification that death must be work-related has made it necessary to show a causal connection between a seafarer's work and his death to be compensable. Under the *2000 POEA Amended Employment Contract,* work related injury is defined as an injury(ies) resulting in disability or death arising out of and in the course of employment. Thus, there is a need to show that the injury resulting to disability or death must arise (1) out of employment, and (2) in the course of employment.

In *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission, No. L-26341, November 27, 1968,* the Court explained the phrase "arising out of and in the course of employment" in this wise: "x x x The two components of the coverage formula – "arising out of" and "in the course of employment" – are said to be separate tests which must be independently satisfied; however, it should not be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection," because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident takes place. As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto."

AS was hired as a seaman on board M/V Chekiang on June 23, 2005 and was found dead on October 1, 2005, with drowning as the cause of death. Notably, at the time of the accident, AS was on shore leave and there was no showing that he was doing an act in relation to his duty as a seaman or engaged in the performance of any act incidental thereto. It was not also established that, at the time of the accident, he was doing work which was ordered by his superior ship officers to be done for the advancement of his employer's interest. On the contrary, it was established that he was on shore leave when he drowned and because of the 20% alcohol found in his urine upon autopsy of his body, it can be safely presumed that he just came from a personal social function which was not related at all to his job as a seaman. Consequently, his death could not be considered work-related to be compensable.

While AS employment relationship with respondent did not stop but continues to be in force even when he was on shore leave, their contract clearly provides that it is not enough that death occurred during the term of the employment contract, but must be work-related to be compensable. There is a need to show the connection of AS death with the performance of his duty as a seaman. As the Court found, he was not in the performance of his duty as a seaman, but was doing an act for his own personal benefit at the time of the accident. The cause of his death at the time he was on shore leave, which was drowning was not brought about by a risk which was only peculiar to his employment as a seaman. In fact, he was in no different circumstance with other people walking along the riverside who might also drown if no due care to one's safety is exercised. Petitioner failed to establish by substantial evidence her right to the entitlement of the benefits provided by law. Petitioner's claim that her spouse death was by accident, thus, not willfully done which would negate compensability, has no relevance in this case based on the aforementioned disquisition. While the Court commiserate with petitioner, it cannot grant her claim for death compensation benefits in the absence of substantial evidence to prove her entitlement thereto, since to do so will cause an injustice to the employer. Otherwise stated, while it is true that labor contracts are impressed with public interest and the provisions of the POEW-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence ***(****See also* ***Panganiban vs. Tara Trading Shipmanagement, Inc., G.R. No. 187032, October 18, 2010)***.

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JUST CAUSES: GROSS NEGLIGENCE & LOSS OF TRUST & CONFIDENCE

Cruz vs. Bank of Philippine Islands
G.R. No. 173357, February 13, 2013

Facts:

Petitioner was hired by FEBTC in 1989. Upon the merger of FEBTC with respondent in April 2000, petitioner automatically became an employee of respondent. Petitioner held the position of Assistant Branch Manager of the BPI Ayala Avenue Branch in Makati City, and she was in charge of the Trading Section. On July 12, 2002, after 13 years of continuous service, respondent terminated petitioner on grounds of gross negligence and breach of trust. Petitioner's dismissal was brought about by the fraud perpetrated against three depositors in respondent's Ayala Avenue Branch. One of the three depositors deposited US$29,592.30 under a U.S. Dollar Certificate of Deposit (USD CD). As shown on the USD CD, it was supposed to mature a month after its issuance. Since the depositor's USD CD was not presented for redemption, it was automatically rolled over on a monthly basis by the bank with a new USD CD being issued for each rolled-over USD CD, and the rolled-over USD CD was kept by the bank. The USD CD was pre-terminated and the proceeds thereof, amounting to US$34,358.03 was credited to an account opened by means of an Instruction Sheet. However, it was not the depositor who preterminated the last USD CD, as the prior USD CD was still in his possession. When the depositor discovered the fraud, he immediately wrote respondent a letter complaining that he was not the one who pre terminated the account. Upon investigation, it turned out that the depositor's signature was forged and intercalated in the records of BPI Ayala Avenue Branch. Moreover, it was petitioner who approved the pre-termination of the depositor's USD CD and the withdrawal of the proceeds thereof. The depositor also had a U.S. Dollar Savings Account. For a time, his savings account was dormant. However, the account was reactivated, without the depositor's consent, through an alleged Instruction Sheet bearing the forged signature and a spurious passbook. On the same date that it was reactivated, the amount of US$15,000.00 was withdrawn. Sometime in 2002, the amount of US$3,500.00 was again withdrawn from the depositor's account. The depositor then complained about the illegal withdrawal. An investigation

revealed that the Letter of Instruction, which was used to reactivate the account, was a forgery. Moreover, it was found that petitioner was the one who approved the reactivation and withdrawal of money from the depositor's account. The same transactions happened to another two depositors.

Thereafter, an administrative hearing was held to give petitioner an opportunity to explain her side of the controversy. On July 10, 2002, a notice of termination was issued informing petitioner of her dismissal effective July 12, 2002 on grounds of gross negligence and breach of trust for the following acts: (1) allowing the issuance of USD CDs under the bank's safekeeping to an impostor without valid consideration; (2) allowing USD CD pre-terminations based on such irregularly released certificates; and (3) allowing withdrawals by third parties from clients' accounts, which resulted in prejudice to the bank. Petitioner filed an appeal before BPI President, but her appeal was denied. The aforementioned incidents of fraud resulted in the dismissal of three officers, including petitioner, one trader; the suspension of two officers and one trader, and the reprimand of one teller. Thereafter, petitioner filed a Complaint for illegal dismissal against respondent and its officers with the Arbitral Office of the NLRC. The LA held that the dismissal of petitioner was illegal. On appeal, the NLRC reversed the LA.

Issue:

Was petitioner's dismissal for a valid cause?

Ruling:

Yes. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them ***(Jumuad vs. Hi-Flyer Food, Inc., G.R. No. 187887, September 7, 2011)***. On the other hand, the basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee. In this case, respondent avers that petitioner held the position of Assistant Manager in its Ayala Avenue Branch. However, petitioner contends that her position was only Cash II Officer. The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment ***(Clientlogic Philippines, Inc. vs. Castro, G.R. No. 186070, April 11, 2011)***. In respondent's Position Paper before the NLRC and its Memorandum, respondent stated that the responsibility of petitioner, among others, were as follows: (1) to maintain the integrity of the signature card files of certificates of deposits and/or detect spurious signature cards in the same files; (2) to ensure that releases of original CDS are done only against valid considerations and made only to the legitimate depositors or their duly authorized representatives; (3) to approve payments or withdrawals of deposits by clients to ensure that such withdrawals are valid transactions of the bank; and (4) to supervise the performance of certain rank-and-file employees of the branch. Petitioner holds a managerial status since she is tasked to act in the interest of her employer as she exercises independent judgment when she approves pre-termination of USD CDs or the withdrawal of deposits. In fact, petitioner admitted the exercise of independent judgment when she explained that as regards the pre-termination of the USD CDs of Uymatiao and Caluag, the transactions were approved on the basis of her independent judgment that the signatures in all the documents presented to her by the traders matched, as shown in her reply25 dated April 23, 2002 to respondent's memorandum asking her to explain the unauthorized preterminations/withdrawals of U.S. dollar deposits in the BPI Ayala Avenue Branch.

The Court notes that petitioner admitted that she did not call the depositors to appear before her, although she performed other procedures to determine whether the subject transactions were with the depositors' authorization. Petitioner did not determine if it was really Uymatiao and Caluag who were pre-terminating their respective USD CD, as she based the identification of the said clients from their matching signatures on the original certificate on file with the branch, withdrawal slips and signature cards. Moreover, as stated by respondent, petitioner did not require that the original certificates of time

deposit in the possession of Uymatiao and Caluag be surrendered to the bank when the rolled-over certificates were pre-terminated. If petitioner took the precaution to identify that it was really Uymatiao and Caluag who were pre-terminating their respective USD CD, and required that Uymatiao and Calaug surrender their respective original certificates of time deposit in their possession upon pre-termination of the rolled-over certificates, the fraud could have been averted.

In that regard, petitioner was remiss in the performance of her duty to approve the pre-termination of certificates of deposits by legitimate depositors or their duly-authorized representatives, resulting in prejudice to the bank, which reimbursed the monetary loss suffered by the affected clients. Hence, respondent was justified in dismissing petitioner on the ground of breach of trust. As long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed.

Bristol Myers Squibb (Phils., Inc. vs. Baban, G.R. No. 167449, December 17, 2008 reiterated: "As a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him. A labor tribunal cannot deny the employer the authority to dismiss him. In fine, the dismissal of petitioner on the ground of breach of trust or loss of trust and confidence is upheld.

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