

## SECOND DIVISION

[ G.R. NO. 170001, April 04, 2007 ]

**ARLYN D. BAGO, PETITIONER, VS. NATIONAL LABOR RELATIONS  
COMMISSION AND STANDARD INSURANCE CO. INC. AND/OR  
ERNESTO ECHAUS, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

In a complaint filed on November 20, 2002<sup>[1]</sup> with the Human Resource Development Department (HRDD) of respondent Standard Insurance Company Incorporated (SICI), Celia P. Abordo (Celia), the Head of the Tuguegarao Branch of SICI, charged five employees including herein petitioner Arlyn Bago (Arlyn), an encoder, and Elsie Pagarigan (Elsie), an assistant underwriter, with "manipulating money out of the agents/zone managers and [Celia's] commissions."<sup>[2]</sup> She further charged Arlyn and two other employees with "spreading rumors to clients/agents/zone managers that [Celia] is having an "affair" with the claims assistant."<sup>[3]</sup>

On Celia's recommendation, the Internal Audit Department conducted a special audit from November 25-29, 2002 which disclosed as follows, quoted verbatim:

1. Agents whose business coded under the Branch Head were not given commissions due to them. Likewise, commissions due to the Branch Head were not also given . . . to her. Commission slips were not signed by the corresponding recipient. This is done in the following ways, to wit;

- A. through Branch Head's commission drawn in the G&A Fund (Cashier encash the check and the Accountant computes commissions of sub-agent and other expenses to be deducted from the cash. Sub-agents will be given a commission lower than the amount that was reported to the Branch Head. Commissions due to sub-agents that was being reported to the Branch Head is written in a scratch paper by the Branch Accountant, thus commission will be given to sub-agent is concealed to their Branch Head as well as the agent. Cash due will then be given to the Branch Head by the Branch Cashier x x x x

x x x x

- B. through cash collection. Branch Head did not receive the amount what is due to her, likewise discount given to client is also concealed (lower than what was computed in the

commission slip.) They commonly used the word "discount" in the commission slip to mislead the Branch Head in approving it; x x x

x x x x

2. ***The above dishonesty was admitted by the Branch Cashier and Branch Accountant*** as per statement submitted to the auditors x x x and discussions with them on November 27, 2002. However, their letters differ as to the details of the act. x x x

*The above act of dishonesty was discussed with the Branch. It was admitted that there was a connivance between Branch Cashier, Accountant, Underwriter, and the Encoder during the meeting as evidenced by their **signing on the auditors' report on November 27, 2002. They admitted that the amount they get from the act is divided equally among them.*** x x x

3. During the verification of the auditors regarding the common fund record, the Branch Cashier provided xxx a photocopy of a portion of the common fund record. x x x As per record, the act started last quarter of 2001. The staff obtained loans from the fund except the Claims Assistant. x x x **The running balance of the fund as of November 5, 2002 is P5, 039.09.**
4. A written statement from the Underwriter and the Encoder was also obtained. x x x They are blaming the Branch Accountant and the Branch Cashier for such an act of dishonesty. **They are also denying that they are part of connivance and that they do not know that the money they received comes from such act of dishonesty.** However, on the last part of their letter they are asking for an apology for being a part of the act they have committed.

x x x x<sup>[4]</sup> (Underscoring and emphasis partly in the original, partly supplied; italics supplied)

The audit also disclosed that the alleged rumor about Celia started when she requested the Claims Evaluator to drive for her and allowed him to bring home her car.<sup>[5]</sup>

On the request of the HRDD,<sup>[6]</sup> Celia submitted statements of three witnesses<sup>[7]</sup> to substantiate the charge of rumor-mongering.

The HRDD thus directed Arlyn and the two other concerned employees to explain within five days why appropriate sanction under SICI's Code of Conduct should not be imposed on them relative to the charge of spreading malicious rumors about Celia.<sup>[8]</sup> Complying, Arlyn and her two co-employees explained, by letter of December 3, 2002 addressed to the Assistant Vice President of SICI's legal department, as follows:

We, the concerned staff of Standard Insurance Co., Inc. Tuguegarao Branch, would like to appeal to your good end as we are asking apologies for all offenses and distractions committed by us against our Branch Head. We humbly acknowledge our faults. "*Hindi nga po naming maubos maisip kung bakit at paano naming nagawa yun sa kabila ng lahat ng kabutihang nagawa sa amin ng aming boss.*" Ayon nga sa kasabihan, "*Ang pagsisisi ay laging nasa huli*". Lubos po kaming nagsisisi ngayon pero **sana hindi pa huli ang lahat.**

On some occasions, jealousy and anger have driven us towards our boss. *Tao lang po kami na mahina at nagkakasala. Kungsabagay, sa pangyayaring ito marami kaming natutunan. Ngayon alam na namin na dapat naming protektahan at suportahan ang aming Branch Head.* We have already personally asked forgiveness from Ma'am Cecil [sic], she readily forgave us *naman*. But then, we still seek for your further consideration and advice. PLEASE GIVE US ANOTHER CHANCE, SIR, to prove that we are sincere and to show how deeply sorry we are for all inconveniences we have done. *Sana man lang, kahit ito na ang pamasko niyo sa amin.*<sup>[9]</sup> (Emphasis and italics in the original; underscoring supplied)

Noting that Arlyn et al. had not responded to the charge of rumor-mongering, the HRDD gave them an extension of time to comply. They accordingly replied:

While it is true that we did not answer the first memo sent to us, we likewise deny that such act was an admission of the offense charged to us. Please be known that during the period of five (5) days given to us to explain our side, we approached Ma'am Cecil [sic] and earnestly talked to her begging forgiveness for all offenses we've done. The conversation we've had was very emotional and touchy. We cried deeply as we asked for another chance to show how sorry we were with deepest desires to work with her once again.

To this, Ma'am Cecil [sic] recognized our sincerity and she readily forgave us. It shocked us that she was able to get through with our faults despite our shortcomings. We really appreciate our boss who has a big soft heart. We then planned to start anew. Days passed and we noticed she forgot all about the issue. There's no sign of remorse in her anymore. She really has forgiven us we know. That's why, we decided not to answer the memo any longer since we have thought the problem is already over. Whether we failed to comply in your first memo, our apologies. x x x<sup>[10]</sup> (Underscoring supplied)

The HRDD likewise required Arlyn, along with her similarly charged co- employees, to explain within five days why appropriate sanction should not be imposed upon them for dishonesty, given their admission thereof during the conduct of the internal audit.<sup>[11]</sup> Arlyn's explanation reads:

My admission to my participation to the misdeed was deliberately made during the Auditors' visit to Tug. branch simply because I would like to put an end to that form of Dishonesty which we have gradually committed, for one would not put a blame on the person who initiated

the proposal but I would consider the wrong doing a collective responsibility of the group. It is with much regret, however, because I have succumb [sic]/or gave in to such fraudulent move.

I love my work and the company I work with. I'm already on my 8 years working with the co. but I have not been involved on any act of dishonesty nor have been complained of administratively or otherwise. Moreover, the money pooled by us turned out to be a petty cash fund were [sic] we could borrow for emergency purposes. I'm willing to return whatever amount I have benefited. I acknowledge and deeply apologized for that said shortcomings. I know that with that misdeed, it has affected my integrity, which I have taken cared [sic] of a number of years. The complaint of the Branch Head was already discussed with the staff and the said problem has already been given a solution and the staff swore that they would never commit the same mistakes again. I'm also grateful to our Branch Head for having a big heart that despite the act we've done to her she still forgave us.

All I request for the company is to give me one more chance to make up for the things I have done and to proved [sic] that I'm still worthy to work in this company. Once again, I beg for the company's understanding and compassion.<sup>[12]</sup> (Underscoring supplied)

Arlyn et al. were soon informed about the conduct of a formal hearing of the charges on February 7, 2003 during which they could be assisted by counsel and present additional evidence.<sup>[13]</sup> The records show that on the scheduled hearing on February 7, 2003, SICI employees were interviewed. There is no showing, however, if Arlyn et al. attended the hearing.<sup>[14]</sup>

Arlyn et al. were later terminated effective March 31, 2003.<sup>[15]</sup>

Arlyn and Elsie subsequently filed separate complaints for illegal dismissal against respondent SICI and its President-co-respondent Ernesto T. Echaus. The complaints were consolidated. <sup>[16]</sup>

By Decision of October 27, 2003, Executive Labor Arbiter Salvador V. Reyes found that Arlyn and Elsie were illegally dismissed and accordingly ordered their reinstatement to their former positions, without loss of seniority rights,<sup>[17]</sup> and the award to them of full backwages and other benefits they normally enjoyed under existing company policy, moral damages, exemplary damages, and attorney's fees.<sup>[18]</sup>

SICI later manifested that it opted to adopt payroll reinstatement for Arlyn and Elsie pending appeal which the Labor Arbiter approved on December 10, 2003.<sup>[19]</sup>

On appeal<sup>[20]</sup> by respondents, the National Labor Relations Commission (NLRC), by Decision<sup>[21]</sup> dated September 27, 2004, **reversed** the Labor Arbiter's decision and declared valid the termination of Arlyn and Elsie's services on the grounds of loss of trust and confidence and dishonesty.<sup>[22]</sup> Arlyn and Elsie's Joint Motion for Reconsideration<sup>[23]</sup> having been denied<sup>[24]</sup> by the NLRC, Arlyn filed a Petition for

Certiorari and Prohibition with the Court of Appeals which, by Decision<sup>[25]</sup> dated August 25, 2005, it denied.

Hence, Arlyn's present Petition for Review on Certiorari,<sup>[26]</sup> positing that the appellate court gravely erred

A. . . . [IN] RUL[ING] THAT PETITIONER IS NOT AN ORDINARY RANK-AND-FILE EMPLOYEE [SO] THAT SHE COULD BE DISMISSED FOR LOSS OF TRUST AND CONFIDENCE.

B. . . . IN METING THE PENALTY OF DISMISSAL TO HEREIN PETITIONER GIVEN THE FACT THAT THE ACTUAL AMOUNT OF MONEY ALLEGEDLY MISAPPROPRIATED WAS NEVER ESTABLISHED.

<sup>[27]</sup> (Underscoring supplied)

Arlyn also raises in her present petition the lack of "further" investigation "despite [her] insistent denial of the charge,"<sup>[28]</sup> and the lack of opportunity to cross-examine the witnesses whose statements were submitted by Celia to prove her charge of rumor-mongering.<sup>[29]</sup>

Furthermore, Arlyn complains that after the NLRC reversed the Labor Arbiter's decision, respondents "unilaterally discontinued [her] reinstatement pending appeal contrary to prevailing laws and jurisprudence."<sup>[30]</sup> She thus prays that this Court "order respondent to pay the benefits due [her] from September 2004 [when after the NLRC declared her dismissal valid, respondents discontinued her reinstatement] up to [the] present pursuant to Art. 223 of the Labor Code and existing jurisprudence, pending resolution" of the present petition."<sup>[31]</sup>

The petition is bereft of merit.

Arlyn's claim that she is an ordinary rank-and-file employee, hence, she cannot be dismissed for loss of trust and confidence does not lie. The observation of the Court of Appeals that "[h]er work is of such nature as to require a substantial amount of trust and confidence on the part of x x x her employer"<sup>[32]</sup> is well-taken in light of her following functions, as enumerated by the NLRC:

1. Batches, collates and encode[s] policies, endorsements and official receipts;
2. Generates printed production, collection, statistical and receivable reports for submission to the Head Office;
3. Reconciles and finalizes production and collection reports;
4. Maintains the computer hardware and software; and
5. Performs other related functions as may be assigned to her by her superior from time to time, <sup>[33]</sup>

which functions "required the use of judgment and discretion."<sup>[34]</sup>