

## **EIGHTEENTH DIVISION**

**[ CA-G.R. SP NO. 07713, February 18, 2015 ]**

**KAREN L. QUIJADA PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION (7TH DIVISION), JOSE G. GUTIERREZ  
– LABOR ARBITER REGIONAL ARBITRATION BRANCH VII  
NATIONAL LABOR RELATIONS COMMISSION, AND RD  
PAWNSHOP INC., ESTELA G. VILLANER, CIELO V. CARAO,  
CHERNNA ALGAR RESPONDENTS.**

### **D E C I S I O N**

**LOPEZ, J.:**

Before us is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court assailing the Decision<sup>[1]</sup> of the National Labor Relations Commission (7<sup>th</sup> Division) dated 29 November 2012, and its Resolution<sup>[2]</sup> on the Motion for Reconsideration filed by the Petitioner.

### **FACTS**

Petitioner, Karen Quijada (hereinafter "Quijada") was, prior to her dismissal from employment, a Vault Custodian of the private respondent, RD Pawnshop Inc. (hereinafter "RD") assigned at the latter's branch located at 189 Colon Street, Cebu City.

Private respondent RD is a private corporation duly existing under Philippine laws, engaged in the pawnshop business, with its principal place of business at Gov. M.C. Cuenco Avenue, Banilad, Cebu City. Private respondents Estela G. Villaner (hereinafter "Villaner"), Cielo V. Carao (hereinafter "Carao"), and Chernna Algar (hereinafter "Algar") are some of RD's officers.

The facts that bring us to this present controversy are as follows:

#### *Petitioner's version*

Private respondent RD Pawnshop first hired petitioner Quijada on December 1994. She had continuous employment with it until 2012.

On 4 April 2012 at around 8:30 o'clock in the morning, RD Pawnshop conducted a surprise audit at its Colon Branch where Quijada was the vault custodian. Quijada was made to account for the cash in the vault as well as the pledged items that were placed on it.

To Quijada's great shock and surprise, she was apprised by RD's Financial Audit manager, Ms. Joanne Diesca (hereinafter "Diesca"), that there was a cash shortage of the money in the vault as compared to the branch's daily Cash Report.

According to Quijada, she was in disbelief, since the previous day, she knew that the cash in the vault tallied with the balance of the branch's daily Cash Report. She then tried to scour the contents of the vault and found some other bills of money that were not yet included in Diesca's initial count.

After bringing the additional bills to Diesca's attention, Petitioner Quijada tried to find her own personal records of her monetary responsibility with the cash in the vault. She was surprised that these records consisting of the previous day's Cash Report/Daily Report, and her own personal record that she placed on her desk were already missing.

Diesca then informed petitioner that after her subsequent count, there was a shortage of P202,000.00.

Aghast over the sudden and unexplained loss of such a huge amount of money from the vault, Quijada tried to go over the contents of the vault to find out whether or not there was still some money that might have escaped the auditor's notice. This attempt proved futile, and Quijada had no other choice but to remain at her table while the auditor and other employees of RD continued in their audit.

At around 4:30 o'clock in the afternoon of 4 April 2012, Diesca had the petitioner sign some documents regarding the discovery of the shortage of funds. Fearing for her employment, petitioner Quijada signed the same, as she was left without any recourse.

At around 7:30 o'clock in the evening, private respondent Villaner met with petitioner, and asked her in the vernacular: what she will do with the situation; if she had any money to settle the shortage, and whether she had any relative who could help her with the settling of the said amount. Quijada replied that she did not also know how the shortage of money had happened and that she would try to seek the help of her aunt.

A little while thereafter, private respondent Villaner served a copy of a demand letter<sup>[3]</sup> for the shortage of the missing funds.

According to petitioner, Villaner then coerced her to write a handwritten reply letter<sup>[4]</sup> or else she would be turned over to the police authorities and sent to jail. Petitioner then had no other choice but to comply.

At the same time, private respondent Villaner also served a copy of a letter<sup>[5]</sup> dated 4 April 2012 purporting to be a Notice of Preliminary Investigation on the complainant that placed petitioner under preventive suspension from 5 – 20 April 2012. The said letter also informed petitioner that the hearing regarding the investigation of the incident would be on 9 April 2012 at 1:30 o'clock in the afternoon at RD Pawnshop's Legal Department Head Office.

Believing that she would be given a chance to explain her side, petitioner Quijada was shocked to be told by Villaner to remain at the premises to await the police. Petitioner asked why there would be a need to have the police come when she already signed the documents that were presented to her. Villaner replied that that

was what RD's higher management wanted. At around 10 o'clock in the evening on 4 April 2012, policemen from Police Station 5 located near the Carbon Market came to the branch and took petitioner to their station.

At the police station, petitioner was booked and detained. Private respondents Algar and Carao, together with auditor Diesca were the ones who effected their so-called "citizen's arrest"<sup>[6]</sup>.

Petitioner Quijada was detained for seven (7) days, from 4 April 2012 up to 11 April 2012 because of the intervening long Holy Week and holiday of Araw ng Kagitingan on 9 April 2012. She was only released on 11 April 2012 by virtue of a Release Order<sup>[7]</sup> dated 11 April 2012.

According to petitioner, her unjustified and unwarranted detention prevented her from attending the scheduled hearing on 9 April 2012 and deprived her of her right to be heard.

On 17 April 2012, petitioner's father received a letter dated 16 April 2012 denominated as another Notice of Preliminary Investigation<sup>[8]</sup> stating that: petitioner was allegedly presumed to be responsible for the loss of the missing amount; and noted her non-explanation despite notice of the initial hearing (this despite the fact that private respondent Villaner visited petitioner at the Carbon Police Station and was aware that she was detained and would be unable to be physically present at the scheduled hearing on 9 April 2012); re-scheduled another hearing on 20 April 2012 at 9 o'clock in the morning at RD's Legal Department Head Office.

Petitioner was in a quandary as to how she could attend the second scheduled preliminary investigation on 20 April 2012 in view of the fact that she was already unceremoniously placed in jail by RD's officers as well as the further fact that per initial Notice of Preliminary Investigation<sup>[9]</sup> dated 4 April 2012 she was still on preventive suspension on that day.

On 21 April 2012, or a day after the period of preventive suspension, petitioner reported for work at RD's Colon branch. However, she was prevented from entering the premises by a messenger of RD who told her that he was instructed by management and had sent her another letter extending her period of suspension.

On 22 May 2012, petitioner received on the same day, a copy of the letter dated 16 April 2012<sup>[10]</sup>, a copy of the Notice of Extension of Suspension<sup>[11]</sup> signed by private respondent Villaner. The Notice stated that the her suspension was extended from 21 April 2012 up to 4 May 2012; and a letter<sup>[12]</sup> dated 27 April 2012 from RD's Executive Vice-President, Mr. Rene Vicente F. Miguel that informed her of her termination from employment.

On 24 April 2012, petitioner filed a Complaint against the private respondents with Branch No. VII of the Regional Arbitration of the NLRC. This case was docketed at NLRC RAB-VII Case No. 04-0608-12. She filed it on the basis of her claim that the private respondents illegally and constructively dismissed her from her employment.

*Private respondents' version.*

On the other hand, private respondents aver the following version of the facts:

The case at bar stemmed from the results of the regular audit conducted by the auditors of RD Pawnshop on the cash and pledged items under the exclusive custody of petitioner Quijada.

The auditors uncovered a shortage of cash in the amount of P202,000.00. As a result of the audit report, the Assistant Vice President for Operations, Ms. Estela G. Villaner, issued a demand letter for the petitioner to produce the missing funds. However, instead of offering a justification, petitioner issued a written acknowledgment<sup>[13]</sup> of the loss and promised to reimburse the company of the missing funds within a period of one (1) month.

After giving all the opportunity to the petitioner to explain her side and produce or justify the loss of the substantial amount, the audit team leader in her best judgment to protect the interest of the company effected a citizen's arrest on the petitioner with the assistance of the Carbon Police Station.

The petitioner was sent with a Notice of Preliminary Investigation scheduled on 9 April 2012, but when she was not able to post bail for the criminal aspect of the case, another Preliminary Investigation was scheduled on 20 April 2012, to give petitioner enough time to sort out her criminal case and prepare for the scheduled investigation.

Relative thereto, the Cebu City Prosecutor's Office, conducted an inquest proceeding and thereafter filed a Qualified Theft case against the petitioner before RTC branch 16 docketed as criminal case no. CBU-95529.

On 27 April 2012, after the lapse of seven (7) days without the petitioner presenting herself during the scheduled investigation and without any reply as to her failure to attend the hearing, the company had no choice but to issue the termination order citing Dishonesty as the basis thereof.

Thereafter, petitioner filed a case with the National Labor Relations Commission RAB VII citing as causes of action: illegal suspension, illegal dismissal, non-payment of overtime, non-payment of holiday pay, non-payment of separation pay, attorney's fees, moral and exemplary damages. According to respondents, petitioner however did not specify the relief sought in the complaint. The mandatory conferences were conducted on the 10<sup>th</sup> and 17<sup>th</sup> of May 2012.

After the termination of the mandatory conferences having no settlement arrived between the parties, the Honorable Labor Arbiter ordered the parties to submit their respective Position Papers on 11 June 2012.

On 18 June 2012, the Honorable Acting Executive Labor Arbiter Jose G. Gutierrez of the National Labor Relations Commission, RAB VII rendered his Decision<sup>[14]</sup> dismissing the case of lack of merit. The dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered DISMISSING this case for lack of merit.<sup>[15]</sup>

On 29 November 2012, the Honorable National Labor Relations Commission, 7<sup>th</sup> Division (NLRC – VII) rendered its Decision<sup>16</sup> affirming the Decision of the Honorable Labor Arbiter rendered on 18 June 2012, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the Decision rendered by the Labor Arbiter on 18 June 2012 is hereby AFFIRMED.<sup>[17]</sup>

On 14 March 2013, petitioner filed her Motion for Reconsideration, which was subsequently denied by the NLRC in a Resolution<sup>[18]</sup> dated 27 March 2013.

Hence this Petition.

## **ISSUES**

Petitioner assigns the following issues for our consideration:

### **I.**

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE LABOR ARBITER'S DECISION WHEN IT HELD THAT PETITIONER HAD EXCLUSIVE ACCESS TO THE MONEY IN THE VAULT.

### **II.**

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE LABOR ARBITER'S DECISION, WHEN IT HELD THAT PETITIONER WAS NOT DENIED HER RIGHT TO DUE PROCESS.

### **III.**

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN DENYING PETITIONER'S MONETARY CLAIMS.

## **OUR RULING**

The petition is bereft of merit. We are in agreement that Petitioner Quijada was validly dismissed from employment.

*Access to the money in the vault.*

Petitioner maintains that public respondent NLRC erroneously found that she had exclusive access to the money inside the vault. According to her, no evidence points to the conclusion that she had exclusive access to the missing funds. She also cries that the penalty of dismissal imposed upon her was too harsh.

Private respondents also points out that petitioner was the only vault custodian in the branch and as such, she was responsible for the safekeeping of the company's funds and pledged items. The duties and responsibilities were thoroughly explained to her and she signified her conformity to the task. The amount involved is very substantial, comprising more than 40% of the total funds in the branch at the time