

THIRD DIVISION

[G.R. No. 228765, March 20, 2019]

**MINDA TOPINIO CADAVAS, PETITIONER, COURT OF APPEALS,
CAGAYAN DE ORO CITY, TWENTY-THIRD DIVISION, AND DAVAO
DOCTORS HOSPITAL AND/OR RAYMUNDO DEL VAL, PRESIDENT,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is a petition for *certiorari* assailing the Decision^[1] of the Court of Appeals dated December 4, 2015, which affirmed the Resolution of the National Labor Relations Commission (*NLRC*), dismissing petitioner Minda T. Cadavas' complaint for illegal dismissal.

The facts are as follows:

Petitioner Minda Cadavas was hired as a Staff Nurse by respondent Davao Doctors Hospital (*DDH*) on January 16, 1989. She was promoted to Nurse Supervisor in the course of her employment until her dismissal on May 11, 2012.^[2]

Sometime in February 2012, petitioner Cadavas' aunt, Shirley Aninion, was confined at *DDH* for breast cancer, stage four. To help lessen the hospital expenses of her aunt, Cadavas, with the help of some hospital staff, was able to obtain supplies and medicines used in her aunt's operation from the Emergency Department and Operating Room Central Supply Service without being entered in the records so that the said supplies and medicines would not be charged to her aunt's bill, but Cadavas would replace these items (purchased at a lower price outside the hospital). The items taken were valued at P6,000.00, more or less, and were eventually replaced by Cadavas.^[3]

On April 16, 2012, respondent *DDH*, through the Director of Nursing Service, sent petitioner Cadavas a notice^[4] to explain the incident of February 25, 2012 when she allegedly got supplies and drugs from the Emergency Department and Operating Room Central Supply Service and why no disciplinary action would be taken against her for the grave offense of willful abuse of hospital property.

In her letter-explanation^[5] dated April 18, 2012, petitioner Cadavas stated that after the *STAT* chest tube insertion procedure of her aunt, she asked Nursing Aide Madellen Añasco if the supplies and medicines used by her aunt could be replaced, and Añasco agreed; hence, the items were not charged to her aunt. Moreover, after the *VATS* operation of her aunt on March 10, 2012, the staff clerk of the Operating Room Central Supply Service did not charge to her aunt's account the *Thoraset* used because they had an agreement that it would be replaced. The said supplies and

medicines were eventually replaced. Cadavas said that there was no intention on her part to abuse the hospital's property or supplies, as she merely intended to help her aunt lessen her hospital expenses that reached P254,000.00. She stated that she may have committed some mistakes, but they were not done secretly on her own to evade detection, but with the consent and knowledge of some hospital staff.

On May 2, 2012, an administrative hearing was conducted regarding the complaint against petitioner Cadavas. In the said hearing, Cadavas reiterated that she asked Nursing Aide Añasco if the supplies used on her aunt could be replaced, with the intention to help lessen the hospital expenses of her aunt. Cadavas admitted that she was aware of the hospital policy that they are not allowed to purchase medicines outside the hospital and that employees are not allowed to borrow supplies for personal use, but it has long been a practice that employees are allowed to replace supplies or medicines from the emergency room, instead of charging them to the patient.^[6] She admitted that she violated the rules because she was only thinking of helping her aunt at that time.^[7] She was not able to ask approval from her director, but the people around the emergency room were aware of the borrowed items.^[8] She stated that she had already replaced the items.

Thereafter, Cadavas received a Memorandum^[9] dated May 9, 2012, informing her that her employment was being terminated for dishonesty and loss of trust and confidence, thus:

In your letter of explanation dated 18 April 2012, you admitted getting medicines and supplies from Emergency Room and OR CSS which were used [in the] STAT chest tube insertion performed by Dr. Rizbon Yana on patient Shirley Aninion, whom you admitted is your aunt. The items are as follows[:]

Thora bottle	Ketorolac #1
Thoracic Cath (size 32)	Nubain #1
Sterile Gloves size 7 #1	Demerol #1
Sterile Gloves size 7 #2	Mersilk O #1

You alleged that Nursing Aide Madellen Añasco prepared the abovementioned items. You further alleged that you asked Ms. Añasco if you could just replace the items instead of charging the cost thereof to the patient and she agreed. Based on said agreement, the items were not charged to the patient but were later replaced.

x x x x

Investigation disclosed that the abovementioned medicines and supplies used were not recorded in the detailed listing of charges because you told Nursing Aide Añasco and OR CSS clerk that you will just replace the items. Being your subordinates, the said employees naturally complied with your instruction. As a result, the items were not charged to the patient and for which reason the Hospital suffered damages by way of

lost income.

Your abovementioned act of getting medicines and supplies without having the transaction recorded is against hospital policy and practice. It is an act of dishonesty. As a supervisor, it is your duty and obligation to set the example to your subordinates and ensure that hospital policies, rules and regulations are enforced. Sadly, you violated the policy and, worse, even influenced your subordinates to violate policy. Obviously, the employees involved would not have agreed to the commission of the violation if you had not given them the instruction. Thus, you clearly abused your authority and position.

In view of your dishonesty, Management has no more trust and confidence in you. Accordingly, your employment is terminated effective immediately.^[10]

On May 16, 2012, Cadavas filed a Complaint^[11] for illegal dismissal and other monetary claims against DOH with the Regional Arbitration Branch No. XI, NLRC in Davao City. Cadavas claimed that her dismissal from service was too harsh for her act of violating company rules, considering that it was her first offense in her 23 years of service to the hospital. She also alleged that she was denied due process as she was not assisted by counsel during the administrative hearing conducted by DDH.

In its defense, respondent DDH claimed that complainant Cadavas was dismissed for just cause. It argued that Cadavas' dismissal was justified because she violated a hospital policy, thereby breaching the trust and confidence it reposed in her. DDH stated that Cadavas admitted having withdrawn items for a procedure performed on her aunt, who was a patient in the hospital, and the said items were not charged to the patient upon her request and assurance that they would be replaced. She also admitted that the said act is in violation of DDH's policy, although she insisted that it is being practiced in the hospital. Even assuming that replacement of items withdrawn from the Central Supply Service is being practiced, it does not justify Cadavas' admitted violation of existing policy. Cadavas is a supervisor, which is a position of responsibility; hence, she is expected to enforce DDH's policies and rules and regulations. Moreover, DDH said that the policy requiring recording of all withdrawals of supplies and medicines was established in order to prevent pilferage and dishonesty. If enforcement of the said policy would be relaxed, it would encourage the evil being sought to be prevented. Further, DDH stated that Cadavas was afforded due process because she was given a notice to explain, informing her of the offense charged against her; a hearing was conducted to give her an opportunity to explain and to present her defense; and a notice of termination was served on her.

On October 12, 2012, the Labor Arbiter rendered a Decision^[12] in favor of complainant-herein petitioner Cadavas. Although the Labor Arbiter agreed with respondent DDH that Cadavas committed some lapses in participating in the open practice of borrowing and replacing later the hospital supplies and medicines used during the operation/treatment of a hospital staff or the staffs relative, the Labor

Arbiter held that the penalty of dismissal is not commensurate to the offense committed. According to the Labor Arbiter, Cadavas' 23 years of service, wherein she received merit, recognition, commendation and loyalty awards from DDH, should not be obliterated by a single lapse of judgment. The Labor Arbiter cited *Conti v. National Labor Relations Commission*,^[13] which held that violation of a rule or policy, which in its implementation has oftentimes been relaxed, may not lawfully give rise to termination of employment of the violator.^[14] The Labor Arbiter stated that it holds true in this case. The *fallo* of the Decision reads:

WHEREFORE, judgment is hereby rendered declaring the dismissal of complainant MINDA TOPINIO-CADAVAS illegal and ordering respondent DAVAO DOCTORS' HOSPITAL, thru RAYMUND DEL VAL, President, to pay complainant her separation pay in the total amount of SEVEN HUNDRED SIXTY-SIX THOUSAND TWO HUNDRED SIXTY EIGHT PESOS (P766,268.00).^[15]

Respondent DDH appealed the Labor Arbiter's Decision before the NLRC, Cagayan de Oro City.

On February 28, 2013, the NLRC rendered a Resolution in favor of respondent DDH. The *fallo* of the Resolution^[16] reads:

IN VIEW OF ALL THE FOREGOING, the appeal is GRANTED. The appealed decision is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the case for lack of merit.^[17]

The NLRC stated that complainant-herein petitioner Cadavas was the Nurse Supervisor in the Nursing Service Department of respondent DDH and, thus, held a position of trust and confidence. Hence, the betrayal of this trust is the essence of the offense for which the employee is penalized.^[18]

The NLRC said that the records showed that Cadavas admitted that she withdrew hospital supplies and medicines for her aunt and she asked Nursing Aide Añasco if she could replace the items withdrawn to which Añasco agreed. In effect, as a Nurse Supervisor, she was directing the latter not to record the transaction, thereby prejudicing respondent DDH. Cadavas knew all along that there was a policy against the purchase of hospital supplies and medicines outside of respondent DDH's pharmacy even if such items were replaced, but she insisted in doing so. While the NLRC commiserated with Cadavas regarding her intention to help alleviate her aunt's misery, nonetheless, it stated that as a supervisory employee, Cadavas was expected to exercise her judgment and discretion with utmost care and concern for her employer's business. She was tasked to perform key functions and, unlike ordinary rank and file employees, she was bound by a more exacting work ethics. The NLRC said that in doing what she did, Cadavas rendered herself absolutely unworthy of the trust and confidence demanded by her position. Hence, DDH could not be faulted for losing trust and confidence in Cadavas and in refusing to retain

her as its employee.

Cadavas' motion for reconsideration was denied by the NLRC in a Resolution^[19] dated May 7, 2013.

Cadavas filed a petition for *certiorari* with the Court of Appeals, alleging that the NLRC gravely abused its discretion in (1) reversing and setting aside the Decision of the Labor Arbiter and in dismissing her complaint; and (2) ignoring that she was denied due process.^[20]

The Court of Appeals denied the petition.

The appellate court stated that loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. And in order to constitute a just cause for dismissal, the act complained of must be work-related such as would show the employee concerned to be unfit to continue working for the employer.^[21]

In this case, the Court of Appeals found the above requirements for dismissal on the ground of loss of trust and confidence present:

(1) Petitioner Cadavas was DDH's Nurse Supervisor, which position is imbued with trust and confidence as she is charged with the delicate task of overseeing the staff nurses in the Nursing Service Department of DDH;

(2) Petitioner Cadavas, as Nurse Supervisor, requested another hospital staff member, a subordinate employee, not to record the supplies and medicines she took from the Emergency Department and Operating Room Central Supply Service so that these items would not be reflected in her aunt's hospital bill. This act was plainly dishonest and it was admitted by Cadavas herself. Evidently, Cadavas, by her act, breached the trust and confidence reposed in her by DDH. Holding a supervisory position, Cadavas was expected to set an example for other hospital employees to be faithful to the hospital rules and policies. Instead, Cadavas committed a dishonest, if not illegal, act and, to achieve her goal, even directed a subordinate employee to participate in the dishonesty. Even if the items taken were replaced by Cadavas, this did not exempt her from liability for her offense.

Further, the Court of Appeals held that petitioner Cadavas was not denied due process. She was neither barred from being heard nor deprived of her right to be assisted by a counsel. Evidence showed that she was given ample time to prepare for her defense. She was first notified on April 16, 2012 about the charge against her and was given time to explain. She then gave her written explanation on April 18, 2012. The hearing was conducted on May 2, 2012, which gave her two weeks, more or less, to engage the services of a counsel.

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution^[22] dated May 31, 2016.