

SECOND DIVISION

[G.R. No. 225586, July 29, 2019]

**THE PENINSULA MANILA AND SONJA VODUSEK, PETITIONERS,
VS. EDWIN A. JARA, RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari seeks to set aside the Decision^[1] dated January 25, 2016 and Resolution dated July 5, 2016 of the Court of Appeals in CA-G.R. SP No. 131276, finding respondent's dismissal illegal and awarding him backwages and other monetary claims.

Factual Antecedents

Respondent Edwin Jara worked at petitioner The Peninsula Manila from 2002 until his dismissal in 2011. He became its captain waiter in 2009. The termination of Jara's services spawned from the incident which happened on July 22, 2011. Assigned then to the closing shift of respondent's buffet restaurant *Escolta*, Jara was tasked to tally the actual cash count with the cash transaction receipts and match the same with the data in the micros system, a touch-screen computer system which records all transactions in a particular outlet in the hotel, including cash and credit card payments.

On said date, around 11:45 in the evening, Jara discovered a discrepancy between the actual cash on hand and cash transaction receipts. He found that there was an error in the entries for cash settlement of Table 32 - the sales receipt reflected payment of P7,113.08. In the official receipt of the cash register, however, the payment reflected was only P613.00, while in the tape receipt (transaction receipt), the amount of P7,113.08 was reflected as payment. Due to the discrepancy, Jara had an overage of P6,500.00 cash. Assistant Supervisor Michelle Jardines, tried to correct the error but there was still an excess cash on hand. Consequently, Jara informed his supervisor Jimmy Tabamo of his failure to balance the actual cash on hand and the transaction receipts. Per Tabamo's incident report,^[2] he instructed Jara to double check all his cash transactions and inform him if the problem about the account balances would persist. By 12:30 in the morning, Tabamo allegedly asked Jara if the cash transactions had already been reconciled. Jara answered in the affirmative, submitted his report, and remitted the cash collections. In truth, however, Jara was unable to reconcile the excess cash on hand with the cash transaction receipts but he did not turn over the excess cash of P6,500.00 and kept the same in his office locker. What Jara did to remedy the discrepancy was post the P613.00 amount appearing on the tape receipt, instead of the entire P7,113.08 appearing in the sales receipt. This way, the cash count tallied with the data posted

in the micros system.

The following day, July 23, was Jara's birthday so he did not report for work. He, however, dined at the *Escolta*. On July 24, Jara again did not report for work because it was his day-off. When he reported for work on July 25, he informed the hotel's internal auditor about the overage of P6,500.00. The latter advised Jara to surrender the excess cash to his supervisor. Instead of complying with this directive, Jara turned over the money to the captain waitress instead, for safekeeping in the safety deposit box.

On July 27, 2011, petitioner issued a Memorandum to Explain, requiring Jara to explain why he should not be sanctioned for dishonesty for: (1) failing to promptly inform his supervisor of the overage of P6,500.00; (2) for misrepresenting that he had already reconciled the cash transaction records; and (3) falsifying the tape receipt to be able to balance his cash settlement report.

In his written explanation, Jara stated that he posted the P613.00 payment because he thought that there was only a micros error due to the tax exemption on the original check of Table 32. Jara, however, admitted that he kept the overage of P6,500.00 in his office locker and failed to inform his supervisor of such overage.

An administrative hearing was held on August 11, 2011. By Memorandum dated September 28, 2011, Jara was informed of his termination for misappropriation or falsification of hotel receipts and dishonesty in violation of the Hotel's Code of Discipline. Consequently, Jara filed a complaint for illegal dismissal against respondent.

Labor Arbiter's Ruling

By Decision^[3] dated March 30, 2012, Labor Arbiter Renaldo O. Hernandez found Jara to have been illegally dismissed. Respondent was ordered to reinstate Jara and pay him full backwages, proportionate 13th month pay, accrued service charges, and other monetary benefits under the existing CBA. The labor arbiter found that Jara was not motivated by any dishonest intention and his mistake was due to a lapse in judgment.

NLRC'S Ruling

On appeal, the NLRC reversed.^[4] It found the dismissal valid, resulting from Jara's dishonesty and misrepresentation.

Court of Appeals' Ruling

On petition for certiorari, the Court of Appeals reversed.^[5] It held that Jara's lapses cannot be considered grave, let alone, indicative of intentional or willful breach of his employer's trust.

Petitioner's motion for reconsideration was denied under Resolution^[6] dated July 5, 2016.

The Present Petition

Petitioner now faults the Court of Appeals for ruling that Jara had been illegally dismissed. It asserts that the Court of Appeals seriously erred in its finding that Jara's actions only amounted to a lapse in judgment and could not be considered a grave, intentional, or willful breach of his employer's trust. Petitioner emphasizes that, as employer, it possesses wide latitude of discretion in terminating employees who perform functions requiring the employer's trust and confidence but who had breached such trust or had given reason for the employer to distrust him/her.

In his Comment, Jara reiterated that to be validly dismissed based on Article 282 (now Article 296) of the Labor Code, the employee involved must hold a position of trust and confidence. Jara claims that his position as captain waiter is classified as *rank and file Level 8-A* under the existing CBA, not a position of trust and confidence, thus, he could not be held liable under Article 282 of the Labor Code.

Further, Jara denies having wilfully committed any wrongful act and stands by his defense of good faith and utmost honesty. He maintains that he never took away the overage of P6,500.00 but kept it in his locker with full intent to turn it over to respondent on his next working day.

ISSUE

Was Jara illegally dismissed?

RULING

It is a fundamental rule that the Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own factual determination. This finds support in the well settled rule that factual findings of administrative or quasi-judicial bodies, including labor tribunals are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence^[7]. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court or quasi-judicial agency, as in this case.^[8]

After a judicious review of the records, the Court is constrained to reverse the Court of Appeals' factual findings and legal conclusion.

Article 297 (formerly Article 282) of the Labor Code enumerates the just causes for termination of employment, *viz*:

Art. 297. Termination by employer. - An employee may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in