

FIRST DIVISION

[G.R. No. 160982, June 26, 2013]

MANILA JOCKEY CLUB, INC., PETITIONER, VS. AIMEE O. TRAJANO, RESPONDENT.

DECISION

BERSAMIN, J.:

An illegally dismissed employee is entitled to her reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances and other benefits or their monetary equivalent. Should the reinstatement be no longer feasible, an award of separation pay in lieu of reinstatement will be justified, and the backwages shall be reckoned from the time her wages were withheld until the finality of the decision.

The Case

Employer Manila Jockey Club, Inc. (MJCI) appeals via petition for review on *certiorari* the adverse decision promulgated on January 30, 2003,^[1] whereby the Court of Appeals (CA) dismissed the petition for *certiorari* MJCI had brought to assail the decision rendered by the National Labor Relations Commission (NLRC) declaring respondent Aimee O. Trajano to have been illegally dismissed, and ordered it to reinstate her to her former position with limited backwages of six months, without loss of seniority rights and other benefits.^[2]

Antecedents

MJCI had employed Trajano as a selling teller of betting tickets since November 1989. On April 25, 1998, she reported for work. At around 7:15 p.m., two regular bettors gave her their respective lists of bets (*rota*) and money for the bets for Race 14. Although the bettors suddenly left her, she entered their bets in the selling machine and segregated the tickets for pick up by the two bettors upon their return. Before closing time, one of the bettors (requesting bettor) returned and asked her to cancel one of his bets worth P2,000.00. Since she was also operating the negative machine on that day, she obliged and immediately cancelled the bet as requested. She gave the remaining tickets and the P2,000.00 to the requesting bettor, the money pertaining to the canceled bet. When Race 14 was completed, she counted the bets received and the sold tickets. She found that the bets and the tickets balanced. But then she saw in her drawer the receipt for the canceled ticket, but the canceled ticket was not inside the drawer. Thinking she could have given the canceled ticket to the requesting bettor, she immediately looked for him but could not find him. It was only then that she remembered that there were two bettors who had earlier left their bets with her. Thus, she went to look for the other bettor (second bettor) to ask if the canceled ticket was with him. When she located the second bettor, she showed him the receipt of the canceled ticket to counter-check

the serial number with his tickets.^[3]

Thereafter, the second bettor returned to Trajano and told her that it was one of his bets that had been canceled, instead of that of the requesting bettor. To complicate things, it was also the same bet that had won Race 14. Considering that the bet was for a daily double, the second bettor only needed to win Race 15 in order to claim dividends. At that point, she realized her mistake, and explained to the second bettor that the cancellation of his ticket had not been intentional, but the result of an honest mistake on her part. She offered to personally pay the dividends should the second bettor win Race 15, which the latter accepted. When Race 15 was completed, the second bettor lost. She was thus relieved of the obligation to pay any winnings to the second bettor.^[4]

To her surprise, the reliever-supervisor later approached Trajano and told her to submit a written explanation about the ticket cancellation incident. The next day (April 26, 1998), she submitted the handwritten explanation to Atty. Joey R. Galit, Assistant Racing Supervisor. She then resumed her work as a selling teller, until later that day, when she received an inter-office correspondence signed by Atty. Galit informing her that she was being placed under preventive suspension effective April 28, 1998, for an unstated period of time. At the end of thirty days of her suspension, Trajano reported for work. But she was no longer admitted.^[5] She then learned that she had been dismissed when she read a copy of an inter-office correspondence^[6] about her termination posted in a selling station of MJCI.

Trajano instituted a complaint^[7] for illegal dismissal against MJCI in the Department of Labor and Employment (DOLE). She claimed that her dismissal was not based on any of the grounds enumerated under Article 282 of the *Labor Code*; that her dismissal on the ground of unauthorized cancellation of ticket had no basis because she was also the operator of the negative machine on the day in question with the authority to cancel tickets as requested; that the cancellation was not intentional on her part but resulted from an honest mistake that did not amount to dishonesty; that her dismissal was without due process of law because she was not aware of any justifiable cause of her termination; that she was not notified about or furnished a copy of the notice of dismissal; that instead, MJCI simply posted copies of the notice in all its selling stations, an act intended to embarrass and humiliate her by imputing an allegedly unauthorized cancellation of ticket against her; and that MCJI's acts were tainted with evident bad faith and malice.

Trajano prayed that she be reinstated to her former position without loss of seniority rights; that she be paid backwages until she would be fully reinstated; and that she be paid moral and exemplary damages amounting to P180,000.00 and attorney's fees of 10% of the total award.^[8]

On its part, MJCI averred that on April 25, 1998, it received a letter^[9] from Jun Carpio, the Field Officer of the Games and Amusement Board, calling its attention to a complaint against Trajano brought by a certain bettor named "Tito" who had reported the cancellation of his ticket that had already won the first leg (Race 14) of the daily double bet; that it acted on the complaint by placing her under preventive suspension^[10] upon her submission of a written explanation^[11] and after the conduct of preliminary investigation on the matter; that on June 5, 1998, it invited

her to a clarificatory meeting in the presence of MJCI Raceday Union President Miguel Altonaga; and that it terminated her services on the next day “*for cause due to unauthorized cancellation of ticket.*”^[12]

MJCI maintained that Trajano’s dismissal was justified because the unauthorized cancellation of the ticket had constituted a serious violation of company policy amounting to dishonesty; that her action had also constituted a just cause for terminating her employment under Article 282 of the *Labor Code*, particularly paragraph (a) on serious misconduct or willful disobedience and paragraph (b) on gross and habitual neglect of duty; that the admissions made in her written explanation left no doubt as to her participation in the unauthorized cancellation of the ticket; that she was afforded her right to due process by being given the chance to submit her written explanation and being appraised of the charges against her; that she was accompanied by the union leaders during the preliminary investigation of her case; and that the non-appeal of the decision to terminate her indicated that she and the union leaders believed in the merit of the decision to terminate her.^[13]

Decision of the Labor Arbiter

On April 23, 1999, the Labor Arbiter dismissed the complaint for illegal dismissal upon finding that Trajano’s gross negligence in the performance of her job warranted the termination of her employment. The Labor Arbiter observed that the bet of P2,000.00 was “a huge amount that necessarily requires extra care like [sic] its cancellation;”^[14] and that she had been given her chance to dispute the charges made against her.^[15]

Decision of the NLRC

Aggrieved, Trajano appealed to the NLRC, arguing that she did not commit any gross dishonesty or any serious misconduct or habitual neglect of duties, because what she committed was purely an honest mistake that did not merit the imposition of the penalty of dismissal from the service.

On October 27, 1999, the NLRC rendered its decision reversing and setting aside the decision of the Labor Arbiter and declaring Trajano to have been illegally dismissed by MJCI without just or authorized cause and without due process of law. It concluded that her cancellation of the ticket was an honest mistake that did not constitute a serious misconduct or willful disobedience of the lawful orders of her employer; that such cancellation did not amount to a gross and habitual neglect of duty because her mistake was only her first offense in the nine years of service to MJCI; and that MJCI sustained no damage.^[16] It ordered MJCI to reinstate her to her former position without loss of seniority rights, and with payment of backwages equivalent to at least six months and other benefits.^[17]

The NLRC denied MJCI’s motion for reconsideration on February 18, 2000.^[18]

Ruling of the CA

MJCI elevated the decision of the NLRC to the CA on *certiorari*, claiming that the NLRC thereby gravely abused its discretion in reversing the Labor Arbiter’s decision.

MJCI insisted that Trajano had been accorded procedural due process and had been dismissed for just cause; and that she was not entitled to the reliefs of reinstatement with payment of limited backwages of six months, without loss of seniority rights and other benefits.

On January 30, 2003, however, the CA upheld the NLRC, pointing out that MJCI had not given the valid notice of termination as required by law; that MJCI had not shown that the unauthorized cancellation of tickets by Trajano had violated company policy; and that the cancellation of the ticket had been only an honest mistake that did not amount to gross negligence as to warrant dismissal.^[19]

Aggrieved, MJCI filed a motion for reconsideration,^[20] but the CA denied its motion.^[21]

Issues

Hence, MJCI appealed to the Court, raising the following issues:

1. Whether or not there was just cause when Petitioner (MJCI) dismissed Respondent Aimee O. Trajano from the service;^[22] and
2. Whether or not Petitioner MJCI complied with the due process requirement when it effected the dismissal of Respondent Trajano.^[23]

Ruling of the Court

The appeal lacks merit.

MJCI posits that Trajano held a position of trust and confidence; that the act of canceling the ticket was unauthorized because it was done without the consent of the bettor; that the CA thus erred in construing the phrase *unauthorized cancellation of ticket* as referring to whether or not she was authorized to cancel the ticket pursuant to company rules; that under the same premise, the loss of trust and confidence was established because the unauthorized cancellation of the ticket was a serious misconduct on her part considering that had the bet of P2,000.00 won the daily double race, the dividend to be paid could have been such a big amount that she would be unable to pay on her own; that the repercussions of her act to MJCI would have been disastrous had the bet won, with MJCI being sued by the bettor and being scandalized in the media; that MJCI would have suffered great loss in both income and reputation due to such unauthorized cancellation of ticket; and that, consequently, MJCI had the just cause to dismiss her.^[24]

We cannot sustain the position of MJCI.

The valid termination of an employee may either be for just causes under Article 282^[25] or for authorized causes under Article 283^[26] and Article 284,^[27] all of the *Labor Code*.

Specifically, loss of the employer's trust and confidence is a just cause under Article 282 (c), a provision that ideally applies only to cases involving an employee occupying a position of trust and confidence, or to a situation where the employee

has been routinely charged with the care and custody of the employer's money or property.^[28] But the loss of trust and confidence, to be a valid ground for dismissal, must be based on a willful breach of trust and confidence founded on clearly established facts. "A breach is willful," according to *AMA Computer College, Inc. v. Garay*,^[29] "if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer."^[30] An ordinary breach is not enough.

Moreover, the loss of trust and confidence must be related to the employee's performance of duties. As held in *Gonzales v. National Labor Relations Commission*:^[31]

Loss of confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. He must be invested with confidence on delicate matters such as the custody, handling, care and protection of the employer's property and/or funds. But 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.

As a selling teller, Trajano held a position of trust and confidence. The nature of her employment required her to handle and keep in custody the tickets issued and the bets made in her assigned selling station. The bets were funds belonging to her employer. Although the act complained of – the unauthorized cancellation of the ticket (*i.e.*, unauthorized because it was done without the consent of the bettor) – was related to her work as a selling teller, MJCI did not establish that the cancellation of the ticket was intentional, knowing and purposeful on her part in order for her to have breached the trust and confidence reposed in her by MJCI, instead of being only out of an honest mistake.

Still, to justify the supposed loss of its trust and confidence in Trajano, MJCI contends that the unauthorized cancellation of the ticket could have greatly prejudiced MJCI for causing damage to both its income and reputation.

We consider the contention of MJCI unwarranted. As the records indicate, MJCI's prejudice remained speculative and unrealized. To dismiss an employee based on speculation as to the damage the employer could have suffered would be an injustice. The injustice in the case of Trajano would be greater if the supposed just cause for her dismissal was not even sufficiently established. While MJCI as the employer understandably had its own interests to protect, and could validly terminate any employee for a just cause, its exercise of the power to dismiss should always be tempered with compassion and imbued with understanding, avoiding its abuse.^[32]

In this regard, we have to stress that the loss of trust and confidence as a ground for the dismissal of an employee must also be shown to be genuine, for, as the Court has aptly pointed out in *Mabeza v. National Labor Relations Commission*:^[33] "x x x loss of confidence should not be simulated in order to justify what would