

SECOND DIVISION

[G.R. No. 190559, March 07, 2012]

**BLUE SKY TRADING COMPANY, INC. AND/OR JOSE TANTIANSU
AND LINDA TANTIANSU, PETITIONERS, VS. ARLENE P. BLAS
AND JOSEPH D. SILVANO, RESPONDENTS.**

D E C I S I O N

REYES, J.:

The Case

Before us is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the October 26, 2009 Decision^[2] and the December 14, 2009 Resolution^[3] of the Court of Appeals (CA) in CA G.R. SP No. 108432. The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The challenged resolution of the NLRC dated 30 January 2009 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision of the NLRC dated 29 November 2007 is hereby **REINSTATED**.

SO ORDERED.^[4]

The assailed resolution denied the petitioners' Motion for Reconsideration^[5] to the foregoing.

Antecedent Facts

Petitioner Blue Sky Trading Company, Inc. (Blue Sky) is a duly registered domestic corporation engaged in the importation and sale of medical supplies and equipment. Petitioner Jose G. Tantiansu, Jr. (Jose) is Blue Sky's vice president for operations while petitioner Linda G. Tantiansu (Linda) is its assistant corporate secretary. The respondents Arlene P. Blas (Arlene) and Joseph D. Silvano (Joseph) were regular employees of Blue Sky and they respectively held the positions of stock clerk and warehouse helper before they were dismissed from service on February 5, 2005.

On January 29, 2005, Lorna N. Manalastas (Lorna), Blue Sky's warehouse supervisor, wrote Jose a memorandum^[6] informing the latter that six pairs of intensifying screens were missing. Lorna likewise stated that when a certain "Boy" conducted an inventory on October 2004, the screens were still completely accounted for.

On January 31, 2005, Helario Adonis, Jr. (Helario), warehouse personnel, was

summoned by Linda, Jose's wife Alice Tantiansu, and human resources department head Jean B. De La Paz (Jean). Helario was asked to admit his participation in the theft of the missing screens. While he was offered to be paid a separation pay if he would confess complicity with the alleged theft, he pleaded utter innocence.

On February 1, 2005, Jean notified Helario of his termination from service on the ground of his failure to properly account for and maintain a balance of the company's stock inventories, hence, resulting in Blue Sky's loss of trust and confidence in him.^[7] The day after, Blue Sky promptly filed with the Department of Labor and Employment (DOLE) an establishment termination report^[8] indicating therein Helario's dismissal from service for cause.

On February 3, 2005, Jean issued notices to explain/preventive suspension^[9] to Arlene, Joseph, delivery personnel Jayde Tano-an (Jayde) and maintenance personnel/driver Wilfredo Fasonilao (Wilfredo). The notices informed them that they were being accused of gross dishonesty in connection with their alleged participation in and conspiracy with other employees in committing theft against company property, specifically relative to the loss of the six intensifying screens. They were placed under preventive suspension pending investigation and were thus required to file their written explanations within 48 hours from receipt of the notices.

On February 4, 2005, Arlene submitted to Jean a handwritten memorandum denying knowledge or complicity with the theft of the intensifying screens. In part, the memorandum reads:

I'm not the supervisor of that dep't. para tanungin sa lahat ng nangyayari. Second, hindi naman ako ang nag-inventory ng stocks na yan. Third, nag-oout lang ako ng stocks kapag wala sila at kailangan na ang stocks. And lastly, ano ba talaga ang trabaho ko dito, kc all I know is pag-re-record ng stocks but parang lumalabas guard ako na kailangan kong malaman ang lahat ng kilos at galaw ng lahat ng employee dito. Dahil ako lagi ang tinatanong tungkol sa nangyayari sa mezz. Bakit ako lang ba ang tao doon? So it means that, dapat lahat kami ay may memo para mag-explain regarding that matter. Maging fair naman kayo sa akin.

Anyway, regarding sa nawawalang IS, ang alam ko inim-ventory ni Kuya Boy yan last Oct. According to him, complete daw lahat yun. Nang bumaba si Sir Jun mga last week ng Dec. para magpalinis ng stocks, na-found out nya na kulang ang stocks. So we did, we compare the bincard to the stockcard. But tally silang pareho. Kaya, we did we trace it is sa mga possible records like shipment sa Cebu or sales. But wala doon. Ang naiisip naming dahilan ay baka nagpakabit si Ate Lorna ng cassette with IS sa technical and she forgot to report it. Yun lang ang possible reason na alam ko. At wala na akong alam pang iba. x x x^[10]

On the other hand, Joseph proffered the following explanation:

Tungkol po sa nawawalang intensifying screen, wala po akong alam. Kasi po sa messanin[,] pumapasok lang po ako pag may inutos o may

pagagawa, tsaka hindi po ako naghahanda ng lumang stocks. Nagbababa po kami ng stock at nag-aakyat sa 2nd floor pag kami po ay inutusan ng nakakataas sa akin o may katungkulan. Yun lang po ang aking trabaho sa mesanin. Eto lang po ang aking masasabi.^[11]

Jayde and Wilfredo also filed their written explanations denying any involvement in the theft which took place and professing their dedication and loyalty to Blue Sky.^[12]

On February 5, 2005, Jean issued to Arlene, Joseph, Jayde and Wilfredo notices of dismissal for cause^[13] stating therein that evidence that they had conspired with each other to commit theft against company property was too glaring to ignore. Blue Sky had lost its trust and confidence on them and as an act of self-preservation, their termination from service was in order.

On February 7, 2005, Blue Sky filed with the DOLE an establishment termination report stating therein the dismissal of Arlene, Joseph, Jayde and Wilfredo.^[14]

On February 8, 2005, Arlene, Joseph, Helario, Jayde and Wilfredo filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal and suspension, underpayment of overtime pay, and non-payment of emergency cost of living allowance (ECOLA), with prayers for reinstatement and payment of full backwages. The complaint was docketed as NLRC NCR Case No. 00-02-01351-05.

Meanwhile, an entrapment operation was conducted by the police during which Jayde and Helario were caught allegedly attempting to sell to an operative an ultrasound probe worth around P400,000.00 belonging to Blue Sky. On April 22, 2005, Quezon City Inquest Prosecutor Arleen Tagaban issued a resolution^[15] recommending the filing in court of criminal charges against Jayde and Helario.

On May 2005, before the complaint which was filed with the NLRC can be resolved, Helario, Jayde and Wilfredo executed affidavits of desistance^[16] stating therein that their termination by Blue Sky was for cause and after observance of due process.

The Ruling of the Labor Arbiter

On November 17, 2005, Labor Arbiter Gaudencio P. Demaisip, Jr. (LA Demaisip) dismissed the complaint relative to Helario, Jayde and Wilfredo as a consequence of their filing of the affidavits of desistance. As to Arlene and Joseph, LA Demaisip denied their claims of illegal suspension and dismissal and for payment of ECOLA and overtime pay based on the following grounds:

[T]he duties of Ms. Blas [Arlene] was to take out stocks. Also, Mr. Silvano's [Joseph] work consisted of removing, storing, or furnishing of "stocks" or supplies.

Further, Ms. Blas [Arlene] was tasked to make written monitoring of "stocks" or supplies.

Complainants therefore, are charged with the care and custody of respondents' property. They may not be given such functions or allowed entrance and exit from respondents' bodega if they were untrustworthy.

Indeed, the functions consisting of removing, storing, furnishing, monitoring and gaining ingress to and egress from the "bodega", where the "stocks" or supplies are kept, involved trust and confidence.

Article 282 of the Labor Code allows the employer to terminate the services of the employees, among others, for breach of trust and confidence.

Loss of confidence however, apply (sic) to the following: x x x (2) to those situations where the employee is routinely charged with the care and custody of the employer's money or property such as auditors, cashier; property custodians, or those who regularly handle significant amount of money or property.

The dismissal must rest on actual breach of duty committed by the employee.

Further, proof beyond reasonable doubt is not necessary. It is sufficient if there is some basis for such loss of confidence.

x x x

The basis, for the dismissal of the complainants, is the fact that six (6) pairs of assorted sizes of Intensifying Screen of the company at the bodega were lost x x x.

An entrapment was conducted against Tano-an [Jayde] and Adonis [Helario] x x x:

x x x

Simply put, the contention, about the missing items or supplies, is credible and reliable.

It is not necessary that proof of taking or conspiracy must exist.

The existence of the fact, that items or supplies were missing at the bodega of the company, would suffice to prove loss of confidence.

Complainants failed in their duties to exercise utmost protection, care, or custody of respondent's property. Hence, their dismissal from the service is warranted.

x x x

Claims for ECOLA and overtime pay were not discussed by the complainants[,], hence, they should be denied.^[17]

Arlene and Joseph assailed before the NLRC the decision rendered by LA Demaisip.
[18]

The Rulings of the NLRC

On November 29, 2007, the NLRC ordered the reinstatement of Arlene and Joseph and the payment to them of full backwages and ten percent attorney's fees. The decision, in part, reads:

[T]he respondents [Blue Sky, Jose and Linda] accused complainants [Arlene and Joseph] of theft of company property. It was, thus, incumbent upon the respondents to prove the alleged theft by the appellants [Arlene and Joseph] with clear and substantial evidence. A reading of the record will, however, show that respondents have not presented any evidence to show the involvement of the complaint [sic] Arlene Blas and Joseph Silvano x x x in the theft. To start with, appellants were not caught red handed. No specific acts or deeds were imputed upon appellants to prove the allegation that they committed theft against the respondents. While there may be articles which may have been lost, the respondents have not shown how these were lost and how appellants participated in the theft. The fact that appellants had access to the lost items is not sufficient to prove their guilt. As shown, there were several other persons who had unlimited access to the warehouse where the items stolen were stacked. No witnesses were also presented implicating appellants in the theft.

As it is, all respondents have are general allegations that appellants conspired with the other complainants in stealing the lost items. Allegations, no matter how convincing they may sound, while they remain to be so, cannot be considered as clear and substantial evidence sufficient to justify the dismissal of an employee. While proof beyond reasonable doubt is not required, still respondents should have presented substantial evidence to support the grounds they have relied upon. x x x

x x x

Finally, [w]e do not see appellants as holding positions of trust and confidence. Before an employee may be dismissed due to willful breach of trust, he must hold a position of trust and confidence (Estiva [v]s. NLRC, G.R. No. 95145, August 5, 1993). A position of trust and confidence is one where a person is entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property (Panday vs. NLRC, G.R. No. 67664, May 20, 1994) and/or funds (Gonzales vs. NLRC, 335 SCRA 197).

Appellant Arlene Blas is a Stock Clerk while Joseph Silvano is a warehouse helper. While they may have access to the lost items, they were not entrusted with confidence on delicate matters or custody of the employer's property. They do not have the authority to withdraw, transfer or release items in the warehouse. They are mere low keyed employees