

FIRST DIVISION

[G.R. No. 169260, March 23, 2011]

**SANDEN AIRCON PHILIPPINES AND ANTONIO ANG,
PETITIONERS, VS. LORESSA P. ROSALES, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

An employer has the discretion to dismiss an employee for loss of trust and confidence but the former may not use the same to cloak an illegal dismissal.

This Petition for Review on *Certiorari*^[1] assails the Decision^[2] dated May 24, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 85698, which granted the petition for *certiorari* and reversed and set aside the Resolution^[3] dated November 28, 2003 of the National Labor Relations Commission (NLRC) in NLRC CASE No. RAB-IV-9-9330-97-L (NLRC NCR CA No. 016826-98) and reinstated the Resolution^[4] dated November 29, 2000 of the NLRC.

Also assailed is the Resolution^[5] dated August 1, 2005 denying the Motion for Reconsideration

Factual Antecedents

Sanden Aircon Philippines (Sanden) is a corporation engaged in the business of manufacturing, assembling, and fabricating automotive air-conditioning systems.

In August 1992, Sanden employed Loressa P. Rosales (Loressa) as Management Information System (MIS) Department Secretary. On December 26, 1996, she was promoted as Data Custodian and Coordinator. As such, Loressa had access to all computer programs and marketing computer data, including the Delivery Receipt Transaction files of Sanden. The Finance Department based its billing and collection activities on the marketing delivery receipt transactions. Loressa's functions and authority include opening, editing and copying files in Sanden's computers. She was also charged with the duty of creating back-up copies of all files under her custody. For this purpose, she can request all computer users at a particular time to log out or exit from the system.

On May 16, 1997, Sanden discovered that the marketing delivery receipt transactions computer files were missing. The Internal Auditing Department, through its Audit Officer, Ernesto M. Bayubay (Ernesto), immediately sent a memorandum^[6] dated May 17, 1997 to Garrick L. Ang (Garrick), the MIS Manager, requesting that a technical investigation be conducted.

On May 19, 1997, Garrick issued a memorandum^[7] enumerating the findings of the

MIS Department, the pertinent portions of which read:

This is in response on [sic] your request for a technical investigation regarding the missing Marketing Delivery Receipt (DR) transactions filed inside our computer system. The incident happened at [sic] the 16 of May 1997 12:35 noon in which we discovered a data corruption in the Marketing DR transactions file wherein all the data were missing. We immediately conducted an investigation of the incident and found out the following:

1. Before the incident, [the] Marketing Staff are still using the said file until 12:00 noon [when they] were instructed by the Data Custodian (Ms. Loressa Rosales) to log out from the system because a back-up was to be conducted. The back-up activities never took place for [unknown reasons];
2. We don't have an updated back up on the mentioned file which was the responsibility of the Data Custodian, the last back up of the file was [conducted] on 10 of May 1997.
3. The incident can only happen when only one user [was] using the file and after the incident we immediately look[ed] into the Server Manager, a security auditing tool of the system, and found out that Ms. Loressa Rosales was the only one log[ged] in on the system at 12:05 noon to 12:21 noon with 16 minutes of usage time as witnesse[d] by many MIS personnel including one audit officer.
4. The Data Custodian [has] all the rights of Add, Edit, Delete on all the files found in the system.
5. So based on the facts that we have gathered it is highly probable that Ms. Loressa Rosales was the culprit in the said incident.

On June 26, 1997, Atty. Reynaldo B. Destura (Atty. Reynaldo), the Personnel and Administrative Services Manager sent a letter^[8] to Loressa charging her with data sabotage and absences without leave (AWOL). She was given 24 hours to explain her side.

On July 2, 1997, Loressa submitted her letter^[9] to Atty. Reynaldo where she vehemently denied the allegations of data sabotage. According to her, only a computer programmer equipped with the necessary expertise and not a mere data custodian like her would be capable of such an act. As to the charge of incurring absences without leave, she challenged Sanden to specify the dates and circumstances of her alleged AWOL.

In a memorandum^[10] dated July 3, 1997, Atty. Reynaldo scheduled the administrative investigation on the charge of "data sabotage" in the afternoon of the next day. The investigation pushed through as scheduled.

On July 17, 1997, the husband of Loressa received a Notice^[11] of Disciplinary Action from Sanden notifying Loressa that management is terminating Loressa's employment effective upon receipt of the said communication. The reason cited by Sanden was the loss of trust on her capability to continue as its Coordinator and Data Custodian. Sanden indicated in the said letter that based on all the documents and written testimonies gathered during the investigation, Loressa caused the deliberate sabotage of the marketing data involving the Delivery Receipts.

On September 9, 1997, Loressa filed a complaint^[12] for illegal dismissal with a prayer for the payment of 13th month pay, attorney's fees and other benefits.

In her position paper,^[13] Loressa alleged that no evidence was presented during the investigation conducted by Sanden to prove that she indeed committed "data sabotage." She claimed that she was singled out as the culprit based on mere suspicion unsupported by any testimonial or documentary evidence. The Delivery Receipts, which Sanden claims to have been deleted, were not presented during the investigation process. Moreover, there were no witnesses presented who pointed to Loressa as the one who actually committed the "data sabotage."

On the other hand, in Sanden's position paper,^[14] it alleged that at around noon of May 16, 1997, Loressa requested the Marketing Staff to log out or exit from the computer system because she would create a backup of the Marketing Delivery Receipt Transaction files. At that time, some members of the Marketing Staff were still using and encoding additional data but as requested, all of them logged out from the network. The Server Manager showed that from 12:05 p.m. to 12:21 p.m., the only computer logged in was that of Loressa. This is precisely the period when the deletion of the Marketing Delivery Receipt Transaction files occurred.

Ruling of the Labor Arbiter

On May 28, 1998, Labor Arbiter Nieves De Castro rendered a Decision^[15] finding that Sanden is guilty of illegal dismissal. She ruled that there exists no justifiable basis for Sanden's act of terminating the services of Loressa. Nowhere in the records can be found evidence, documentary or otherwise (i) that will directly point to Loressa's having committed "data sabotage" or (ii) that she absented herself without leave. The Labor Arbiter also ruled that since animosity between Sanden and Loressa already exists, the award of separation pay in lieu of reinstatement is in order and in accord with industrial peace and harmony. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, declaring the dismissal of the complainant illegal and respondent Sanden Aircon Philippines, Inc. is ordered:

1. To pay complainant backwages from the time of [her] dismissal up to the date of promulgation of this decision[;]
2. To pay complainant separation pay of one (1) month for every year of service [from] the date of employment up to the date of

promulgation of this decision[;]

3. To pay attorney's fees of 10% of the total award[; and]

4. [To have its] financial analyst x x x compute the monetary award[s which form] part of this decision.

All other claims are dismissed for lack of merit.

SO ORDERED.^[16]

Ruling of the National Labor Relations Commission

Sanden sought recourse to the NLRC by submitting its Notice^[17] of Appeal and Memorandum on Appeal on September 28, 1998.

On November 29, 2000, the NLRC issued a Resolution^[18] affirming the May 28, 1998 Decision of the Labor Arbiter with the modification that the computation of the amount of separation pay to be awarded be reckoned from December 26, 1996 which was the date when Loressa was hired by Sanden as Data Custodian and Coordinator. The NLRC found that Loressa was paid separation pay corresponding to the period beginning August 1992 (the date she was hired) up to December 26, 1996.

Sanden filed a Motion for Reconsideration^[19] of the NLRC Resolution.

On November 28, 2003, the NLRC issued another Resolution^[20] which reversed its November 29, 2000 Resolution and dismissed the complaint for lack of merit.

Ruling of the Court of Appeals

Aggrieved, Loressa filed with the CA a petition for *certiorari*.^[21] The CA through a Resolution^[22] dated August 19, 2004, directed her to submit within five days from receipt of said resolution copies of Sanden's appeal memorandum and motion for reconsideration of the November 29, 2000 resolution which were mentioned in her petition but were not attached thereto. On September 8, 2004, Loressa submitted the documents as directed by the CA.^[23] On September 27, 2004, the CA issued its Resolution^[24] noting the compliance of Loressa and also directing Sanden to file its comment.

On October 18, 2004, Sanden filed a Motion for Extension of Time to File Comment.^[25] This was granted by the CA through its Resolution^[26] dated November 3, 2004. On November 5, 2004, Sanden filed its comment.^[27]

On May 24, 2005, the CA granted the petition and reversed and set aside the November 28, 2003 Resolution of the NLRC and reinstated the latter's November 29, 2000 Resolution.

Petitioners moved for reconsideration,^[28] but to no avail. Hence, this appeal

anchored on the following grounds:

Issues

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER SANDEN FAILED TO SUBSTANTIATE RESPONDENT ROSALES'S DISMISSAL, CONSIDERING THAT:

- A. THE ASSERTION MADE BY THE COURT OF APPEALS AS TO THE POSSIBLE EXISTENCE OF A PARALLEL SET OF DOCUMENTS CORRESPONDING TO THE DELETED FILES, AS WELL AS THE POSSIBILITY OF A GLITCH IN THE COMPUTER SYSTEM WHICH CAUSED THE DELETION OF THE SUBJECT FILES, ARE HIGHLY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.
- B. SIMILARLY, THE CLAIM THAT THE DELETION OF THE SUBJECT FILES COULD HAVE OCCURRED AT ANY POINT IN TIME IS PURELY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.
- C. LIKEWISE, THE CLAIM THAT ANOTHER PERSON COULD HAVE CAUSED THE DELETION OF THE SUBJECT FILES CONSIDERING THAT RESPONDENT ROSALES COULD NOT POSSIBLY HAVE BEEN THE SOLE PERSON WITH ACCESS THERETO IS PURELY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.
- D. HENCE, THERE IS MORE THAN SUFFICIENT SUBSTANTIAL EVIDENCE WARRANTING THE VALID DISMISSAL OF RESPONDENT ROSALES.^[29]

These matters boil down to a single issue of whether Sanden legally terminated Loressa's employment on the ground of willful breach of trust and confidence as Coordinator and Data Custodian.

Petitioners' Arguments

Petitioners contend that Loressa was vested with the delicate position of safekeeping the records of Sanden. She was charged with the duty of creating back up files so that Sanden may be fully protected in any eventuality. Loressa's act, therefore, of maliciously deleting the Marketing Delivery Receipt Transaction files is a valid ground to dismiss her from her employment on the ground of loss of trust. It is betrayal of the highest order when the very custodian of the records deleted the same.

According to petitioners, it was clearly shown by evidence that before the deletion of said files, the Marketing Staff were still using the files until noon when they were instructed by Loressa to log out from the system because a back up was to be conducted. The back up activities never took place and worse the data were deleted