

SECOND DIVISION

[G.R. No. 179293, August 14, 2009]

**EDEN LLAMAS, PETITIONER, VS. OCEAN GATEWAY MARITIME
AND MANAGEMENT, INC. RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Ocean Gateway Maritime and Management, Inc. (respondent or the company) hired Eden Llamas (petitioner) on August 1, 2001 as an accounting manager.

On February 9, 2002, Mary Anne T. Macaraig (Mary Anne), respondent's Chief Executive Officer, called petitioner's attention to her failure, despite repeated demands, to accomplish the long overdue monthly and annual company financial reports and to remit the company's contributions to the Social Security System (SSS) and PhilHealth for November and December 2001.

Subsequently or on February 20, 2002, Mary Anne again instructed petitioner to remit on that day or until the following day the company's contributions to the SSS and PhilHealth for January 2002. By petitioner's claim, she failed to comply with the instruction as money for the purpose was not, as of February 20, 2002, credited to the company's account at the bank. The following day, February 21, 2002, petitioner did not report for work as she was allegedly suffering from hypertension, hence, she was again unable to remit the contributions.

On February 26, 2002 Mary Anne sent a memorandum to petitioner charging her with gross and habitual neglect of duty and/or misconduct or willful disobedience and insubordination, detailing therein the bases of the charges, and requiring her to submit a written explanation why she should not be penalized or dismissed from employment.

Complying with the show cause order, petitioner claimed that the delay was due to the fact that she was overloaded with work and undermanned. Her explanation reads:

I was able to submit SSS/PhilHealth reports and payment from July to October, 2001 because I was assisted by an on-the-job trainee who stayed only up to November.

In spite of my repeated request to give me some help because of my heavy load nothing has been provided. I have to stay working for 10 to 12 hours a day and sometimes for more than 12 hours without overtime pay just to lessen my load and meet the deadlines.

In our February 9th meeting, Ms. Abigail Carranza was instructed to help me in order to finish the needed report for SSS/Philhealth for November up to January and she was able to finish on February 14th after she unloaded herself of her regular duties and concentrated on the SSS/Philhealth reports. Her regular work was divided between Ms. Sonia Gonzales & Mr. Efren Robles.

On February 20th at about 12:10 P.M. Ms. Macaraig gave me, in the presence of Capt. Picardal, the finished work of Ms. Carranza and instructed me to pay the SSS on that day or the next day. I called up BPI to check if the remittance from MMM has already been credited to our bank account but I was informed by BPI Forex Dept. that the money is not yet credited. The payment was made the following day by Ms. Macaraig and Ms. Carranza since I was not able to report because I got sick.

With the above explanation, the penalties imposed therefore, on non-remittance of the contribution to SSS and PhilHealth on time should not be blamed on me.

x x x x

I believe I did something good for the office when our declaration of gross income submitted to City Hall for the renewal of our municipal license was lower than our actual gross income for which the office paid a lower amount. City Hall is only after the gross income which amount I got from our Agency Fee received during the year.

If only I will be provided with some assistance that I always request, who will do some of my additional tasks especially the vouchers & check preparation, reports for SSS/Philhealth, POEA & BIR, and filing, I could perform all the tasks given to me by the Management and submit all the reports on time;

x x x x^[1] (Underscoring supplied)

On account of the delay in the remittance of those contributions, respondent was penalized in the amount of P18,580.41 which it charged to petitioner via salary deductions.

Sometime in July 2002, Mary Anne instructed petitioner to encash a check and remit the proceeds thereof to the architect who renovated respondent's new office in Makati. Petitioner instead suggested that she would ask one of the cadets to encash the check because she was scheduled to go to the Bureau of Internal Revenue, and reminded Mary Anne that it was very risky to pay in cash. Insisting that she was the boss, Mary Anne told petitioner to follow her orders. Petitioner complied. Getting wind of the incident, respondent's president asked her to give a statement of facts thereof which she did.

As respondent found petitioner's explanation unsatisfactory, it sent her a notice of

termination from employment on July 31, 2002,^[2] anchored on gross and habitual neglect of duty and/or serious misconduct or willful disobedience/insubordination, drawing, petitioner to file on August 5, 2002 before the National Labor Relations Commission (NLRC) a Complaint^[3] against respondent and Mary Anne for illegal dismissal, damages and attorney's fees.

She later amended her complaint to include as cause of action non-payment of overtime pay.^[4] Still, in her Position Paper,^[5] she included illegal deductions as additional cause of action.

Petitioner, claiming that she was fired because of the heated discussion between her and Mary Anne, maintained that her delay in the remittance of the company's SSS/PhilHealth contributions was occasioned by the circumstances she had spelled out.

Upon the other hand, respondent maintained its justification of petitioner's dismissal, highlighting her failure to accomplish the company's monthly and annual financial reports for 2001 reflecting its gross income which is determinative of the amount to be paid to secure government licenses and permits.

Respecting petitioner's claim for overtime pay, respondent contended that she, being a managerial employee and/or a member of the managerial staff, is not entitled thereto.

By Decision^[6] of April 15, 2003, the Labor Arbiter found petitioner's dismissal to have been for a just cause and with due process. However, he ordered respondent to pay petitioner's "proportionate 13th month pay for the year 2000 [sic] and final assistance" in the amount of Thirty Three Thousand Two Hundred Fifty Pesos (P33,250).

On appeal, the NLRC, finding petitioner to have been illegally dismissed, set aside the Labor Arbiter's decision and awarded backwages, separation pay, and 13th month pay. It held that petitioner's dismissal was due to the heated argument between her and Mary Anne and that she was already penalized when she was required to pay via salary deduction the above-stated fine meted the company.

On petition for certiorari, the Court of Appeals nullified the NLRC decision and reinstated the Labor Arbiter's decision.^[7] The appellate court ruled that petitioner neglected her duties not just once, but four times. Furthermore, it held that, following *Amadeo Fishing Corporation v. Nierra*,^[8] as petitioner occupied a position of trust and confidence, the company could not be compelled to continuously engage her services which is detrimental to its interests. Petitioner's motion for reconsideration having been denied by Resolution^[9] dated August 17, 2007, she filed the present petition.^[10]

The petition fails.

Under Article 282 (b) of the Labor Code, negligence must be both gross and habitual to justify the dismissal of an employee. Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act,