

THIRD DIVISION

[G.R. NO. 146367, December 14, 2005]

**SILVERIO PICAR, PETITIONER, VS. SHANGRI-LA HOTEL,
RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on *certiorari* assailing the Decision^[1] dated November 29, 2000 of the Court of Appeals in CA-G.R. SP No. 51405, entitled "*Shangri-la Hotel vs. National Labor Relations Commission and Silverio Picar.*"

The facts are:

On November 11, 1993, Shangri-La Hotel, respondent, employed Silverio T. Picar, petitioner, as repair and maintenance supervisor of its Engineering Department. As such, he was in charge of respondent's employees as well as the workers provided by KC Agency, an independent contractor.

Sometime in November 1995, an employee of respondent and three workers of KC Agency filed complaints against petitioner. They alleged that he required them to work in the renovation of his house in Tondo, Manila; that when one of the complainants applied for work, he conducted the "trade test" in his house; that in renovating his house, he used materials belonging to respondent; and that he extended loans with exorbitant interest rates to his subordinates.

In a letter dated December 14, 1995, respondent asked petitioner to comment on the complaint and placed him under preventive suspension for 15 days.

In his comment, petitioner denied using respondent's materials in the renovation of his house. He admitted though that he **hired** several employees of respondent to work for him during their days off.

Thereafter, a formal administrative investigation was conducted where the parties were given an opportunity to present their respective evidence.

On February 22, 1996, respondent dismissed petitioner from the service. While petitioner did not use its materials for the renovation of his house, however, in requiring its employees to work for him and in lending money with high interest rates to his subordinates, petitioner disregarded respondent's Code of Discipline and breached the trust it reposed in him, thus violating Article 282 of the Labor Code,^[2] specifying the causes for terminating one's employment.

Aggrieved, petitioner, on February 28, 1996, filed with the National Capital Region Arbitration Branch, Quezon City, a complaint for illegal dismissal against respondent,

docketed as NLRC NCR Case No. 00-02-01461-96.

On September 30, 1996, the Labor Arbiter rendered a Decision^[3] finding that petitioner was legally dismissed from the service.

On appeal, the NLRC reversed the Labor Arbiter's Decision, holding that the dismissal of petitioner from employment is illegal, thus:

"WHEREFORE, in view thereof, the appealed decision is hereby reversed and set aside and a new one entered finding the dismissal illegal.

Consequently, respondent is hereby ordered to pay complainant full backwages from the time of his dismissal up to the time this judgment becomes final and executory.

Likewise, complainant is entitled to his separation pay equivalent to his ½ month salary for every year of service.

Ten (10) percent of the total award is also recoverable by complainant as attorney's fees.

SO ORDERED."

Respondent filed its motion for reconsideration but was denied by the NLRC in a Resolution^[4] dated November 10, 1998. This prompted respondent to file with the Court of Appeals a petition for *certiorari*.

On November 29, 2000, the Appellate Court rendered its Decision reversing that of the NLRC, thus:

"The two (2) requisites in order to constitute a valid dismissal are: (a) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code, and (b) the employee must be accorded due process, basic of which are the opportunity to be heard and defend himself. (Santos, Jr., vs. NLRC, 287 SCRA 117). In the case at bench, there is no dispute that the second requisite has been complied with. Records reveal that petitioner was asked to answer the written charges against him and after which a formal investigation and hearing was conducted where the complainants against petitioner were asked to testify. Private respondent was allowed to cross-examine the complainants, and more importantly, allowed to present witnesses in his behalf. Clearly, there was observance of due process.

The remaining issue to be resolved therefore is, was the cause for termination in accordance with the Labor Code and was the same sufficiently established.

It is the contention of petitioner, which was upheld by the Labor Arbiter, that private respondent was guilty of violating its code of discipline by committing an abuse of status, power, or discretion, as a superior, and therefore constituted serious misconduct as provided for in Article 282 (A) of the Labor Code. This conclusion was arrived at after consideration

of the testimonies, given during the investigation conducted by petitioner, by the witnesses, not only of complainants against private respondent but also those of the latter's own witnesses.

We find therefore no reason to disagree with the disquisition of the Labor Arbiter on the matter, which We quote with conformity, thus:

'Complainant denied that he forced the contractual workers to work in remodeling his house claiming they worked voluntarily and on their days off. However, as supervisor in the repair and maintenance section of the respondent hotel, the Complainant could decide which of the contractor's employees could continue to work at the hotel. The Complainant did not deny this. The worker therefore had to be in the good graces of the Complainant, otherwise, he loses a job. Those who worked on the Complainant's house were assigned by their employer to the Hotel. They worked on remodeling the complainant's house for many weekends on their days off. An applicant was even made to take his trade test helping others do the remodeling at the Complainant's house. The Hotel was justified in believing that the casual workers helped remodel the Complainant's house out of fear for their jobs, rather than love for the Complainant.

The Complainant during the investigation admitted that he lent money to the contractual workers and received interest voluntarily given to him by the casual workers. In a subsequent statement, however, he denied receiving interest. This contradiction affects his credibility. Those who complained against him said that they had to pay interest. Considering that the Complainant was also a salaried employee, it is doubtful that he would lend money to many low-salaried casual workers who would insist on paying interest even if not required. His borrowers, like those who worked on his house, depended on him for continued work. The Hotel had reasons for believing that the complainant abused his power by lending money and charging exorbitant rates to the casual workers.' (pp. 4 & 5 Labor Arbiter's Decision, pp. 26-27, Rollo)

There is also no dispute that private respondent is a supervisor or if not, a managerial employee, in whom petitioner has reposed trust and confidence. As such therefore, **loss of trust and confidence is a valid basis for termination**. In the case of supervisors or personnel occupying positions of responsibility, the Supreme Court has held that loss of trust and confidence justifies termination. This ground for terminating employment, springs from the voluntary or willful act of the employee or by reason of some blameworthy act or omission on the part of the employee. (Caoile vs. NLRC, 299 SCRA 71).

Additionally, as regards managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal (supra). In the case at bench, private