

FIRST DIVISION

[G.R. No. 144089, August 09, 2001]

**CONCORDE HOTEL, REPRESENTED BY MICHAEL ONG SIY,
GENERAL MANAGER, PETITIONER, VS. COURT OF APPEALS,
NATIONAL LABOR RELATIONS COMMISSION, SECOND
DIVISION, AND ROBERTO PARADO, RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

This is an appeal,^[1] with prayer for a writ of preliminary injunction and temporary restraining order, from the decision of the Court of Appeals^[2] dated June 22, 2000 in C.A. G.R. SP. No. 57130 which affirmed the findings of the National Labor Relations Commission^[3] that the dismissal of herein respondent Roberto Parado was without just cause.

The facts from which the present petition proceeds are as follows:

Petitioner Concorde Hotel is engaged in the business of a hotel service at the Europa Center, Legarda Road, Baguio City. Before opening its business to the public, petitioner engaged in a mass hiring of personnel through the Highlanders Management Services, a manpower service agency, to fill up positions in the hotel. Those recruited were subjected to a ten-day training and screening period. One of those recruited is herein private respondent Roberto Parado who applied and was hired by the hotel as assistant cook.

Sometime in January 1997, petitioner discovered that some of its stocks and merchandise were missing and unaccounted for in the inventory reports. When the hotel management conducted an inquiry among the employees, it found out that some of its employees, singly or in conspiracy with each other, had been bringing home canned goods, meat and poultry, plates, glasses, spoons and other utensils, including cloth napkins.

An in-house investigation was thereafter initiated by the management. Those departments whose stock inventories included items unaccounted for were asked to explain such irregularity. The identities of those who were allegedly involved in the pilferage were gathered from the employees. The Highlanders Agency was furnished a list of the employees allegedly involved in the incident. Those who were named in the list were called and asked to explain in writing on the same day. When nobody submitted the required written explanation, petitioner and Highlanders Agency issued separate notices of termination to the said employees.

Petitioner reported the incident to the Baguio City police on January 22, 1997 and the same was entered in the police blotter. Fifteen (15) names were initially listed as suspects in the theft incident. However, eight more names were added to the

list. These names were allegedly furnished by other employees who were bothered by their conscience and decided to reveal the identities of the other employees involved in the pilferage. Private respondent was one of these additional suspects. Thereafter, he was terminated from employment.

On February 12, 1997, private respondent filed a complaint for illegal dismissal, non-payment of wages, overtime pay, premium pay for rest day and night shift and 13th month pay, backwages, separation pay, service charges, damages and indemnity for non-observance of due process with the Labor Arbiter against petitioner, Milagros Ong Siy and Michael Ong Siy, doing business under the name and style Concorde Hotel.^[4]

Private respondent alleged that on January 23, 1997, Michael Ong Siy, General Manager of Concorde Hotel, talked to him and tried to convince him to stand as witness against his co-employees suspected of having participated in the pilferage and whose services were terminated by the hotel. When he refused, he received a memorandum informing him that he was dismissed effective on that same day (January 23, 1997), for his alleged offenses in violation of the Hotel's Rules and Regulations, namely: (1) dishonesty (allowing food to be taken out of the kitchen without Order Slip); (2) rumor mongering/intriguing against the honor of co-employees; and (3) fraud or willful breach of trust and confidence.^[5] Respondent claimed that these charges had no basis as he was in fact one of the two employees who complained to the police authorities that certain employees threatened them with harm at the time the incident of pilferage was discovered. He also received a memo from Highlanders Management Services dated January 22, 1997, informing him that his employment was terminated "for failure to satisfactorily meet the minimum of the Company's standards for its employees."^[6]

Petitioner, on the other hand, maintained that after it reported the incident to the police, several employees, allegedly bothered by their conscience, approached management and named eight (8) more employees as among those who participated in the hotel theft. Private respondent was among those who were additionally named. When the management confronted him, he denied the accusations and even got angry with those who pinpointed him. The following day, January 23, 1997, the additional list of suspects was submitted by petitioner to the police authorities, which was noted in the police blotter as an addendum to the initial complaint lodged by petitioner. Private respondent was required to submit a written explanation on the same day and when he failed to do so, petitioner terminated private respondent's employment on the ground of violation of hotel rules and regulations.

On July 29, 1998, Labor Arbiter Jesselito Latoja dismissed the complaint for lack of merit. Private respondent, thus, appealed to the National Labor Relations Commission (NLRC). On October 19, 1999, the NLRC reversed the decision of the Labor Arbiter and found private respondent's dismissal from employment to be without cause. The dispositive portion of the NLRC's decision reads:

WHEREFORE, premises considered, Complainant's appeal is GRANTED. The Executive Labor Arbiter's July 29, 1998 decision on the above-entitled case is REVERSED and SET ASIDE. This Office finds Respondents

to have illegally dismissed Complainant from his employment.

Respondents Michael Ong-Siy and Concorde Hotel, Inc. are ordered to solidarily pay Complainant the following:

1. Backwages	P	158,100.00
2. Separation Pay.....		14,025.00
3. 10% Attorney's Fees.....		17,212.50
TOTAL.....	P	189,337.50

SO ORDERED. [7]

Petitioner sought a reconsideration of the aforementioned decision but the same was denied on January 11, 2000 prompting petitioner to file a petition before the Court of Appeals. On June 22, 2000, the Court of Appeals affirmed the Commission's findings. The motion for reconsideration of this decision was, likewise, denied. Hence, this petition assigning the following issues:

THE COURT OF APPEALS xxx ERRED IN AFFIRMING THE DECISION OF THE xxx NATIONAL LABOR RELATIONS COMMISSION, THE LATTER HAVING SET ASIDE THE DECISION OF THE EXECUTIVE LABOR ARBITER xxx BASED PRIMARILY ON THE ALLEGED FACT THAT SINCE NO CRIMINAL CHARGES WERE FILED AGAINST THE PRIVATE RESPONDENT, THERE WAS NO JUST CAUSE IN THE TERMINATION OF HIS SERVICES;

THE xxx COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO APPRECIATE THE FACT THAT IT WAS NOT THE HEREIN PETITIONER WHICH TERMINATED THE SERVICES OF THE PRIVATE RESPONDENT BUT IT WAS ANOTHER ENTITY;

THE xxx COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DID NOT DISMISS THE CASE AS AGAINST MILAGROS ONG SIY, WHO WAS NOT A PARTY IN INTEREST IN THE CASE;

THE xxx COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DENIED HEREIN PETITIONER'S MOTION FOR RECONSIDERATION POINTING OUT THE FOREGOING FACTS. [8]

Petitioner alleges that the Court of Appeals erred in affirming the finding of the NLRC that there was no just cause in the termination of private respondent's employment; that the basis for private respondent's dismissal was loss of trust and confidence, sanctioned by Art. 282 of the Labor Code, because he allowed food to be taken out of the kitchen without any order slip; that the fact that no criminal charges were filed against private respondent does not detract from the validity of his dismissal because proof beyond reasonable doubt is not required when the basis for an employee's termination is loss of trust and confidence; that, contrary to the findings of the Court of Appeals, private respondent was accorded due process as an in-house investigation was conducted prior to the termination; that private respondent was given the opportunity to present his side when he was required to

submit a written explanation as to his participation or non-participation in the pilferage but he failed to comply therewith prompting management to terminate his services; that, assuming for the sake of argument that private respondent was not duly notified prior to his termination, such lack of notice does not make the dismissal illegal *per se*; and finally, that it was not the one which terminated the services of private respondent but Highlanders Agency.

We deny the petition for lack of merit.

The Court has repeatedly ruled that for an employee's dismissal to be valid, two requirements must be met: *first*, the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and to defend himself, and *second*, the dismissal must be for a valid cause.^[9] The burden of proving that the dismissal of the employee was for a valid and authorized cause rests on the employer and the employer's failure to discharge such burden would mean that the dismissal was not justified and therefore illegal.^[10]

Under Article 282 of the Labor Code, an employer may terminate the services of an employee for loss of trust and confidence:

Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

xxx

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

xxx

The Court, however, is cognizant of the fact that in numerous dismissal cases, loss of trust and confidence has been indiscriminately used by employers to justify almost every instance of termination and as a defense against claims of arbitrary dismissal. In the case of *General Bank and Trust Company vs. Court of Appeals*,^[11] the Court came up with the following guidelines for the application of the doctrine of loss of confidence:

(1) loss of confidence which should not be simulated;

(b) it should not be used as a subterfuge for causes which are improper, illegal or unjustified;

(c) it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and

(d) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.