

THIRD DIVISION

[G.R. No. 115365, March 04, 1996]

**ESMENIO MADLOS, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND THE MANILA HOTEL
CORPORATION, RESPONDENTS.**

D E C I S I O N

DAVIDE, JR., J.:

This is a special civil action for *certiorari* under Rule 65 of the Rules of Court to set aside the decision of 15 February 1994^[1] and resolution of 15 March 1994^[2] of public respondent National Labor Relations Commission (NLRC) in NLRC NCR Case CA No. 00-2970-93. The former reversed the decision of 14 February 1992 of the Labor Arbiter in NLRC NCR Case No. 03-01576-91 by declaring the petitioner's dismissal as just and valid, while the latter denied the motion to reconsider the former.

NLRC NCR Case No. 03-01576-91 was commenced by the petitioner after the private respondent terminated his employment.

The parties have different versions of the facts. That of private respondent Manila Hotel is summarized in the decision of the NLRC as follows:

Complainant was employed by the respondent on March 17, 1978 as a housekeeper and in 1979 as a floor attendant.

On February 13, 1991 complainant and his co-attendant, Mauricio Adriano, were working together as partners doing their cleaning routine. At about 10:25 a.m., while they were in the corridor, Takashi Goto, a Japanese guest of Room 1610, who does not speak English, came out and made them understand that he needs laundry services. Complainant and Adriano acceded and immediately proceeded to Room 1610. The respondent claim that while complainant was collecting the soiled clothes of Takashi Goto he attempted to steal the latter's ¥100,000. Yen. Immediately thereafter the guest called up the Manager at the lobby of the hotel and reported the matter and executed an affidavit, which reads: -

REPUBLIC OF THE PHILIPPINES }
CITY OF MANILA }
AFFIDAVIT OF COMPLAINT

I, TAKASHI GOTO, Japanese, 46 years old, single, with foreign and postal address at 1-7-2 AZABU CHINA, MINATO-KU,

JAPAN holder of Passport Number ML4359817 and temporarily billeted at ROOM 1610 THE MANILA HOTEL after having been duly sworn to in accordance with law, hereby depose and say:

1. That around 10:30 a.m. today, February 13, 1991, I requested the roomboy at the 16th floor to get inside my room and collect my laundry items;
2. That while the roomboy was putting inside the laundry bag my soiled clothings, I went for a while to the closet to hang my coat and attend to something in there, leaving my wallet containing, more or less, one million cash Japanese Yen (¥1,000,000.00) atop the night table in my room. The roomboy that time was positioned near the night table;
3. That after a while, I returned to the room proper and noticed that the roomboy was placing a bundle of cash among the dirty clothings inside the laundry bag which prompted me to accost him immediately and to check the item placed inside the laundry bag;
4. That upon checking the contents of the laundry bag in the roomboy's possession, I confirmed that a bundle of my money amounting to ¥100,000.00 in 10 pcs. ¥10,000.00 denomination was among those inside the bag which amount is part of my money in my wallet placed atop the night table in my room;
5. That prior to the placing of the cash inside the laundry bag by the roomboy, all my cash are kept inside my wallet which was placed atop the night table in my room;
6. That after the recovery of my cash from the laundry bag, I got in touch with the hotel manager at the lobby and reported the incident.

(Sgd.) TAKASHI GOTO
13 February 1991

NOTE: THIS STATEMENT WAS INTERPRETED BY MR. YOSHIAKI TAKEDA, THE MANILA HOTEL GINZA RESTAURANT MANAGER.

On the same day, complainant was reassigned to the Linen Room.

On February 14, 1991, complainant was placed under preventive suspension per memorandum issued by the Rooms Director, to wit:

In view of the complaint filed by Mr. TAKASHI GOTO presently billeted at Room 1610, copy attached, which states in part

that he caught you in possession of Y100,000.00, which amount he said came from his wallet, please be informed that you are placed under preventive suspension for 30 days effective immediately pending investigation and final resolution of this case.

You are hereby requested also to submit your written explanation on this matter on or before February 18, 1991 at 10:00 A.M. in person to Mr. Baltazar of HRD so you can have full opportunity to explain your side on this complaint.

You may request your COH delegate to accompany you if you so wish.

On February 18, 1991 complainant submitted his counter-affidavit denying the complaint of Goto. On the same date, complainant was served a notice of investigation scheduled for February 20, 1991.

On February 20, 1991 complainant and Adriano were again asked to narrate the incident of February 13, 1991, which they did.

On February 25, 1991 the respondent's investigating body issued a memorandum requiring the complainant to explain within three (3) days as to why his employment should not be terminated, which complainant did on March 4, 1991.

On March 6, 1991, complainant was served a notice of termination, which reads:

SUBJECT: NOTICE OF TERMINATION

Dear Mr. Madlos:

After closely evaluating and examining the evidence on record of your administrative case, we have come up with the following factual and legal findings:

1. That you have breached the trust and confidence reposed upon you by management and you have committed acts inimical to the interest of the Hotel when you attempted, with deliberate, dishonest intention, to steal cash from a Japanese guest of the Hotel, in patent and gross violation of Section 1, Rule I of the Code of Good Behavior. Were it not for the timely attention of the guest, Mr. Takashi Goto, you could have gotten away with the cash in complete satisfaction of your intent to gain.

2. That by reason of your said act, you likewise committed serious misconduct in violation of Article 282 of the Labor

Code of the Philippines.

3. That in the light of the character of the business of the Hotel and the nature of your functions as Floor Attendant, your said act also resulted in the complete loss of the trust and confidence reposed in you by management, another ground for termination, in addition to the foregoing, under Article 282 of the Labor Code.

4. Considering that you had committed an attempted crime during working hours, you had also violated Section 2, Rule III of the Code of Good Behavior of the Hotel.

5. That you lied several times, even under oath, when you distorted facts in your Counter-Affidavit to suit your ulterior motive. For one thing, being fully aware of your frequent implication in investigations involving similar acts of dishonesty in the past, you had tried to mislead management that you have not been administratively investigated in the past except for once, contrary to the record of the Hotel which shows that on at least seven (7) occasions, you had been investigated for theft of cash occurring within your area of responsibility. For another thing, you distorted facts regarding the presence of another attendant, Mauricio Adriano, within the room, fully aware that by so alleging, you will be able to have an eyewitness' account of your actuation inside the room. Unfortunately, Adriano fully corroborated by complainant Goto, controverted in material points your said allegation.

6. That all the foregoing are sufficient grounds for the termination of your employment both under the Code of Good Behavior of the Manila Hotel as well as the Labor Code of the Philippines.

In the light of the above, you are hereby served this notice of termination of your employment with The Manila Hotel effective upon your receipt hereof.

Please turn over your accountabilities to your supervisor upon your receipt of this letter.

For your strict compliance and guidance.^[3]

On the other hand, the petitioner asserts that he, together with his co-attendant Mauricio Adriano, entered Goto's room to collect dirty clothes upon Goto's request. The petitioner stood at the foot of the hotel bed, while Mauricio stood by the mini-bar inside Goto's room. Goto stood between them. The three of them were only two