**SUPREME COURT**
**SECOND DIVISION**

**EDI STAFF BUILDERS INTERNATIONAL, INC. and LEOCADIO J. DOMINGUEZ,**
***Petitioners*,**

***-versus-***

**G.R. No. 139430**
**June 20, 2001**

**FERMINA D. MAGSINO,**
***Respondent*.**
**x----------x**

**D E C I S I O N**

**MENDOZA, *J.*:**

This is a Petition for Review on Certiorari of the Decision,[1] dated March 11, 1999, and the Resolution,[2] dated July 20, 1999, of the Court of Appeals, affirming the finding of the National Labor Relations Commission that respondent Fermina D. Magsino had been illegally dismissed and ordering petitioner EDI Staffbuilders International, Inc. (EDI) and Leocadio J. Dominguez to pay separation pay to respondent at the rate of P10,000.00 a month for every year of service.

The antecedent facts are as follows:

Petitioner EDI is a duly licensed recruitment agency. Petitioner Leocadio J. Dominguez is its president, while respondent Fermina D. Magsino was until her dismissal the supervisor of its Processing and Documentation Group responsible for ensuring that all the documentary and other requirements for the deployment abroad of contract workers recruited by petitioner were complied with. Among the requirements was the remittance of premium payments on the repatriation bonds of contract workers. Under Department Order No. 28, series of 1991 of the Department of Labor and Employment, overseas contract workers whose employment contracts have terms of six months or longer are required to post repatriation bonds to guarantee the reimbursement of the costs of repatriation, including air fare from the job site and other incidental expenses, in the event of the termination of their employment.

In compliance with the DOLE order, petitioner EDI required overseas contract workers recruited by it to pay P400.00 a year as premium depending on the length of their respective employment contracts. The premiums were remitted to a bonding company accredited by the Philippine Overseas Employment Agency. The bonding company issues a "Certificate of Coverage" or COC indicating the name of the covered overseas contract worker, the duration of the repatriation bond, and the premiums paid. The COCs are submitted together with other documents to the POEA.

On April 16, 1993, Dan de Guzman, the manager of petitioner's Processing and Documentation Group, sent respondent the following memorandum:

> Management has received reports on your withholding of collected premium payments for [the] workers' mandatory repatriation bond.
>
> As you well know, all collections are supposed to be properly documented, accounted for, and subsequently remitted/reported to accounting, whether these are official service fees of EDI-SBII or payments to government offices for processing of workers' travel documents. When PDG records were reviewed, it was discovered that our document analyst has been collecting premium payments from workers for a two-year

> bond coverage in accordance with their employment contracts. However, based on your alleged instructions, collections for two-year premium payments had been turned over to you. Subsequently, you released to the POEA liaison officer premium payments only for one year. In effect, you withheld one-year premium payment[s] which remain unaccounted to this day. It appears that this procedure has been going on since January 1992.
>
> In this connection, you are required to submit to the undersigned within three (3) working days from receipt hereof your written clarification and/or explanations on the foregoing acts, and to show and justify why no disciplinary action should be taken against you.[3]

Instead of complying with the memorandum, respondent tendered her resignation effective May 30, 1993.[4] However, action on her resignation letter was held in abeyance pending the result of the investigation of the charge against her.[5] On May 20, 1993, respondent was given notice of her termination.[6]

On July 12, 1993, respondent filed a complaint for illegal dismissal, nonpayment of salaries, leave pay, 13th month pay, profit sharing for 1992, service award for 10 years, and maternity benefits against herein petitioners. She claimed she had been dismissed without cause and without notices.

As no amicable settlement had been reached, the Labor Arbiter on August 25, 1993 directed both parties to file their position papers.

Only respondent complied. The Labor Arbiter deemed as unrebutted the allegations in respondent's complaint and position paper. On May 19, 1994, the Labor Arbiter rendered his decision, ordering petitioners to reinstate respondent to her former position without loss of seniority rights and to pay her P91,492.80 backwages and P7,624.40 13th month pay.[7]

Petitioners appealed to the NLRC which, in its decision,[8] dated March 22, 1996, affirmed the Labor Arbiter's decision. The NLRC held:

The submission of petitioners' position paper in the guise of an appeal could not be entertained under the criteria set forth in Sec. 2 of Rule VI of the Rules of Procedure of the NLRC, to wit:

> SECTION 2. Grounds. — The appeal may be entertained only on any of the following grounds:
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> a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter, Regional Director or duly authorized Hearing Officer or Administrator of POEA;
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> b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
>
> c) If made purely on questions of law; and/or
>
> d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.[9]

Through a new counsel, petitioners moved for a reconsideration, alleging that their former lawyer deliberately did not file a position paper in their behalf before the Labor Arbiter and did not even explain his failure to do so on appeal to the NLRC. However, the NLRC found petitioners' claim "not supported by evidence" and consequently denied their motion for lack of merit.[10]

Petitioners then filed a petition for certiorari. Originally filed with this Court, the petition was referred to the Court of Appeals pursuant to the ruling in St. Martin Funeral Homes vs. NLRC.[11] On March 11, 1999, the appeals court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, finding no reversible error on the part of the NLRC, the assailed decision and orders are hereby AFFIRMED with modification that in lieu of the order of reinstatement, a separation pay shall be awarded to private respondent to be

> computed at the rate of Ten Thousand Pesos (P10,000.00) for every month for every year of service.[12]

The Court of Appeals affirmed the NLRC's holding that petitioners could not present their evidence on appeal for the first time. It further held that even considering their evidence, petitioners had failed to prove that respondent was responsible for the discrepancies between the premiums paid and the premiums remitted so as to justify her termination since no documents were presented by petitioners to substantiate the same. Petitioners moved for a reconsideration, but their motion was denied on July 20, 1999.

Hence this petition. Petitioners argue that respondent was dismissed for cause, for loss of trust and confidence, and, therefore, should not have been granted separation pay.

In support of their contention, petitioners cite evidence they presented before the National Labor Relations Commission in their memorandum on appeal and motion for reconsideration, consisting of the following: (1) petitioner EDI's April 16, 1993 "notice of violation" to respondent, (2) respondent's letter of resignation, (3) notice of hearing of April 28, 1993, (4) notice of hearing of April 29, 1993, (5) notice of hearing of May 6, 1993, (6) May 6, 1993 letter of petitioner EDI notifying respondent that her letter of resignation could not be considered pending results of the respondent's investigation, and (7) May 20, 1993 notice of respondent's termination.[13]

The issues in this case are (1) whether the NLRC correctly disregarded the evidence presented by petitioners on appeal on the ground that they failed to file their position paper before the Labor Arbiter and (2) whether considering such evidence, respondent was dismissed for cause, specifically, for loss of trust and confidence, and after due notice to her.

With respect to the first question, the Labor Code provides:

> ARTICLE 221. Technical rules not binding and prior resort to amicable settlement. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence

> prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.

Accordingly, it has been settled that no undue sympathy is to be accorded to any claim of a procedural misstep in labor cases. Such cases must be decided according to justice and equity and the substantial merits of the controversy.[14] Thus, in Bristol Laboratories Employee's Association vs. NLRC,[15] the Court held that the NLRC did not commit grave abuse of its discretion in considering additional documentary evidence submitted by the employer on appeal to prove breach of trust and loss of confidence as bases for the dismissal of the petitioner in that case.

In this case, petitioners not implausibly ascribed to the fault of their counsel their failure to file a position paper (which would have constituted their evidence) before the Labor Arbiter. Considering that respondent had also been given the opportunity (in the NLRC, Court of Appeals, and also here in this Court) to rebut petitioners' evidence against her, the Court deems it best to admit such evidence and to decide this case on the merits.

Considering, however, the evidence presented by petitioners on appeal, the Court finds the same to be insufficient in establishing that respondent was dismissed for loss of trust and confidence.

At the outset, it should be stressed that in an unlawful dismissal case, the employer has the burden of proving the lawful cause for the employee's dismissal.[16] Without sufficient proof of loss of confidence, an employee cannot be dismissed on this ground.[17] It was, therefore, error for both the NLRC and the Court of Appeals to disallow evidence on appeal which petitioners tried to present.

In this case, there is no proof either of the amount collected by document analyst Mary Ann Samson and turned over to respondent or of the amount which respondent turned over to POEA liaison officer Ferdinand De la Cruz for eventual payment to the bonding

company. Proof of these amounts is necessary so that it can be determined whether respondent was responsible for any defalcation. Petitioners simply alleged that respondent failed to account for P201,600.00 without showing how this figure was arrived at. According to petitioners, three individuals, namely, Mary Ann Samson, Ferdinand De la Cruz, and respondent Fermina D. Magsino, actually handled the money for payment of the premiums of the overseas contract workers' bonds. It is, therefore, necessary for petitioners to show how much was turned over by Mary Ann Samson to respondent and how much the latter in turn turned over to Ferdinand De la Cruz. As the Court of Appeals aptly stated, "if there are no records to speak of, it follows that the discovered anomalies have no basis too."[18]

Nor can the Court of Appeals be faulted for ordering payment of separation pay in lieu of reinstatement. Indeed, if any party can complain against this feature of the decision of the Court of Appeals, it should be respondent, as employee, and not petitioners, who are the employers. The strain in the relationship between the parties, not to mention the length of time respondent has been out of petitioners' employ, make an award of separation pay appropriate.[19] The grant of separation pay is of course to be understood as separate and in addition to the payment of backwages which, in accordance with the ruling in Bustamante vs. NLRC,[20] should be computed from the time of respondent's dismissal up to the time of finality of this decision and without any deduction and qualification.

**WHEREFORE**, the decision and resolution of the Court of Appeals are **AFFIRMED** with the **MODIFICATION** that in addition to the grant of separation pay, respondent Fermina D. Magsino is awarded backwages, inclusive of allowances, and other benefits, including 13th month pay, which should be computed from the time of her dismissal up to the time of finality of this decision, without any deduction and qualification.

**SO ORDERED**.

**Bellosillo, Quisumbing, Buena and De Leon, Jr., *JJ.*, concur.**

[1] Per Associate Justice Eloy R. Bello and concurred in by Associate Justices Salome A. Montoya and Ruben T. Reyes. Petition, Annex A; Rollo, pp. 21-27.
[2] Id., Annex B; id., pp. 28-29.
[3] Id., Annex C; id., p. 30.
[4] Id., Annex D; id., p. 31.
[5] Id., Annex E; id., p. 32.
[6] Id., Annex F; id., pp. 33-35.
[7] Id., Annex G; id., pp. 36-39.
[8] Id., Annex H; id., pp. 40-48.
[9] Rollo, p. 44.
[10] Petition, Annex I; Rollo, pp. 47-48.
[11] 295 SCRA 494 (1998).
[12] CA Decision, p. 6; Rollo, p. 27.
[13] Records, pp. 63-70.
[14] Lawin Security Services, Inc. vs. NLRC (First Division), 273 SCRA 132 (1997).
[15] 187 SCRA 118 (1990). see also Philippine Telegraph and Telephone Corporation vs. NLRC, 183 SCRA 451 (1990); Magna Rubber Manufacturing Corporation vs. Drilon, 168 SCRA 727 (1988); Columbia Development Corporation vs. Minister of Labor and Employment, 146 SCRA 421 (1986); Haverton Shipping Ltd. vs. NLRC, 135 SCRA 685 (1985).
[16] Farrol vs. Court of Appeals, G.R. No. 133259, Feb. 10, 2000.
[17] Benguet Corporation vs. NLRC, 318 SCRA 106 (1999); Cocoland Development Corporation vs. NLRC, 259 SCRA 51 (1996).
[18] CA Decision, p. 5; Rollo, p. 26.
[19] Jardine Davies, Inc. vs. NLRC, 311 SCRA 289 (1999).
[20] 265 SCRA 61 (1996).