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

**CARMELITA NOKOM,**
***Petitioner*,**

***-versus-***

**G.R. No. 140043**
**July 18, 2000**

**NATIONAL LABOR RELATIONS COMMISSION, RENTOKIL (PHILS.) PAUL STEARN AND RUSSEL HARRIS,**
***Respondents*.**
**x------------------------------------------------x**

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

**DE LEON, JR., *J*.:**

Before us is a petition for review on certiorari of the Decision[1] and Resolution[2] of the Court of Appeals[3] dated February 24, 1999, and September 6, 1999, respectively, in its affirmance of the Decision[4] of the NLRC[5] dated September 30, 1997 finding petitioner Carmelita Nokom as having been legally dismissed for loss of confidence from her employment with private respondent Rentokil (Phils.).

The pertinent facts are as follows:

Petitioner Nokom was employed as a manager by private respondent Rentokil (Phils.) for its Healthcare Division effective August 1, 1994.

As manager, she was responsible for managing the Healthcare Division in accordance with the policies of Rentokil and she reported directly to the General Manager, Framie Ong-dela Luna.

Sometime in April 1996, private respondents Paul Stern and Russel Harris, Rentokil's Area Director and Regional Finance Controller, respectively, received information that fictitious invoices were sent to Rentokil clients in the Healthcare Division whose contracts have already been terminated. The fictitious invoices were allegedly made to inflate the gross revenues of the Healthcare Division to make up for the shortfall in its target revenues for the year 1995. Because initial findings showed that petitioner Nokom, as Manager of the Healthcare Division, was involved in the anomaly, private respondents placed her on preventive suspension. Later on, it was found out that petitioner knew of the fraudulent activities which, as discovered by the new Finance Manager, continued in 1996. It was likewise discovered that there were fraudulent activities in the Pest Control Division which was also headed by Framie Ong-dela Luna. As a result of that discovery, the local general manager, Framie Ong-dela Luna, was also placed on preventive suspension and she was required to submit a written explanation on the fraudulent activities.

Thereafter, private respondent Paul Stern informed petitioner of the findings of their auditor. Petitioner admitted the irregularities and, in her written explanation as required under the notice of preventive suspension, petitioner told Stern that she had no explanation and said that she was leaving her fate up to management. Petitioner also complained about acts committed by private respondent Russel Harris who allegedly forcibly opened and ransacked her office drawers sometime on April 20, 1996 thereby causing her to lose some valuables.

During the hearing conducted by Rentokil management on May 13, 1996 to investigate the anomalies, petitioner failed to appear despite notice. After the investigation, it was found out that petitioner was aware, tolerated and in fact participated in the production of fictitious invoices.[6] Thus, on May 15, 1996,[7] petitioner's employment was terminated in a letter of that date which stated:

"Dear Carmelita,

As you are aware, the Company sent to you on 18th April 1996 a memorandum relative to the fictitious invoices which were raised for Rentokil clients. You were given the opportunity to submit your written answer but you failed to do so. Moreover, you also failed to attend the scheduled hearing.

The following were established:

1. Fictitious invoices were sent to Rentokil clients in August and December of 1995, to the value of P7,114K, with purpose to fraudulently increasing the turnover and therefore the profit of the Healthcare Division.

2. The Healthcare turnover in the first quarter of 1996 was adjusted manually to declare a higher turnover than had actually occurred by some P3,019K.

3. You were aware, tolerated and in fact participated in the production of the fictitious invoices.

The above points are fraudulent and cannot be tolerated. Accordingly, you are hereby terminated from your employment effective immediately.

You are directed to return any company property that may still be in your possession.

Yours faithfully,

(Sgd.) Paul C. Stearn
Area Director, Asia North"

In a letter dated June 6, 1996,[8] Framie Ong-dela Luna was also given a letter of termination of her employment and which reads:

"Dear MRS. DELA LUNA:

You will recall that on 7 May 1996, you were required to submit a written explanation relative to report of Mr. David Stedman

about the lack of senior management control on subordinate managers giving opportunity for the commission of fraud. In fact, fictitious invoices were sent to Rentokil clients to fraudulently increase the turnover to show profit for the Healthcare Division. The Healthcare, turnover in the first quarter of 1996 was adjusted manually to declare higher turnover. In your written explanation dated 11 May 1996, you claim that your name was not stated or the person directly responsible with respect to the falsified invoices and others. Likewise, you claim that the resulting fraudulent reports were not under your direct supervision and control.

Hearings were conducted and the final report of Mr. Stedman was shown to you and taking into account your explanation and the matters taken up during the hearings, the following were established:

1. As Executive Vice President and General Manager (EVP & GM), you failed to oversee and ensure that all reports submitted to the Head Office are accurate.

2. As EVP & GM, you failed to effectively supervise your subordinate managers resulting in their commission of fraud.

3. The effect of the fraud was that the company under your control declared to the Rentokil Group some P7,114K is fictitious turnover and profit in the year of 1995. It also overdeclared its turnover in the first quarter of 1996 by P3,332K and its profit by P4,044.

4. The portfolio of Healthcare was also overdeclared in the Management Account by potentially P15,181K.

5. As a result of these actions, the trading result of 1996 will now be less by some P500K sterling.

In view of the foregoing, you are hereby terminated from your employment effective immediately on the ground of gross neglect of duties resulting in the loss of trust and confidence.

> You are directed to return company properties that may still be in your possession.
>
> Very truly yours,
>
> (Sgd.) Paul Stearn
> Area Director, Asia North"

On June 11, 1996, petitioner filed a complaint[9] for illegal suspension, illegal dismissal and non-payment of salaries against Rentokil before Labor Arbiter Eduardo J. Carpio and prayed for her reinstatement, payment of backwages, damages and attorney's fees. On the other hand, Framie Ong-Dela Luna filed a separate complaint[10] for illegal dismissal against Rentokil. On May 30, 1997, Labor Arbiter Carpio rendered a Joint Decision[11] in favor of petitioner and Framie Ong-Dela Luna and held:

> "WHEREFORE, judgment is hereby rendered declaring the employment termination of both complainants as illegal and ordering respondents to immediately reinstate them to their former position (sic) with full backwages from the time of their employment termination up to March 31, 1997 in the amount of:
>
> 1. CARMELITA NOKOM Php400,050.00
>
> 2. FRAMIE ONG-DELA LUNA Php682,366.38
>
> which amounts of backwages are still subject to further adjustment, until complainants' payroll or physical reinstatement.
>
> Respondent (Rentokil) is further ordered to pay each complainant the sum of Php100,000.00 for moral damages and Php50,000.00 for exemplary damages, plus 10% of the total judgment award by way of attorney's fees.
>
> SO ORDERED."

On appeal to the NLRC, a Decision[12] was rendered which reversed and set aside the decision of Labor Arbiter Carpio and dismissed the complaints for being without merit. In the case against Nokom, it held that gone does not have to be endowed with an exceptional intelligence to be convinced that the subject managerial employee was directly involved in the uncovered fictitious invoicing in 1995 and in the fraudulent adjustment of 'Healthcare turnover in the first quarter of 1996.' When complainant refused to explain her side in writing as well as in the hearing scheduled for said purpose, she not only waived her right to due process as guaranteed by Article 277 (b) of the Labor Code, worse, she raised the presumption that she was guilty of the infractions she was asked to explain about."[13]

Anent the case against Dela Luna, the NLRC ratiocinated that Dela Luna was dismissed not because of any evidence of her complicity or culpability vis-a-vis the subject fraudulent transactions, but rather, it was because as Executive Vice President and General Manager, she failed to oversee and ensure that all reports submitted to the Head Office are accurate and effectively supervise (her) subordinate managers resulting in their commission of fraud. These matters not only unquestionably serve as valid bases for an employer's loss of trust on a managerial employee but worse, they were factual charges that complainant Dela Luna failed to seriously refute."[14] Further, the NLRC stated that it was not too late to entertain additional grounds justifying the dismissal of complainants, i.e., committing misstatement of trading expenses, abuse of personal expenses, appointment of relatives, related party transaction, authorization of financial documents, payroll and staff loans and misstatement of portfolio, because such grounds were introduced in the proceedings before the Labor Arbiter. The NLRC justified that if such grounds to dismiss can be validly entertained by it on appeal on the ground that Article 221 of the Labor Code provided that it was not bound by technical rules or even in a petition for new trial or a petition for relief from judgment after a decision has obtained finality, there is no reason why the Labor Arbiter should ignore the infractions which were not disputed by complainants.[15]

Petitioner Nokom then filed a petition for certiorari before the Court of Appeals and, in a decision dated February 24, 1999,[16] the petition was dismissed for lack of merit and the assailed decision of the NLRC

was affirmed. It held, among others, that "petitioner's failure to detect and report to the respondent company the fraudulent activities in her division as well as her failure to give a satisfactory explanation on the existence of the said irregularities constitute 'fraud or willful breach' of the trust reposed on her by her employer or duly authorized representative" — one of the just causes in terminating employment as provided for by paragraph c, Article 283[17] of the Labor Code, as amended."[18] Further, it held that petitioner's bare, unsubstantiated and uncorroborated denial of her participation in the anomalies, and her adamant refusal to cooperate with and explain her side to the management of Rentokil is regrettable, thus, she not only waived her right to due process as guaranteed by Article 277 (b) of the Labor Code but worse, she raised the presumption that she was guilty of the infraction she was asked to explain about.[19] All in all, it was held that no grave abuse of discretion was committed by the NLRC in the issuance of its assailed decision because substantial evidence existed which supported the findings of the NLRC that, indeed, petitioner Nokom was validly dismissed by private respondents for a legal and just cause.[20] Petitioner thereafter filed a Motion for Reconsideration but the same was denied for lack of merit in a Resolution[21] dated September 6, 1999.

Hence, this petition.[22]

Petitioner Nokom raises two (2) issues, namely, (1) whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction correctible by certiorari in concluding that petitioner was legally dismissed despite the overwhelming evidence to the contrary, and (2) whether the Court of Appeals gravely abused its discretion in denying the petitioner the reliefs sought by her.[23]

Private respondents interposed with this Court a Motion to Dismiss[24] the petition on the ground that the petition was filed out of time and raised no question of law. In their Comment,[25] private respondents citing Martires vs. Court of Appeals, et al.[26] reiterated that the issues raised by petitioner did not fall within the purview of "questions of law" but rather, that they were allegations of "grave abuse of discretion" which were not the proper office of appeal by certiorari under Rule 45.[27] Private respondents averred that the Court of Appeals had already ruled that the NLRC did not commit any

grave abuse of discretion in upholding the validity of petitioner's dismissal from employment and that the NLRC correctly found more than enough substantial evidence to justify its decision.[28] Further, private respondents alleged that as gleaned from the issue raised by petitioner, it is apparent that petitioner seeks the re-evaluation by this Court of the sufficiency of evidence for petitioner's dismissal from employment which is not the function of appeal by certiorari inasmuch as this Court is not a trier of facts.[29] They added that contrary to the assertion of petitioner, she was not denied due process because the fact was that she refused to explain the existence of the anomalies in her division.[30] Petitioner refused to submit her written explanation and ignored the scheduled administrative hearing on May 13, 1996.[31] Lastly, under the principle of command responsibility, private respondents contend that as Manager of the Healthcare Division, she exercised control and supervision on all transactions including the fraudulent production of falsified invoices in her division and that her unexplained failure to detect the anomalies and unjustified refusal to give her explanation constitutes fraud and willful breach of trust.[32]

Public respondent NLRC likewise filed its Comment[33] where it stressed that only questions of law may be raised in a petition for review on certiorari and not questions on grave abuse of discretion. Even assuming that such questions on abuse of discretion may be allowed, such ground does not exist in the case at bar because even if petitioner admitted that she had direct control and supervision over the division where the anomalies occurred, she claimed that there was no evidence establishing her guilt in the fraudulent issuance of invoices.[34] Anent the claim of petitioner that she was denied due process because she was in Mindoro when the investigation was held and that she was not given an opportunity to defend herself prior to her dismissal, the NLRC found and declared that:

> "Petitioner's claim is without merit. The record reveals that as early as May 1996, Rentokil's Area Director private respondent Paul Stern met with petitioner and informed her of the irregularities discovered in her division. Stern had in fact, reminded petitioner to submit her written explanation to these findings in the notice of preventive suspension served upon her. Petitioner, however, opted to remain silent and did not give any

> explanation. She actually hid in Mindoro while the investigation was being conducted."[35]

At the outset, we must point out that while petitioner questions the alleged grave abuse of discretion of the appellate court, an error properly assignable only in a petition for certiorari under Rule 65 of the Revised Rules of Court, a close scrutiny of petitioner's arguments reveal that, undisputably, at the core of the controversy is the legality of the dismissal of petitioner.

The petition, not being meritorious, the same should be as it is hereby denied.

To constitute a valid dismissal from employment, two requisites must concur, namely: (a) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code[36] and (b) the employee must be afforded an opportunity to be heard and defend himself.[37] In fine, prior to the dismissal of an employee by an employer, the cause for termination must be duly proven and fall under those enumerated in Article 282. Of equal importance is that prior to the dismissal of an employee, the requirements of due process must be met, that is, the employee concerned must be given both due notice and the opportunity to be heard and present his side.

In the case at bar, petitioner held the position of Manager in the Healthcare Division. Her duties, among others, were to detect fraudulent activities and irregularities within her Division and thereafter report the same to management. Her position demands that she manage, control and take responsibility over activities in her department. It requires a high degree of responsibility that necessarily includes unearthing of fraudulent and irregular activities. This, she failed to do. Her 'bare, unsubstantiated and uncorroborated denial' of her participation in the anomalies does not prove her innocence nor disprove her alleged guilt. On the contrary, such denial or failure to rebut the serious accusations hurled against her militate against her innocence and strengthened the adverse averments of private respondents.

Indeed, it is a well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in

his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary.[38] The ordinary rule is that one who has knowledge peculiarly within his control, and refuses to divulge it, cannot complain if the court puts the most unfavorable construction upon his silence, and infers that a disclosure would have shown the fact to be as claimed by the opposing party.[39] Considering the possible effects of the charges against her, petitioner nevertheless chose to remain silent and deny the accusations hurled at her. She-did not present evidence in her behalf to prove her innocence.

To make matters worse, petitioner's inaction or failure to submit her written report and her non-attendance of the scheduled administrative hearing do not speak well of her supposed innocence. She cannot hide under the guise of management's alleged failure to apprise her of the hearings because she was informed of the irregularities by private respondent Stern who also told her to submit her written explanation. Hence, she has only herself to blame.

Time and again, this Court had occasion to reiterate the well-established rule that findings of fact by the Court of Appeals are conclusive on the parties and are not reviewable by this Court.[40] We find no compelling reason to disturb the factual findings of the Court of Appeals in the absence of any showing that the present case falls under the exceptions under this rule.[41] When supported by sufficient evidence, the findings of fact of the Court of Appeals affirming those of the trial court, are not to be disturbed on appeal. The rationale behind this doctrine is that review of the findings of fact of the Court of Appeals is not a function that the Supreme Court normally undertakes.[42] In the case at bar, we subscribe to the findings of fact of the Court of Appeals when it held:

> "Indeed, petitioner's failure to detect and report to the respondent company [Rentokil] the fraudulent activities in her division as well as her failure to give a satisfactory explanation on the existence of the said irregularities constitute "fraud or willful breach of the trust reposed on her by her employer or duly authorized representative" — one of the just causes in

terminating employment as provided for by paragraph c, Article 283 of the Labor Code, as amended. Concomitantly, petitioner's actuations betrayed the utmost trust and confidence reposed on her by the respondent company. We cannot, therefore, compel private respondents to retain the employment of herein petitioner who is shown to be lacking in candor, honesty and efficiency required of her position.

Loss of confidence is a valid ground for dismissing an employee and proof beyond reasonable doubt of the employee's misconduct is not required to dismiss him on this charge (Del Carmen vs. NLRC, 203 SCRA 245[1991]). It is enough that there be 'some basis' for such loss of confidence, or that the employer has reasonable grounds to believe, if not entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded of his position (Vallende vs. National Labor Relations Commission, 245 SCRA 662 [1995]).

x x x"

As enunciated in the recent case of Vitarich Corporation et al. vs. National Labor Relations Commission et al.,[43] the guidelines for the application of the doctrine of loss of confidence are:

a. loss of confidence should not be simulated;

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

c. it may 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.

Petitioner was holding a managerial position with Rentokil. As manager of the Healthcare Division, petitioner was duty-bound to perform her functions in accordance with company policies. During

her incumbency, fraudulent activities transpired for which she must be held accountable. Petitioner has not presented any persuasive evidence or argument to convince us otherwise. True it is that an employer enjoys a wide latitude of discretion in the promulgation of company rules and regulations that at times become the root of abuse by management. In the present case, however, we find that the policies of private respondent Rentokil are fair and reasonable, the decision to terminate the employment of petitioner was justified and appropriate in the light of the acts committed by her, and considering that the requirements of the constitutional right to due process were duly accorded to petitioner.

**WHEREFORE**, the petition is hereby **DENIED**. The Decision and the Resolution dated February 24, 1999 and September 6, 1999, respectively, of the Court of Appeals in CA-G.R. SP 50002, are **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED**.

**Bellosillo, Mendoza, Quisumbing and Buena, *JJ*., concur.**

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[1] Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associates Justices Artemon D. Luna and Delilah Vidallon-Magtolis in CA-G.R. SP No. 50002, Rollo, p. 36-42.
[2] Id., p. 44.
[3] Second Division.
[4] Penned by Commissioner Vicente S.E. Veloso and concurred in by Commissioner Alberto R. Quimpo, Rollo, pp. 58-70.
[5] First Division.
[6] Decision of the Court of Appeals, p. 2, Rollo, p. 37.
[7] Rollo, pp. 16-17.
[8] Rollo, pp. 66-67.
[9] Docketed as NLRC-NCR Case No. 00-04-0271196.
[10] Docketed as NLRC-NCR Case No. 00-06-03583-96.
[11] Rollo, p. 46-47.
[12] See Note 4, supra.
[13] Rollo, p. 65.
[14] Rollo, pp. 67-68.
[15] Rollo, p. 68.
[16] See Note 1, supra.
[17] Should be Article 282.

[18] Rollo, p. 40.
[19] Rollo, p. 41.
[20] Ibid.
[21] See Note 2, supra.
[22] Filed November 3, 1999, Rollo, pp. 7-35.
[23] Rollo, p. 12.
[24] Filed November 29, 1999, Rollo, p. 73.
[25] Filed January 6, 2000, Rollo, p. 81.
[26] 188 SCRA 306, 309 [1990].
[27] Sec. 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.
[28] Rollo, p. 82.
[29] Rollo, p. 82.
[30] Rollo, p. 87.
[31] Rollo, p. 89.
[32] Rollo, p. 90.
[33] Filed March 17, 2000.
[34] Comment, p. 6.
[35] Comment, p. 10.
[36] ARTICLE 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
(e) Other causes analogous to the foregoing.
[37] Permex Inc. and/or Jane (Jean) Punzalan, Personnel Manager and Edgar Lim, Manager vs. National Labor Relations Commission and Emmanuel Filoteo, G.R. No. 125031, January 24, 2000 citing Salafranca vs. Philamlife (Pamplona) Village Homeowners Assn., Inc., 300 SCRA 469, 476 (1998); Mirano vs. NLRC, 270 SCRA 96, 102 (1997), 266 SCRA 42, 45 (1997).
[38] Manila Bay Club Corporation vs. Court of Appeals, 249 SCRA 303, 306 (1995) citing Missouri, etc. R. Co. vs. Elliot, 102 Fed. Rep. 96, 102, 42 C.C.A. 188, per Caldwell, C.J., Moore on Facts, Vol. I, p. 546.
[39] Ibid. citing Societe, etc. vs. Allen, 90 Fed. Rep. 815, 817, 33, C.C.A. 282, per Taft, C.J., Moore on Facts, Vol. I, p. 561.
[40] Cebu Shipyard and Engineering Works, Inc. vs. William Lines, Inc., 306 SCRA 762, 775 (1999).

[41] (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (Commissioner on Internal Revenue vs. Embroidery and Garments Industries (Phils.), Inc., G.R. No. 96262, March 22, 1999 citing Misa vs. Court of Appeals, 212 SCRA 217; Golangco vs. Court of Appeals, 283 SCRA 283 SCRA 493, 503; Fule vs. Court of Appeals, 286 SCRA 698, 710; Halili vs. Court of Appeals, 287 SCRA 465, 470; Remalante vs. Tibe, 158 SCRA 138; Ayala Corporation vs. Ray Burton Development Corporation, G.R. 126699, August 17, 1998.

[42] Supra.

[43] 307 SCRA 509, 518 (1999) citing Midas Touch Food Corporation vs. NLRC.

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