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FIRST DIVISION

[G.R. No. 111639. July 29, 1996]

MIDAS TOUCH FOOD CORPORATION, WILSON CHU & RAMON T. LUY, *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION and IRIS FE ISAAC, *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; REQUISITES OF A VALID DISMISSAL.**— The requisites of a valid dismissal are (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code, and (2) the employee must be given an opportunity to be heard and to defend himself. Among the valid causes specified in Article 282 of the Labor Code is loss of trust and confidence of an employee, which is the basis of the termination of the respondent. Nevertheless, the substantive and procedural laws must be strictly complied with before a worker can be dismissed from his employment because what is at stake is not only the employee's position but his livelihood.

2. **ID.; ID.; ID.; AN EMPLOYEE WHO WAS SEPARATED FROM HIS EMPLOYMENT MUST BE ACCORDED HIS CONSTITUTIONAL RIGHT TO DUE PROCESS.**— An employee cannot be separated from his employment without according to him his constitutional right to due process, consisting of proper notice and hearing, whether he be a rank and file or a managerial employee. The essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. The notice required actually consists of two parts to be separately served on the employee, to wit: (1) notice to apprise

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the employee of the particular acts or omission for which his dismissal is sought; and (2) subsequent notice to inform him of the employer's decision to dismiss him.

3. **ID.; ID.; ID.; SECURITY OF TENURE, AS GUARANTEED BY THE CONSTITUTION.**— The right of security of tenure cannot be eroded, let alone forfeited except upon a clear and convincing showing of a just and lawful cause. No less than the Constitution itself has guaranteed the State's protection to labor and its assurance to workers of security of tenure in their employment. The application of this rule encompasses both the rank and file as well as the managerial employees.

4. **ID.; ID.; ID.; LOSS OF CONFIDENCE, AS A JUST CAUSE; GUIDELINES FOR ITS APPLICATION.**— While Art. 282 of the Labor Code enumerates loss of confidence as one of the just causes for termination of an employee, it must nonetheless rest on an actual breach of duty committed by the employee and not on the employer's caprices. The guidelines for the doctrine of loss of confidence to apply are: "(1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal, or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith." (*China City Restaurant Corporation v. NLRC*, 217 SCRA 443) While proof beyond reasonable doubt is not required, still substantial evidence is vital and the burden rests on the employer to establish it.

5. **COMMERCIAL LAW; CORPORATION; LIABILITY OF CORPORATE OFFICERS.**— As held in the case of *Tramat Mercantile, Inc. vs. Court of Appeals*, 238 SCRA 14, personal liability of a corporate director, trustee or officer along (although not

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necessarily) with the corporation may so validly attach, as a rule, only when he (a) assents to a patently unlawful act of the corporation, or (b) is guilty of bad faith or gross negligence in directing its affairs, or (c) is responsible for conflict of interest, resulting in damages to the corporation, its stockholders or other persons; x x x. A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment.

APPEARANCES OF COUNSEL

De Jesus Paguio & Manimtim for petitioners.

Martinez & Perez Law Offices for private respondents.

The Solicitor General for public respondent.

DECISION

HERMOSISIMA, JR., *J.*:

This is a petition seeking the reversal of the decision of the National Labor Relations Commission which declared the dismissal of private respondent Iris Fe B. Isaac illegal.

Petitioner Midas Touch Foods Corp. (Midas) is a company which owns and operates the chain of West Villa Restaurants and other mini outlets in various department stores throughout Metro Manila,[1] while petitioner Wilson Chu is its Chairman of the Board of Directors and Ramon Luy its President and Chief Executive Officer.

On September 16, 1986, private respondent Iris Fe B. Isaac was hired by petitioner Midas as its Operations Manager, next in rank to the President. As such, her task was to establish an efficient management scheme for the

[1] *Rollo*, p. 26.

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fast-food chain of West Villa Dimsum and Noodles, and the formulation of company policies on recruitment and training of personnel, planning and expansion of business, purchasing of goods and other related activities. She was given a free hand in all aspects of the operation and was allowed to bring in Alice Te to act as the Commissary Manager, and part of the management team, since the company has a centralized commissary.

Respondent Isaac continued her functions as Operations Manager until she received a letter, dated June 15, 1987, terminating her services as decided by the Executive Committee for alleged lack of confidence. On July 7, 1987, she was informed by petitioner Luy that the Executive Committee had decided to recall the termination letter. She was allowed thereby to continue to act as the Operations Manager.

Sometime in October, 1987, Alice Te was investigated for allegedly stealing food supplies which were supposedly delivered to another restaurant, named Food Center, located at the Port Area. This led to the eventual resignation of Alice Te on November 3, 1987. On the same day, petitioner Luy claims that respondent Isaac admitted to him in one conversation they had that she owns the Food Center. In view of this admission, petitioner Luy, through a letter, dated November 6, 1987, terminated the services of respondent Isaac on the ground of loss of confidence. A portion of the said letter reads:[2]

"Among other considerations, you have admitted last Tuesday (November 3, 1987) in my presence, to owning the 'canteen' located near the Port Area and spending two days operating it. Further, your commissary Manager, MS. ALICE TE, admitted Wednesday (Nov. 4, 1987) in my presence and in the presence of other witnesses that she

[2] *Rollo*, p. 144.

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uses company premises and facilities in purchasing and transporting for your 'canteen' (Records, p. 34)."

On March 9, 1988, respondent Isaac filed a complaint with the Labor Arbiter for illegal dismissal against petitioners.

On November 23, 1990, the Labor Arbiter rendered judgment, the dispositive portion of which we quote hereinbelow:[3]

"*WHEREFORE, finding the dismissal of complainant Iris Fe B. Isaac to be valid and justified, this case, impugning the legality of the same, should be, as it is hereby DISMISSED. However, respondent Midas Touch Foods Corporation and its chairman of the Board, Wilson Chu and President Ramon T. Luy, for reason afore-discussed, are hereby ordered to pay said complainant the total amount of P52,682.10, comprising her one (1) month separation pay, proportionate 13th month pay, unpaid wages from November 1 to 6, 1987 and her sick and vacation leave.*"

Petitioners and respondent Isaac appealed the aforequoted decision to the NLRC. Petitioners questioned the award of separation pay. Wilson Chu and Ramon Luy asked that they be relieved of personal liabilities. Respondent Isaac, on the other hand, argued that the Labor Arbiter committed an error in relying on the undocumented, self-serving and hearsay evidence which were gathered only after she was terminated. She further stressed that there was lack of investigation prior to her termination. Petitioners failed to present their witnesses during the hearing of the case.[4]

In its decision, rendered on July 20, 1993, the NLRC reversed the Labor Arbiter and decided:[5]

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[3] *Rollo*, p. 88.

[4] *Rollo*, p. 14.

[5] *Rollo*, p. 17.

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"WHEREFORE, premises considered, the appealed decision is modified by declaring the complainant as having been illegally dismissed. Consequently, respondents are ordered to pay complainant the following amounts: 1) backwages for three years from November 7, 1987; 2) separation pay in lieu of reinstatement equivalent to one month pay for every year of service, which is to be computed as to include the period of three years she was awarded backwages; 3) proportionate 13th month pay for 1987; and 4) unpaid wages from November 1 to 6, 1987. All other claims of the complainant are dismissed for lack of merit."

Petitioners now come before us assailing the decision of the NLRC, without filing any motion for reconsideration. While a motion for reconsideration under the Rules of Court is required before a petition for certiorari is filed, the rules admit of certain exceptions, among which is the finding that under the circumstances of the case, a motion for reconsideration would be useless.[6]

In this case, the NLRC had reversed the decision of the Labor Arbiter and no new issues were raised in this appeal. We find it quite impossible for the NLRC to reverse itself under the foregoing facts and so, a motion for reconsideration will be deemed useless. Hence, by reason of justice and equity, we resolve to settle the issues on the merits in order to avoid further delay.

We believe that the contrariety of views between the Labor Arbiter and the NLRC mandates us to consider the legality of the dismissal of respondent Isaac as the primary issue to be resolved. In doing so, it is but appropriate that we lay the legal basis for the conclusions we are to espouse in respect to the petition at hand.

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[6] Regalado, Florenz, Remedial Law Compendium, 1988 Ed., p. 460 citing People *v.* Palacio, L-13933, March 20, 1960; Villarama *v.* NLRC, 236 SCRA 281.

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The requisites of a valid dismissal are (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code, and (2) the employee must be given an opportunity to be heard and to defend himself.[7] Among the valid causes specified in Article 282 of the Labor Code is loss of trust and confidence of an employee, which is the basis of the termination of the respondent. Nevertheless the substantive and procedural laws must be strictly complied with before a worker can be dismissed from his employment[8] because what is at stake is not only the employee's position but his livelihood.[9]

The acts committed by respondent Isaac, which resulted in her employer's loss of confidence were enumerated by petitioners as follows:[10]

(a) Respondent Isaac and her partner in crime, Alice Te, used their highly confidential positions to occasionally convert the company's stockroom as their personal supermarket to stuff their canteen, for free.

(b) Because of an apparent conflict in interest, Respondent Isaac who had a full and free control of the company's operations, never expanded the company's operations to the Ermita portion of Manila, as she even admitted spending two days operating her canteen.

(c) Company properties were used by the partnership of respondent Isaac and Alice Te, not for the company's use, but for their own Food Center:

(1) The company's service jeep, reported to have made deliveries to their Food Center, was used for more than the time ordinarily consumed for official

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[7] Mapalo *v.* NLRC, 233 SCRA 266.

[8] BPI Credit Corp. *v.* NLRC, 234 SCRA 441.

[9] Maglutac *v.* NLRC, 189 SCRA 767.

[10] *Rollo*, p. 40.

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company use, with the permission of Alice Te and concurrence of respondent Isaac.

(2) Respondent Isaac, as the Operations Manager of petitioner company, signed a contract for lighted signboard whose size and color specification (brown) correspond with that of her Food Center, which is irreconciliably different from respondent company's color specification of white and green, at the expense of the company, who never benefited therefrom.

These accusations were not established by evidence in a fair and impartial hearing.

Indeed, an employee cannot be separated from his employment without according to him his constitutional right of due process, consisting of proper notice and hearing, whether he be a rank and file or a managerial employee. Due process is wanting in the case at bench. Respondent Isaac was not given notice of her impending dismissal, not even the chance to explain her side. The essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[11] The notice required actually consist of two parts to be separately served on the employee, to wit; 1) notice to apprise the employee of the particular acts or omission for which his dismissal is sought; and 2) subsequent notice to inform him of the employer's decision to dismiss him.[12] The letter given by petitioner Luy, dated November 6, 1987, terminating respondent Isaac's services was made effective immediately. Even if no hearing is conducted, the requirement of due process would have been met where a chance to explain a party's side of the

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[11] Shoemart, Inc. *v.* NLRC, 225 SCRA 311.

[12] King-size Manufacturing Corporation *v.* NLRC, 238 SCRA 349.

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controversy had been accorded him.[13] Failure to observe this procedure is fatal for this could raise doubt to the petitioner's claim that the termination was for just cause. The want of due process may be clearly construed based on the termination letter given to respondent Isaac, to quote:

"Acting in my capacity as President, I am hereby terminating your services as Operations Manager *effective immediately* on the ground of loss of confidence."[14] (Italics Supplied)

Considering the foregoing facts, we hold that respondent Isaac was denied procedural due process.

The right of security of tenure cannot be eroded, let alone forfeited except upon a clear and convincing showing of a just and lawful cause.[15] No less than the Constitution itself has guaranteed the State's protection to labor and its assurance to workers of security of tenure in their employment.[16] The application of this rule encompasses both the rank and file as well as the managerial employees. It is in this light that we are inclined to examine the validity of respondent Isaac's dismissal from employment, loss of confidence being the rationale therefor.

While Art. 282 of the Labor Code enumerates loss of confidence as one of the just causes for termination of an employee, it must nonetheless rest on an actual breach of duty committed by the employee and not on the employer's

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[13] Ferrer *v.* NLRC, 224 SCRA 410.

[14] *Rollo*, p. 10.

[15] BPI Credit Corporation *v.* NLRC, 234 SCRA 441.

[16] Tanduay Distillery Labor Union *v.* NLRC, 239 SCRA 1.

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caprices.[17] The guidelines for the doctrine of loss of confidence to apply are:[18]

> *"(1) loss of confidence should not be simulated;*
>
> *(2) it should not be used as a subterfuge for causes which are improper, illegal, or unjustified;*
>
> *(3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and*
>
> *(4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith."*

While proof beyond reasonable doubt is not required, still substantial evidence is vital and the burden rests on the employer to establish it.

In reversing the decision of the Labor Arbiter, the NLRC ruled, thus:[19]

"In the instant case, respondent Ramon T. Luy allegedly personally confronted the complainant about the ownership of a canteen and her use of company personnel and facilities in operating the same. According to respondent Luy, complainant admitted to him about her ownership of the canteen and the use of certain employees, among them Alice Te, in the purchasing of supplies for the said canteen.

But complainant denies this and explained that the truth of the matter is that the canteen is owned by her cousin and her sister and that respondent Luy knew that she was helping her sister operate. Had there been an investigation made, the truth could have come out.

Assuming that complainant indeed owned the canteen, it has not been shown however, that because of this, she

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[17] Imperial Textile Mills, Inc. *v.* NLRC, 217 SCRA 237.

[18] China City Restaurant Corporation *v.* NLRC, 217 SCRA 443.

[19] *Rollo*, pp. 15-16.

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neglected her work as Operations Manager of the respondent corporation, the same has not been established. As to the fact that complainant was engaged in a business in competition with that of the respondents. We also noted that respondents' restaurants were located in Makati, Quezon City and in San Juan, Metro Manila. The canteen being referred to as owned by the complainant is located in Port Area, Manila. We can not see our way clear how the canteen can compete with the business of the respondents, considering their different locations. For this reason, we believe that there was no sufficient basis for the respondents to lose their trust and confidence on the complainant. As to the use of the corporation's personnel in delivering supplies to the canteen, this has not been sufficiently established either."

We agree with the NLRC.

The written statements of witnesses Tierry G. Jaymalin[20] and Marcial Manacop[21] in support of all the allegations of the petitioners against respondents Isaac were unverified. These witnesses were not presented before the Labor Arbiter to testify in order to give respondent a chance to cross-examine them. Those exhibits therefore, were hearsay and of no probative value. At any rate, allegations in the affidavit[22] executed by petitioner Luy were unsubstantiated. Neither was petitioner Luy presented before the Labor Arbiter to testify on the truth of the allegations written therein. Furthermore, those so called statements and affidavit were executed only after the termination of respondent in an obvious attempt to circumvent the law, depriving her of the opportunity to defend herself and present evidence in her defense. It has to be emphasized that this Court has

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[20] Annex B, *Rollo*, p. 59.

[21] Annex E, *Rollo*, p. 64.

[22] Annex D, *Rollo*, pp. 62-63.

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held in innumerable cases, the case of People's Bank and Trust Company *v.* Leonidas[23] in particular, that, where the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.

With respect to the alleged involvement of respondent Isaac in the purported pilferage of goods in the company, the same has not likewise been established by petitioners. If, indeed, this be true, it is but proper for the petitioners to conduct a thorough investigation in order to determine the persons actually liable therefor, instead of wantonly dismissing employees out of mere suspicion.

Anent the personal liabilities of petitioners Ramon Luy and Wilson Chu, it is their contention that they cannot be held jointly or solidarily liable for the simple reason that they are not respondent's employers.

Indeed, no less than the public respondent, NLRC, in its Comment[24] admitted that petitioners are correct by stating that:

"The present petition disputes the fact that petitioners Chu and Luy were held jointly and severally liable with petitioner corporation in the payment of the monetary awards to private respondent on the ground that said individual petitioners, being only the president (Luy) and chairman of the board of directors (Chu) of petitioner corporation, are not the employers of the private respondent.

It is submitted that petitioners' contention is correct. The individual petitioners cannot be held to be personally liable since they are not the employers of private respondent."

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[23] 20 SCRA 165.

[24] *Rollo*, p. 159.

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As we have held in the case of Tramat Mercantile, Inc. *vs.* Court of Appeals,[25] personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when — 1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons; x x x.

Moreover, Section 31 of the Corporation Code provides that:

"SEC. 31. Liability of directors, trustees or officers.— Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are *guilty of gross negligence or bad faith* in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons." (Italics supplied)

A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment.[26] No bad faith can be attributed to both petitioners Luy and Chu. Neither were they employers of respondent Isaac. Hence, they should not be made liable for the payment of damages to respondent.

WHEREFORE, the Decision of the National Labor Relations Commission is AFFIRMED, BUT WITH THE MODIFICATION that only petitioner corporation should be made solely liable for all the monetary awards considering

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[25] 238 SCRA 14.

[26] 221 SCRA 9.

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that petitioners Luy and Chu were not the employers but merely the President and Chairman of the Board respectively.

Costs against petitioner corporation.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and *Kapunan JJ.,* concur.

EN BANC

[G.R. No. 114313. July 29, 1996]

MGG MARINE SERVICES, INC. and/or DOROTEO C. GARLAN and CESAR ROTILO, *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION and ELIZABETH A. MOLINA, *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; REQUISITES.—** To justify the dismissal of an employee, the employer — as a rule — must prove (a) that the termination was due to a just cause and (b) that the employee was afforded due process prior to dismissal. To constitute a completely valid and faultless dismissal, it is well-settled that the employer must show not only sufficient ground therefor but it must also prove that it observed procedural due process by giving the employee two notices: one, of the intention to dismiss, indicating therein his acts or omissions complained against, and two, notice of the decision to dismiss and an opportunity to