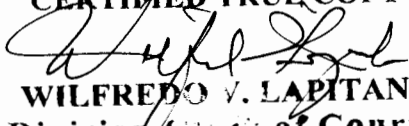





Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

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 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 OCT 05 2016

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NARCISO T. MATIS,
 Petitioner,

G.R. No. 206629

Present:

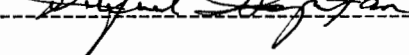
- versus -

VELASCO, JR., J., *Chairperson,*
 PERALTA,
 PEREZ,
 REYES, and
 PERLAS-BERNABE,* *JJ.*

MANILA ELECTRIC COMPANY,
 Respondent.

Promulgated:

September 14, 2016

X----------X

DECISION

PERALTA, J.:

Before this Court is a petition for review on *certiorari* filed by petitioner Narciso T. Matis (*Matis*) assailing the Decision¹ and Resolution,² dated June 11, 2012 and March 1, 2013, respectively, of the Court of Appeals (*CA*), which affirmed with modification the Decision³ dated July 22, 2009 and Resolution⁴ dated December 28, 2009 of the National Labor Relations Commission (*NLRC*).

The antecedents follow.

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated April 20, 2015.

¹ Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring, *rollo*, pp. 36-50.

² *Id.* at 33-34.

³ Penned by Commissioner Perlita B. Velasco, with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring, *CA rollo*, pp. 40-54.

⁴ *Rollo*, pp. 219-221.



Respondent Manila Electric Company (*Meralco*) hired petitioner Matis, and complainants Nemencio Hipolito, Jr. (*Hipolito*), Raymundo M. Zuñiga⁵ (*Zuñiga*), Gerardo de Guia (*De Guia*), and Ricardo Ignacio (*Ignacio*) on various dates and in various capacities.⁶ At the time of their dismissal, Matis was a foreman; Hipolito and Zuniga were acting foremen; De Guia was a stockman/driver; and Ignacio was a leadman.

On July 27, 2006, Matis and the others were dismissed on the grounds of serious misconduct, fraud or willful breach of trust, commission of a crime or offense against the employer and other causes analogous to the foregoing.⁷ They were dismissed for their alleged cooperation in the pilferages of Meralco's electrical supplies by one Norberto Llanes (*Llanes*), a non-Meralco employee, particularly, in an incident which took place on May 25, 2006. On that same day, Matis and the rest of the crew of Trucks 1837 and 1891 were replacing a rotten pole in Pacheco Subdivision, Dalandan, Valenzuela City.⁸

At around 10:30 in the morning while the Meralco crew were working at a distance, Llanes was hanging around the work site. He appeared familiar with the crew as he was handing tools and drinking water with them. He nonchalantly boarded the truck in the presence of Zuñiga and De Guia, and rummaged through the cargo bed for tools and materials and stashed them in his backpack without being stopped by any of the crew. Thereafter, Matis and the other crew manning Truck 1891 arrived. Llanes boarded Truck 1891 and filched materials while Matis was around. For more than two hours, Llanes was walking around, boarding the trucks, freely sorting and choosing materials and tools inside the trucks then putting them in his backpack, talking casually with the crew, and even drinking water from the crew's jug.⁹

Unknown to them, a Meralco surveillance team, composed of Joseph Aguilar (*Aguilar*), Ariel Dola (*Dola*) and Frederick Riano (*Riano*), was monitoring their activities and recording the same with a Sony Video 8 camera. Due to reports of alleged pilferages occurring in Trucks 1837 and 1891, Meralco was prompted to create the said team or "task force" to tail and monitor Matis and the others.

In a Memorandum dated June 16, 2006, Meralco required them to appear before Meralco's counsel for an investigation relative to the incident

⁵ Also spelled as "Zuniga" elsewhere in the records.

⁶ *Rollo*, p. 37.

⁷ *Id.* at 38.

⁸ *Id.* at 224.

⁹ *Id.* at 224-225.

on May 25, 2006. Matis and the others denied any involvement in the stealing of the company properties. Subsequently, they were dismissed.

Matis and the other complainants alleged that Meralco's dismissal of their employment violated their constitutional right to property protection, social justice and security of tenure. They denied any complicity or participation in the pilferage. They claimed that the affidavits presented by Meralco have weak probative value. They also alleged that Meralco did not observe due process in their termination.

Meralco, on the other hand, maintained that petitioner and the complainants were validly dismissed on the ground of serious misconduct. Meralco presented the affidavits of Aguilar, Dola and the probationary employees who were members of the crew, and the video showing the incident on May 25, 2006 to show that complainants had knowledge, direct participation and complicity in the stealing. Meralco insisted that there is evidence to support that it was not the first instance that Llanes has been stealing supplies and materials, and that such were done in the presence of, and with clear knowledge of the dismissed crew.

In a Decision¹⁰ dated April 11, 2007, the Labor Arbiter (*LA*) ruled that Matis and the others were not illegally dismissed. The *LA* considered their dismissal from service too harsh when suspension would have sufficed given that they were not entirely faultless. The charge of serious misconduct cannot prosper as there is no substantial evidence of their alleged cooperation and participation in the theft. Likewise, the *LA* rejected respondent's claim that complainants are guilty of gross negligence since there was no evidence of complainants' habitual neglect of duty. The dispositive portion of the decision reads:

WHEREFORE, all foregoing premises considered, judgment is hereby rendered finding complainants' dismissal too harsh a penalty being not commensurate with their simple neglect of duties as earlier discussed above. Accordingly, complainants are hereby ordered to immediately report back to work within ten (10) working days from receipt of this decision without loss of seniority rights and benefits but without the payment of backwages. As clarified above, this return-to-work order is NOT a reinstatement order within the ambit of Article 279 of the Labor Code since there is NO finding of illegal dismissal herein.

For being a nominal party, Mr. Manuel M. Lopez is hereby ordered dropped as party-respondent in these consolidated cases.

All other claims are dismissed for lack of merit.

¹⁰ Penned by Labor Arbiter Napoleon M. Menese; *id.* at 223-234.



SO ORDERED.¹¹

On appeal, the NLRC ruled that Matis and the other complainants were validly dismissed. Their suspicious leniency and laxity in allowing Llanes to board the trucks, conversing with him intimately, permitting him to return to the trucks with empty sacks in tow, and the quantity of materials stolen, all video-taped and described in detail by the surveillance team, belie their denial of involvement.¹² Even assuming that they were not conspirators in the crime of theft, their dismissal is still justified for they were guilty of gross negligence. Considering the circumstances surrounding the pilferage, the willful inaction of the complainants when there is a duty to stop the stealing amounted to gross negligence.¹³ The complainants were also validly dismissed on the ground of loss of trust and confidence. Their gross negligence amounted to a breach of trust and confidence reposed upon them as employees entrusted with properties of respondent. However, the NLRC held that Ignacio was illegally dismissed in the absence of evidence showing his complicity or participation in the theft. The decretal portion of the decision reads:

WHEREFORE, the appeals are PARTIALLY GRANTED and the Decision appealed from is hereby MODIFIED as follows:

- 1) Complainants Narciso Matis, Nemencio Hipolito, Jr., Raymund Zuñiga and Gerardo De Guia were validly terminated from their employment, hence they are not entitled to the relief of “returning to work” and their complaint is DISMISSED for lack of merit.
- 2) Complainant Ricardo Ignacio was illegally terminated and, therefore, he is entitled to full backwages from the time of his termination until his actual reinstatement.

The dropping of Mr. Manuel M. Lopez as party-respondent is AFFIRMED.

SO ORDERED.¹⁴

Finding no cogent reason to disturb the findings of the NLRC, the CA denied the petition for *certiorari* filed by Matis and the others, and affirmed the decision of the NLRC. The CA held that the ruling of the NLRC deserves respect since the same was based on factual findings supported by clear and convincing evidence and accepted jurisprudence. The *fallo* of the decision reads:



¹¹ *Id.* at 234.

¹² *CA rollo*, pp. 50-51.

¹³ *Id.* at 51.

¹⁴ *Id.* at 53.

WHEREFORE, PREMISES CONSIDERED, the herein petition for *certiorari* is DENIED. The assailed Decision of the National Labor Relations Commission, First Division, in NLRC CA No 052667-07 dated July 22, 2009 and the Resolution promulgated on 28 December 2009 STAND.

SO ORDERED.¹⁵

Upon the denial of the motion for reconsideration, Matis filed before this Court the instant petition raising the following issues:

- I. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THERE WAS NO DISMISSAL IN THE INSTANT CASE.
- II. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION.

In essence, the issue to be resolved by this Court is whether petitioner Matis was illegally dismissed.

This Court resolves to deny the instant petition.

Matis prays that this Court relax the application of the Rules where strong considerations of substantial justice are manifest in the petition. He avowed that his counsel informed him of the denial by the CA of his Motion for Reconsideration only on April 12, 2013.

Section 2, Rule 45 of the Rules of Court provides:

Section 2. Time for filing; extension. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, **the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.** (Emphasis supplied)

It is settled that the rules of procedure are meant to be tools to facilitate a fair and orderly conduct of proceedings.¹⁶ The relaxation or suspension of procedural rules, or the exemption of a case from their

¹⁵ *Supra* note 1, at 49.

¹⁶ *People v. Court of Appeals*, G.R. No. 183652, February 25, 2015, 751 SCRA 675, 693.



operation, is warranted when the purpose of justice requires it.¹⁷ However We held in the case of *Sebastian v. Hon. Morales*¹⁸ that:

Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.

We note that in his statement of material dates, Matis alleged that his counsel received the denial of his Motion for Reconsideration on April 11, 2013, while he asseverated in his statement of the matters and in his verification and certification of non-forum shopping that his counsel received the same on March 11, 2013.

This Court, in a Resolution¹⁹ dated July 22, 2013, granted a 30-day extension within which to file his petition for review on *certiorari*, counted from the expiration of the reglementary period, and granted his second motion for extension of fifteen (15) days to file the petition filed by his new counsel. Thus, Matis filed his petition for review on *certiorari* on May 30, 2013.

We resolve to allow the instant petition and decide on the merits of the case as petitioner adequately explained in his petition the reason for his belated filing, and given that he promptly sought for extensions of time for cogent grounds before the expiration of the time sought to be extended.

As to the substantive issue, Matis maintains that Meralco failed to prove that he was legally dismissed based on the ground that he was grossly negligent which constituted breach of trust as provided by the Labor Code. To be a ground for dismissal, the neglect of duty must be both gross and habitual. The case stemmed from a single incident which occurred on May 25, 2006, thus, he cannot be validly dismissed from employment.

Gross negligence connotes want of care in the performance of one's duties.²⁰ It evinces a thoughtless disregard of consequences without exerting

¹⁷*Id.*¹⁸

445 Phil. 595, 605 (2003).

¹⁹*Rollo*, pp. 515-516.²⁰*Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 162 (2011).

any effort to avoid them.²¹ Fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business. On the other hand, habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.

Records reveal that it was not only on May 25, 2006 that Llanes, the pilferer, was seen during a Meralco operation as he was previously noticed by Meralco employees in past operations. Also, the evidence ascertained the presence of Matis in the worksite where the pilferage took place, and his familiarity with Llanes. Matis's tolerance of the activities of Llanes demonstrates his complicity in the theft, and not a mere want of care in the performance of his duty or gross negligence.

Assuming Matis were negligent, his inaction can only be regarded as a single or isolated act of negligence which cannot be considered as gross and habitual, hence, cannot be considered as a just cause for his dismissal. Nevertheless, such finding will not warrant the reversal of the instant case.

Article 282 (c) of the Labor Code provides that an employer may terminate an employment for fraud or willful breach by the employee of the trust reposed in him by his employer or duly-authorized representative. It is stressed that loss of confidence as a just cause for the termination of employment is based on the premise that the employee holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.²² The essence of the offense for which an employee is penalized is the betrayal of such trust.

Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature.²³ A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.²⁴

Matis alleges that he may not be removed on the ground of breach of trust and confidence as he was not a managerial employee or an employee primarily entrusted with the handling of company funds or property.

²¹ *Century Iron Works, Inc., et al. v. Bañas*, 711 Phil. 576, 589 (2013).

²² *Cocoplans, Inc., et al. v. Ma. Socorro R. Villapando*, G.R. No. 183129, May 30, 2016.

²³ *Manarpiis v. Texan Philippines, Inc.*, G.R. No. 197011, January 28, 2015, 748 SCRA 511, 529.

²⁴ *Cocoplans, Inc. et al. v. Ma. Socorro R. Villapando*, *supra* note 22.



We are not persuaded. Loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) **employees who are routinely charged with the care and custody of the employer's money or property which may include rank-and-file employees**, e.g., cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property.²⁵

It is established that Matis was a foreman with a monthly salary of ₱57,000.00 at the time of his dismissal.²⁶ The vehicles being utilized in the repair and maintenance of Meralco's distribution lines ordinarily carried necessary equipment, tools, supplies and materials. Thus, Matis, as the foreman, is routinely entrusted with the care and custody of Meralco's properties in the exercise of his function.

In the case of *Apo Cement Corp. v. Baptisma*,²⁷ it was held that for an employer to validly dismiss an employee on the ground of loss of trust and confidence, the following guidelines must be observed: (1) loss of confidence should not be simulated; (2) it should not be used as 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. More importantly, the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.²⁸

Contrary to his allegation that he failed to notice the thievery because he and the crew were preoccupied with the replacement of the rotting post, Matis lingered, by his admission, to supposedly look after the truck.²⁹ As established, the crew exhibited familiarity with the culprit during the entire operations. Based on the testimonies of the witnesses, Llanes was seen picking up unused supplies and materials that were not returned to the company in the past operations. He was casually boarding the trucks despite the same being prohibited from non-Meralco employees. Matis was seen conversing intimately with Llanes inside Truck 1891. Thereafter, Llanes was able to filch Meralco properties in the presence of Matis. Thus, Matis was complicit in the pilferage by being familiar with Llanes, by his inaction while the looting was being perpetrated, and by not reporting the same to the authorities and to Meralco. The totality of the circumstances convinces this Court that Matis is guilty of breach of trust.

²⁵ *Century Iron Works, Inc., et al. v. Bañas*, supra note 21, at 588.

²⁶ *Rollo*, p. 224.

²⁷ 688 Phil. 468, 480-481 (2012).

²⁸ *Manarpiis v. Texan Philippines, Inc.*, supra note 23.

²⁹ *Sinumpaang Salaysay* of Narciso Matis, *rollo*, p. 255.



We reiterate this Court's ruling about the very same incident on May 25, 2006 in the case of *Meralco v. Gala*,³⁰ that to Our mind, the Meralco crew (the foremen and the linemen) allowed or could have even asked Llanes to be there during their operations for one and only purpose — to serve as their conduit for pilfered company supplies to be sold to ready buyers outside Meralco worksites. As held in the *Gala* case:

The established fact that Llanes, a non-Meralco employee, was often seen during company operations, conversing with the foremen, for reason or reasons connected with the ongoing company operations, gives rise to the question: what was he doing there? Apparently, he had been visiting Meralco worksites, at least in the Valenzuela Sector, not simply to socialize, but to do something else. As testified to by witnesses, he was picking up unused supplies and materials that were not returned to the company. From these factual premises, it is not hard to conclude that this activity was for the mutual pecuniary benefit of himself and the crew who tolerated the practice. For one working at the scene who had seen or who had shown familiarity with Llanes (a non-Meralco employee), not to have known the reason for his presence is to disregard the obvious, or at least the very suspicious.³¹

Proof beyond reasonable doubt is not needed to justify the loss of confidence as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.³² Meralco was able to establish through substantial evidence that it has reasonable ground to believe that Matis's involvement in the incident rendered him unworthy of the trust and confidence reposed upon him as a foreman of Meralco.

As settled in *Vergara v. NLRC*,³³ the filing of the complaint by the public prosecutor is sufficient ground for a dismissal of an employee for loss of trust and confidence. The evidence supporting the criminal charge, found sufficient to show *prima facie* guilt after preliminary investigation, constitutes just cause for termination based on loss of trust and confidence.³⁴ In this case, the Assistant City Prosecutor of Valenzuela City recommended the filing of information for qualified theft against Matis and the others.³⁵

Additionally, an employee's acquittal in a criminal case does not automatically preclude a determination that he has been guilty of acts

³⁰ 683 Phil. 356 (2012)

³¹ *Id.* at 366-367.

³² *Manarpiis v. Texan Philippines, Inc.*, *supra* note 23.

³³ 347 Phil. 161 (1997).

³⁴ *Id.* at 174.

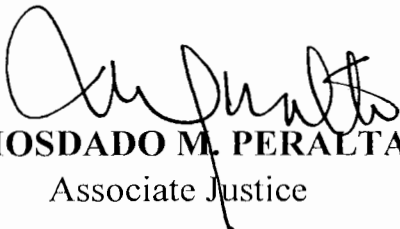
³⁵ *Rollo*, pp. 350-351.

inimical to the employer's interest resulting in loss of trust and confidence.³⁶ An acquittal in criminal prosecution does not have the effect of extinguishing liability for dismissal on the ground of breach of trust and confidence.³⁷ The trial court acquitted Matis and the others due to insufficiency of evidence to warrant conviction beyond reasonable doubt.³⁸ While the evidence presented failed to satisfy the quantum of proof required in criminal cases, the same substantially proved the dishonest act of Matis which warranted his dismissal from employment.

To be sure, length of service is taken into consideration in imposing the penalty to be meted upon an erring employee.³⁹ However, in cases of breach of trust and loss of confidence, the length of time, if considered at all, shall be taken against the employee, as his involvement in dishonest acts reflects a regrettable lack of loyalty which should have been strengthened, instead of betrayed.⁴⁰ Unlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain.⁴¹ In the case at bar, Matis's involvement in the pilferage of Meralco's properties resulted in respondent's loss of confidence in him. If considered, petitioner's length of service should be taken against him as his familiarity with Llanes, his disregard of the company rules, and passivity during the thievery echo his disloyalty with his employer which he served for thirty-one years. As such, fairness dictates that Matis, who has breached the confidence reposed on him, should not be allowed to continue his employment with Meralco.

WHEREFORE, the petition for review on *certiorari* filed by petitioner Narciso T. Matis is hereby **DENIED**. The Decision and Resolution, dated June 11, 2012 and March 1, 2013, respectively, of the Court of Appeals affirming with modification the Decision dated July 22, 2009 and Resolution dated December 28, 2009 of the National Labor Relations Commission are hereby **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

³⁶ *Vergara v. NLRC*, *supra* note 33, at 174.

³⁷ *Amadeo Fishing Corporation v. Nierra*, 509 Phil. 13, 29-30 (2005).

³⁸ Order dated July 8, 2013, penned by Presiding Judge Maria Nena J. Santos; *rollo*, pp. 575-582.

³⁹ *Salvador v. Philippine Mining Service Corp.*, 443 Phil. 878, 892 (2003).

⁴⁰ *Id.* at 893.

⁴¹ *Id.* at 892.

WE CONCUR:

[Signature]
PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson

[Signature]
JOSE PORTUGAL PEREZ
Associate Justice

[Signature]
BIENVENIDO L. REYES
Associate Justice

[Signature]
ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

[Signature]
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

[Signature]
MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
[Signature]
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
OCT 05 2016