

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 1, 2019** which reads as follows:*

“G.R. No. 193811 (MA. MELISSA P. TOLOSA, Petitioner, v. CYBER CITY TELESERVICES LTD. and GEORGE D. SORIO, Respondents.) – After a judicious review of the records herein, the Court denies the petition for review upon failure of the petitioner to prove that the Court of Appeals (CA) committed reversible error in promulgating its June 25, 2010 Decision¹ and October 1, 2010 Resolution,² finding her termination from employment to be valid.

Article 297³ of the *Labor Code* authorizes an employer to dismiss an employee for committing fraud, or for willful breach of the trust reposed by the employer. In order for a dismissal based on breach of trust and confidence to be valid, the following requisites must concur: (1) the employee must be holding a position of trust and confidence; and (2) the act complained against would justify the loss of trust and confidence.⁴

In connection with the first requisite, the Court has held that there are two classes of employees that are vested with trust and confidence. To the first class belong the managerial employees or those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial

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¹ *Rollo*, pp. 83-108; penned by Associate Justice Stephen C. Cruz, concurred by Presiding Justice Andres B. Reyes, Jr. (now a member of the Court) and Associate Justice Isaias P. Dicedican.

² *Id.* at 110-111.

³ Formerly Art. 282(c) of the Labor code; See DOLE Department Advisory No. 1, series of 2015.

⁴ *Lagahit v. Pacific Concord Container Lines*, G.R. No. 177680, January 13, 2016, 780 SCRA 427, 444.

actions. The second class includes those who in the normal and routine exercise of their functions regularly handle significant amounts of money or property. Cashiers, auditors, and property custodians are some of the employees in the second class.⁵

Indubitably, the petitioner occupied a position of trust and confidence as Treasurer of the respondent company. The CA had properly observed that as treasurer, the petitioner had breached the trust of her employer in handling the company's funds, thus:

Private respondent's failure to account for the missing funds warrants the loss of petitioner's trust and confidence. As the treasurer or the person entrusted with the said funds, she had the duty of safekeeping the same and the responsibility to answer for its loss. Failing such duty and responsibility, private respondent undeniably lost or breached her employer's trust and confidence.⁶

The Court also upholds the CA's finding that the respondents observed the procedural requirements in effecting the termination of the petitioner. The exchange of letters between the respondent company and the petitioner showed that she had been duly notified of the unaccounted funds under her care and was provided with several opportunities to explain the cause of the missing funds. Also, the Notice of Termination issued by the respondent company had elucidated the reasons behind her dismissal. These all indicate that the respondents had fully complied with the twin-notice requirement in terminating the petitioner from employment.

The Court also finds no reason to declare the illegality of the petitioner's preventive suspension as it was done to secure the vital records and documents of the respondents which, in view of the position of the petitioner as treasurer, were easily accessible to her.⁷ Under Section 4, Rule XIV of the *Omnibus Rules Implementing the Labor Code*, a preventive suspension shall not exceed thirty days, after which period the employee must be reinstated to his former position. If the suspension is otherwise extended, the employee shall be entitled to his salaries and other benefits that may accrue to him during the period of such suspension.⁸ Accordingly, the preventive suspension meted against the petitioner was valid only from August

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⁵ Id.

⁶ *Rollo*, p. 105.

⁷ *Philippine National Bank v. Velasco*, G.R. No. 166096, September 11, 2008, 564 SCRA 512, 540.

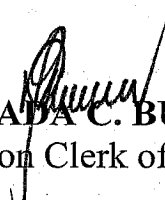
⁸ *Community Rural Bank of San Isidro (N.E.), Inc. v. Paez*, G.R. No. 158707, November 27, 2006, 508 SCRA 245, 263.

28, 2003 until September 28, 2003. Hence, the petitioner is entitled to receive her salaries and benefits during the extended period of her suspension until her termination on November 18, 2003.

WHEREFORE, the Court **DENIES** the petition for review for being unmeritorious and **AFFIRMS** the June 25, 2010 Decision and October 1, 2010 Resolution of the Court of Appeals.

SO ORDERED.” *Carandang, J., on official leave.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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