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MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

APR 24 2019

THIRD DIVISION

MINDA TOPINIO CADAVAS,
Petitioner,

G.R. No. 228765

- versus -

Present:

**COURT OF APPEALS, CAGAYAN
DE ORO CITY, TWENTY-THIRD
DIVISION, AND DAVAO
DOCTORS HOSPITAL AND/OR
RAYMUNDO DEL VAL,
PRESIDENT,**

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
CARANDANG, * JJ.

Respondents.

Promulgated:

March 20, 2019

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[Signature]-----X

DECISION

PERALTA, J.:

This is a petition for *certiorari* assailing the Decision¹ of the Court of Appeals dated December 4, 2015, which affirmed the Resolution of the National Labor Relations Commission (NLRC), dismissing petitioner Minda T. Cadavas' complaint for illegal dismissal.

The facts are as follows:

Petitioner Minda Cadavas was hired as a Staff Nurse by respondent Davao Doctors Hospital (DDH) on January 16, 1989. She was promoted to Nurse Supervisor in the course of her employment until her dismissal on May 11, 2012.²

* Designated as additional member per Special Order No. 2624 dated November 28, 2018.

¹ The Decision was penned by Associate Justice Maria Filomena D. Singh, and concurred in by Associate Justices Edgardo T. Lloren and Ronaldo B. Martin; *rollo*, pp. 191-198.

² *Id.* at 29.

Sometime in February 2012, petitioner Cadavas' aunt, Shirley Aninion, was confined at DDH for breast cancer, stage four. To help lessen the hospital expenses of her aunt, Cadavas, with the help of some hospital staff, was able to obtain supplies and medicines used in her aunt's operation from the Emergency Department and Operating Room Central Supply Service without being entered in the records so that the said supplies and medicines would not be charged to her aunt's bill, but Cadavas would replace these items (purchased at a lower price outside the hospital). The items taken were valued at ₱6,000.00, more or less, and were eventually replaced by Cadavas.³

On April 16, 2012, respondent DDH, through the Director of Nursing Service, sent petitioner Cadavas a notice⁴ to explain the incident of February 25, 2012 when she allegedly got supplies and drugs from the Emergency Department and Operating Room Central Supply Service and why no disciplinary action would be taken against her for the grave offense of willful abuse of hospital property.

In her letter-explanation⁵ dated April 18, 2012, petitioner Cadavas stated that after the STAT chest tube insertion procedure of her aunt, she asked Nursing Aide Madellen Añasco if the supplies and medicines used by her aunt could be replaced, and Añasco agreed; hence, the items were not charged to her aunt. Moreover, after the VATS operation of her aunt on March 10, 2012, the staff clerk of the Operating Room Central Supply Service did not charge to her aunt's account the Thoraset used because they had an agreement that it would be replaced. The said supplies and medicines were eventually replaced. Cadavas said that there was no intention on her part to abuse the hospital's property or supplies, as she merely intended to help her aunt lessen her hospital expenses that reached ₱254,000.00. She stated that she may have committed some mistakes, but they were not done secretly on her own to evade detection, but with the consent and knowledge of some hospital staff.

On May 2, 2012, an administrative hearing was conducted regarding the complaint against petitioner Cadavas. In the said hearing, Cadavas reiterated that she asked Nursing Aide Añasco if the supplies used on her aunt could be replaced, with the intention to help lessen the hospital expenses of her aunt. Cadavas admitted that she was aware of the hospital policy that they are not allowed to purchase medicines outside the hospital and that employees are not allowed to borrow supplies for personal use, but it has long been a practice that employees are allowed to replace supplies or medicines from the emergency room, instead of charging them to the

³ *Id.*

⁴ Records, Volume 1, p. 21.

⁵ *Id.* at 22-23.



patient.⁶ She admitted that she violated the rules because she was only thinking of helping her aunt at that time.⁷ She was not able to ask approval from her director, but the people around the emergency room were aware of the borrowed items.⁸ She stated that she had already replaced the items.

Thereafter, Cadavas received a Memorandum⁹ dated May 9, 2012, informing her that her employment was being terminated for dishonesty and loss of trust and confidence, thus:

In your letter of explanation dated 18 April 2012, you admitted getting medicines and supplies from Emergency Room and OR CSS which were used [in the] STAT chest tube insertion performed by Dr. Rizbon Yarra on patient Shirley Aninion, whom you admitted is your aunt. The items are as follows[:]

Thora bottle	Ketorolac #1
Thoracic Cath (size 32)	Nubain #1
Sterile Gloves size 7 #1	Demerol #1
Sterile Gloves size 7 ½ #2	Mersilk O #1

You alleged that Nursing Aide Madellen Añasco prepared the abovementioned items. You further alleged that you asked Ms. Añasco if you could just replace the items instead of charging the cost thereof to the patient and she agreed. Based on said agreement, the items were not charged to the patient but were later replaced.

X X X X

Investigation disclosed that the abovementioned medicines and supplies used were not recorded in the detailed listing of charges because you told Nursing Aide Añasco and OR CSS clerk that you will just replace the items. Being your subordinates, the said employees naturally complied with your instruction. As a result, the items were not charged to the patient and for which reason the Hospital suffered damages by way of lost income.

Your abovementioned act of getting medicines and supplies without having the transaction recorded is against hospital policy and practice. It is an act of dishonesty. As a supervisor, it is your duty and obligation to set the example to your subordinates and ensure that hospital policies, rules and regulations are enforced. Sadly, you violated the policy and, worse, even influenced your subordinates to violate policy. Obviously, the employees involved would not have agreed to the commission of the violation if you had not given them the instruction. Thus, you clearly abused your authority and position.

In view of your dishonesty, Management has no more trust and confidence in you. Accordingly, your employment is terminated effective immediately.¹⁰

⁶ *Id.* at 44-45.

⁷ *Id.* at 46-47.

⁸ *Id.* at 46.

⁹ *Id.* at 49.

¹⁰ *Id.*

On May 16, 2012, Cadavas filed a Complaint¹¹ for illegal dismissal and other monetary claims against DDH with the Regional Arbitration Branch No. XI, NLRC in Davao City. Cadavas claimed that her dismissal from service was too harsh for her act of violating company rules, considering that it was her first offense in her 23 years of service to the hospital. She also alleged that she was denied due process as she was not assisted by counsel during the administrative hearing conducted by DDH.

In its defense, respondent DDH claimed that complainant Cadavas was dismissed for just cause. It argued that Cadavas' dismissal was justified because she violated a hospital policy, thereby breaching the trust and confidence it reposed in her. DDH stated that Cadavas admitted having withdrawn items for a procedure performed on her aunt, who was a patient in the hospital, and the said items were not charged to the patient upon her request and assurance that they would be replaced. She also admitted that the said act is in violation of DDH's policy, although she insisted that it is being practiced in the hospital. Even assuming that replacement of items withdrawn from the Central Supply Service is being practiced, it does not justify Cadavas' admitted violation of existing policy. Cadavas is a supervisor, which is a position of responsibility; hence, she is expected to enforce DDH's policies and rules and regulations. Moreover, DDH said that the policy requiring recording of all withdrawals of supplies and medicines was established in order to prevent pilferage and dishonesty. If enforcement of the said policy would be relaxed, it would encourage the evil being sought to be prevented. Further, DDH stated that Cadavas was afforded due process because she was given a notice to explain, informing her of the offense charged against her; a hearing was conducted to give her an opportunity to explain and to present her defense; and a notice of termination was served on her.

On October 12, 2012, the Labor Arbiter rendered a Decision¹² in favor of complainant-herein petitioner Cadavas. Although the Labor Arbiter agreed with respondent DDH that Cadavas committed some lapses in participating in the open practice of borrowing and replacing later the hospital supplies and medicines used during the operation/treatment of a hospital staff or the staff's relative, the Labor Arbiter held that the penalty of dismissal is not commensurate to the offense committed. According to the Labor Arbiter, Cadavas' 23 years of service, wherein she received merit, recognition, commendation and loyalty awards from DDH, should not be obliterated by a single lapse of judgment. The Labor Arbiter cited *Conti v. National Labor Relations Commission*,¹³ which held that violation of a rule or policy, which in its implementation has oftentimes been relaxed, may not

¹¹ *Id.* at 1.

¹² *Rollo*, pp. 73-80.

¹³ 337 Phil. 560 (1997).



lawfully give rise to termination of employment of the violator.¹⁴ The Labor Arbiter stated that it holds true in this case. The *fallo* of the Decision reads:

WHEREFORE, judgment is hereby rendered declaring the dismissal of complainant MINDA TOPINIO-CADAVAS illegal and ordering respondent DAVAO DOCTORS' HOSPITAL, thru RAYMUND DEL VAL, President, to pay complainant her separation pay in the total amount of SEVEN HUNDRED SIXTY-SIX THOUSAND TWO HUNDRED SIXTY EIGHT PESOS (P766,268.00).¹⁵

Respondent DDH appealed the Labor Arbiter's Decision before the NLRC, Cagayan de Oro City.

On February 28, 2013, the NLRC rendered a Resolution in favor of respondent DDH. The *fallo* of the Resolution¹⁶ reads:

IN VIEW OF ALL THE FOREGOING, the appeal is GRANTED. The appealed decision is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the case for lack of merit.¹⁷

The NLRC stated that complainant-herein petitioner Cadavas was the Nurse Supervisor in the Nursing Service Department of respondent DDH and, thus, held a position of trust and confidence. Hence, the betrayal of this trust is the essence of the offense for which the employee is penalized.¹⁸

The NLRC said that the records showed that Cadavas admitted that she withdrew hospital supplies and medicines for her aunt and she asked Nursing Aide Añasco if she could replace the items withdrawn to which Añasco agreed. In effect, as a Nurse Supervisor, she was directing the latter not to record the transaction, thereby prejudicing respondent DDH. Cadavas knew all along that there was a policy against the purchase of hospital supplies and medicines outside of respondent DDH's pharmacy even if such items were replaced, but she insisted in doing so. While the NLRC commiserated with Cadavas regarding her intention to help alleviate her aunt's misery, nonetheless, it stated that as a supervisory employee, Cadavas was expected to exercise her judgment and discretion with utmost care and concern for her employer's business. She was tasked to perform key functions and, unlike ordinary rank and file employees, she was bound by a more exacting work ethics. The NLRC said that in doing what she did, Cadavas rendered herself absolutely unworthy of the trust and confidence

¹⁴ Records, Volume 2, p. 152.

¹⁵ *Rollo*, p. 80.

¹⁶ *Id.* at 115-121.

¹⁷ *Id.* at 121.

¹⁸ Citing *Santos v. San Miguel Corp.*, 447 Phil. 264, 277 (2003).

demanded by her position. Hence, DDH could not be faulted for losing trust and confidence in Cadavas and in refusing to retain her as its employee.

Cadavas' motion for reconsideration was denied by the NLRC in a Resolution¹⁹ dated May 7, 2013.

Cadavas filed a petition for *certiorari* with the Court of Appeals, alleging that the NLRC gravely abused its discretion in (1) reversing and setting aside the Decision of the Labor Arbiter and in dismissing her complaint; and (2) ignoring that she was denied due process.²⁰

The Court of Appeals denied the petition.

The appellate court stated that loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. And in order to constitute a just cause for dismissal, the act complained of must be work-related such as would show the employee concerned to be unfit to continue working for the employer.²¹

In this case, the Court of Appeals found the above requirements for dismissal on the ground of loss of trust and confidence present:

(1) Petitioner Cadavas was DDH's Nurse Supervisor, which position is imbued with trust and confidence as she is charged with the delicate task of overseeing the staff nurses in the Nursing Service Department of DDH;

(2) Petitioner Cadavas, as Nurse Supervisor, requested another hospital staff member, a subordinate employee, not to record the supplies and medicines she took from the Emergency Department and Operating Room Central Supply Service so that these items would not be reflected in her aunt's hospital bill. This act was plainly dishonest and it was admitted by Cadavas herself. Evidently, Cadavas, by her act, breached the trust and confidence reposed in her by DDH. Holding a supervisory position, Cadavas was expected to set an example for other hospital employees to be faithful to the hospital rules and policies. Instead, Cadavas committed a dishonest, if not illegal, act and, to achieve her goal, even directed a subordinate

¹⁹ *Rollo*, pp. 131-132.

²⁰ *Id.* at 194.

²¹ Citing *Vilchez v. Free Port Service Corp., et al.*, 763 Phil. 32, 39 (2015).



employee to participate in the dishonesty. Even if the items taken were replaced by Cadavas, this did not exempt her from liability for her offense.

Further, the Court of Appeals held that petitioner Cadavas was not denied due process. She was neither barred from being heard nor deprived of her right to be assisted by a counsel. Evidence showed that she was given ample time to prepare for her defense. She was first notified on April 16, 2012 about the charge against her and was given time to explain. She then gave her written explanation on April 18, 2012. The hearing was conducted on May 2, 2012, which gave her two weeks, more or less, to engage the services of a counsel.

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution²² dated May 31, 2016.

Hence, petitioner filed this petition for *certiorari*, alleging the following:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT UPHELD THE HAPHAZARD CONCLUSION OF THE NLRC THAT THE ALLEGED "LOSS OF TRUST AND CONFIDENCE" WAS JUSTIFIED, FAILING TO CONSIDER THE PARTICULAR CIRCUMSTANCES OF PETITIONER'S POSITION AND THE OTHER CIRCUMSTANCES SURROUNDING THE ACT COMPLAINED OF.

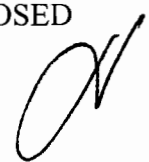
II.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE ALLEGED "LOSS OF TRUST AND CONFIDENCE" WAS A SUFFICIENT GROUND FOR THE PENALTY OF DISMISSAL, WITHOUT DUE REGARD TO THE HARSHNESS OF THE PENALTY *VIS-À-VIS* THE NATURE AND EFFECT OF THE INFRACTION.

III.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT RESPONDENT DDH SATISFIED THE REQUIREMENTS OF DUE PROCESS IN TERMINATING PETITIONER'S EMPLOYMENT, FAILING TO CONSIDER THE IRREGULARITIES IN THE SUPPOSED PROCEEDINGS.

²² Rollo, pp. 207-208.



IV.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT UPHELD THE REVERSAL BY THE NLRC OF THE RULING OF THE LABOR ARBITER, IN VIOLATION AND UTTER DISREGARD OF THE PRINCIPLES OF SOCIAL AND COMPASSIONATE JUSTICE ESPOUSED BY NO LESS THAN THE CONSTITUTION.²³

Petitioner's Arguments

Petitioner Cadavas averred that at the time of the incident, she was the Nurse Supervisor at the Delivery Room Operating Room (*OR-DR*), Neonatal Intensive Care Unit (*ICU*), and Hemodialysis Departments. As such, she was tasked with the scheduling of the staff nurses within her departments and overseeing the bedside care being delivered by her staff.

On the other hand, the supplies used in her aunt's procedure were from the Emergency Room Central Supplies, under the control, charge and supervision of Head Nurse Julie Balagtas and Supervisor-in-Charge Jarilyn Bastasa of the Emergency Department.

Petitioner Cadavas contends that even if she was a Nurse Supervisor, her position alone should not be deemed as one imbued with trust and confidence insofar as the act complained of is concerned. The Thoraset used for her aunt's chest tube insertion was the charge and responsibility of another employee from another department. Moreover, petitioner's functions and duties as a Nurse Supervisor in another department did not grant her any direct access to the supplies or to the recording thereof for billing purposes. Based on her explanation letter, she merely asked Añasco, a nursing aide from the Emergency Department, whether it would be possible for her to replace the Thoraset used. It was Añasco who confirmed that it was possible, that it has been the usual practice among employees, and she even volunteered information as to how to make it happen.

Petitioner stressed that the employees from whom she inquired at the Emergency Room Central Supplies were not her subordinates and she did not exercise any form of authority or supervision over them. Hence, she did not abuse her position of responsibility in a manner that would justify the alleged loss of trust and confidence. The staff at the Emergency Room Central Supplies had the last say and discretion over their responsibilities. To impute all the blame to petitioner for her colleagues' direct actions, letting her bear the brunt of respondent DDH's disciplinary action and

²³ *Id.* at 9-10.

upholding such act of respondent DDH as correct and proper, is an arbitrary and whimsical exercise of the appellate court's jurisdiction.

Moreover, petitioner contends that the act complained of was not work-related as she was not performing an act related to her duties and functions as a Nurse Supervisor of the OR-DR, Neonatal ICU, and Hemodialysis Departments. In addition, the act complained of has been a long-standing practice within the Emergency Department that has been tolerated by DDH's management, such that when petitioner availed of the same, the penalty of dismissal imposed upon her has become unjustifiable. She cited the case of *Conti v. National Labor Relations Commission*,²⁴ wherein it was held that violation of a rule or policy which in its implementation has oftentimes been relaxed may not lawfully give rise to termination of employment of the violator.²⁵ She asserted that she had already replaced all the supplies that were used in her aunt's procedure. There were no actual losses to respondent DDH, since the replacement supplies were used and charged to the bill of other patients.

Further, petitioner argues that the Court of Appeals disregarded the fact that she was denied both substantive and procedural due process. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause. According to petitioner, the supposed loss of trust and confidence is not justified in this case. Thus, there is actually no just cause for her termination.

Lastly, petitioner contends that the Court of Appeals gravely abused its discretion in failing to apply the precedent established in *Bristol Myers Squibb (Phils.), Inc. v. Baban*,²⁶ wherein the Court found the supervisory employee therein to have misappropriated company property for his own use and found his dismissal to be valid, but granted him separation pay because it was his first infraction in his several years of service.

In its Comment, respondent DDH prays for the denial of the petition for *certiorari*, it being the wrong mode of appeal. Respondent DDH contends that petitioner should have filed a petition for review on *certiorari* under Section 1, Rule 45 of the Rules of Court, thus:

SECTION 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.

²⁴ *Supra* note 13.

²⁵ Records, Volume 2, p. 152.

²⁶ 594 Phil. 620 (2008).



The Ruling of the Court

As pointed out by respondent DDH, petitioner Cadavas availed of the wrong remedy in assailing the decision of the Court of Appeals by filing this petition for *certiorari* under Rule 65 of the Rules of Court. The proper recourse of the aggrieved party from the decision of the Court of Appeals is a petition for review on *certiorari* under Rule 45 of the Rules of Court.²⁷

However, this petition should not be dismissed on a mere technicality. In *People's Security, Inc. v. NLRC*,²⁸ the Court held that the dismissal of an appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on its merits. The rules of procedure ought not to be applied in a very rigid technical sense; rules of procedure are used only to help secure, not override substantial justice.²⁹ If a technical and rigid enforcement of the rules is made, their aim would be defeated.³⁰

Hence, in the interest of justice, this petition for *certiorari* shall be treated as a petition for review on *certiorari*.

The main issue is whether or not petitioner Cadavas was validly dismissed for willful breach of the trust reposed in her by her employer, respondent DDH.

As a rule, the Court does not review questions of fact, but only questions of law, in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, the rule is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory.³¹ In this case, the findings and conclusion of the Labor Arbiter differ from those of the NLRC and the Court of Appeals. Hence, the Court reviewed the records of the case and hereby affirms the Court of Appeals' decision.

Based on the notice³² of termination, respondent DDH terminated petitioner Cadavas on the ground of loss of trust and confidence for her act of dishonesty in getting medicines and supplies from the Emergency Department and Operating Room Central Supply Service without having the transaction recorded, which is against the hospital's policy and practice.

²⁷ See *Land Bank of the Phils. v. Court of Appeals*, 456 Phil. 755, 787 (2003).

²⁸ 297 Phil. 157, 163 (1993), citing *Tamargo v. Court of Appeals*, 285 Phil. 72, 77 (1992).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Alaska Milk Corporation v. Ponce*, G.R. Nos. 228412 and 228439, July 26, 2017, 833 SCRA 332,

347.

³² Records, Volume 1, p. 25.

Under Article 282 of the Labor Code, an employer may terminate an employment for “[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.”

The requisites for dismissal on the ground of loss of trust and confidence are: 1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.³³ In addition to these, such loss of trust relates to the employee's performance of duties.³⁴

*Bristol Myers Squibb (Phils.), Inc. v. Baban*³⁵ explained the two classes of positions of trust, thus:

There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as 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 actions. The second class consists of cashiers, auditors, property custodians, etc. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.³⁶ (Citations omitted.)

Managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff.³⁷

In this case, petitioner Cadavas was a managerial employee. Petitioner was the Nurse Supervisor of the OR-DR, Neonatal ICU, and Hemodialysis Departments at the time of the incident; hence, she held a position of trust and confidence as she managed the said departments, having been tasked with the scheduling of the staff nurses within her departments and overseeing the quality of bedside care being delivered by her staff.

To reiterate, the second requisite for dismissal is that there must be an act that would justify the loss of trust and confidence.³⁸ Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts.³⁹ Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly,

³³ *Central Azucarera De Bais, et al. v. Heirs of Zuelo Apostol*, G.R. No. 215314, March 14, 2018.

³⁴ *Id.*

³⁵ *Supra* note 26.

³⁶ *Id.* at 628.

³⁷ *Josephine Casco v. NLRC, etc., et al.*, G.R. No. 200571, February 19, 2018.

³⁸ *Id.*

³⁹ *Id.*

thoughtlessly, heedlessly or inadvertently.⁴⁰ The basis for the dismissal must be clearly and convincingly established, but proof beyond reasonable doubt is not necessary.⁴¹

The act for which respondent DDH terminated petitioner for loss of trust and confidence is stated in its notice of termination, thus:

Your abovementioned act of getting medicines and supplies without having the transaction recorded is against hospital policy and practice. It is an act of dishonesty. As a supervisor, it is your duty and obligation to set the example to your subordinates and ensure that hospital policies, rules and regulations are enforced. Sadly, you violated the policy and, worse, even influenced your subordinates to violate policy. Obviously, the employees involved would not have agreed to the commission of the violation if you had not given them the instruction. Thus, you clearly abused your authority and position.⁴² (Emphasis and underscore supplied.)

In the Minutes⁴³ of the Administrative Hearing conducted by respondent DDH, petitioner admitted that there is no policy that employees can borrow supplies for personal use.⁴⁴ She also admitted that she was aware of the hospital's policy against the purchase of medicines outside the hospital.⁴⁵ She apologized for buying medicines and supplies outside the hospital (to replace the ones used by her aunt). Thus, it is clear that despite knowing that there is a policy against the purchase of supplies and medicines outside the hospital, petitioner chose to violate the policy by asking Nursing Aide Añasco if she could replace the supplies and medicines used by her aunt. As Añasco acceded to petitioner's request, the medicines and supplies used by petitioner's aunt were not recorded and charged to her per the agreement that petitioner would replace the said medicines and supplies. In effect, petitioner caused the transaction not to be recorded. Although petitioner was not then performing her duties and functions as Nurse Supervisor in her departments; nevertheless, as an employee and Nurse Supervisor of respondent DDH, she was covered by the policy against the use of hospital medicines and supplies without recording such use, and purchasing medicines and supplies outside of respondent hospital to replace hospital medicines and supplies already used. Notably, petitioner was aware of such hospital policy, but she still violated it. As a Nurse Supervisor holding a position of trust, petitioner was expected to enforce and observe hospital policies. Clearly, petitioner breached the trust and confidence reposed in her by respondent DDH by her willful violation of the said hospital policy, causing loss of income to respondent DDH.

⁴⁰ *Bluer Than Blue Joint Ventures Company, et al. v. Esteban*, 731 Phil. 502, 513 (2014).

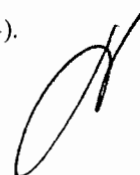
⁴¹ *Bristol Myers Squibb (Phils.), Inc. v. Baban*, *supra* note 26, at 629.

⁴² Records, Volume 1, p. 25.

⁴³ *Id.* at 45-48.

⁴⁴ *Id.* at 46.

⁴⁵ *Id.*



As a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature requires the employer's full trust and confidence.⁴⁶ Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt.⁴⁷

Since the requisites for dismissal due to loss of trust and confidence have been met, respondent DDH validly dismissed petitioner. While the State can regulate the right of an employer to select and discharge his employees, an employer cannot be compelled to continue the employment of an employee in whom there has been a legitimate loss of trust and confidence.⁴⁸

The Court agrees with the Court of Appeals that petitioner was not denied due process. The twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees.⁴⁹ As to the requirement of notice, the employer must furnish the worker with two written notices before termination of employment can be legally effected: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.⁵⁰ With regard to the requirement of a hearing, this Court has held that the essence of due process is simply an opportunity to be heard, and not that an actual hearing should always and indispensably be held.⁵¹ In this case, respondent DDH complied with the twin requirements of notice and hearing.

Petitioner argues that in *Conti v. National Labor Relations Commission*,⁵² the Court held that violation of a rule or policy which, in its implementation, has oftentimes been relaxed may not lawfully give rise to termination of employment of the violator.⁵³ She asserted that she already replaced all the supplies that were used in her aunt's procedure and that there were no actual losses to respondent DDH, since the replacement supplies were used and charged to the bill of other patients.

The Court finds the cited ruling in *Conti* inapplicable to this case.

In *Conti*, the services of the complainants-petitioners therein, Amor Conti and Leopoldo Cruz, were terminated by their employer Corfarm

⁴⁶ *Bristol Myers Squibb (Phils.), Inc. v. Baban*, *supra* note 26, at 631.

⁴⁷ *Id.* at 631-632.

⁴⁸ *Id.* at 631.

⁴⁹ *Conti v. National Labor Relations Commission*, *supra* note 13, at 565.

⁵⁰ *Id.* at 565-566.

⁵¹ *Id.* at 566.

⁵² *Supra* note 13.

⁵³ Records, Volume 2, p. 152.

Holdings Corporation (*Corfarm*) due to (1) the expiration of their respective employment contracts, which were coterminous with the management contract between Corfarm and MERALCO; and (2) the ongoing evaluation of their past performances and investigation by the internal auditor of Corfarm of certain anomalous transactions involving them (petitioners therein). However, petitioners therein were held illegally dismissed because they were denied due process, as their employer Corfarm failed to comply with the twin requirements of notice and hearing. Moreover, the Court found that the said management contract was extended; hence, the respective employment contracts of petitioners therein likewise remained in force.

Further, the Court found that Corfarm failed to controvert therein petitioners' testimony that they were never apprised of any policy on procurement that they allegedly violated. Thus, the Court stated that assuming *arguendo* that petitioners therein had indeed violated a company policy, "[i]t has been held that the dismissal of an employee due to an alleged violation of a company policy, where it was found that the violation was acquiesced in by said employee's immediate superiors and the policy violated had not always been adhered to by the management, is an act not amounting to a breach of trust; therefore, it is not a justification for said employee's dismissal."⁵⁴

In *Conti*, the Court stated that therein petitioner Amor Conti, during her direct examination, testified that since the time of her employment with Corfarm, no written policies governed their purchasing activity, nor was she required to prepare a canvass sheet for every purchase. Furthermore, the Court noted the fact that the questioned purchase orders had been approved and signed by therein petitioners' immediate superiors was uncontroverted. Therefore, Corfarm and its officials' allegations of negligence and violation of company policy, made without substantial proof, could not justify the dismissal of petitioners therein.

In contrast to the lack of a written policy and the approval of the questioned purchase orders by therein petitioners' immediate superiors in *Conti*, in the instant case, petitioner Cadavas was well aware of the policy she admittedly violated and she also admitted⁵⁵ that she did not ask for approval from her superior/director if she could replace the medicines and supplies used by her aunt.

Further, the replacement of the medicines and supplies obtained in violation of a policy by petitioner Cadavas cannot erase the betrayal of the trust and confidence reposed in her by her employer, respondent DDH.

⁵⁴ *Conti v. National Labor Relations Commission*, *supra* note 13, at 567-568.
⁵⁵ Records, Vol. 1, p. 46.



Contrary to the allegation of petitioner, respondent DDH suffered loss of income for the medicines and supplies merely replaced by petitioner.

In addition, the Court finds the ruling in *Bristol Myers Squibb (Phils.) Inc. v. Baban*,⁵⁶ wherein the Court granted separation pay to a validly dismissed employee who was holding a position of trust, to be inapplicable to this case.

In *Bristol Myers Squibb (Phils.) Inc. v. Baban*,⁵⁷ respondent employee therein, who held a position of trust and confidence, gave out therein petitioner's medical samples as a token of gratitude to the supporters of his father who lost in the May 11, 1998 elections. He was held validly dismissed on the ground of loss of trust and confidence, but the Court granted him separation pay as an equitable relief in consideration of past services rendered, since his dismissal was for a cause other than serious misconduct or those that negatively reflected on his moral character, citing *Philippine Long Distance Telephone Company (PLDT) v. NLRC*.⁵⁸

In *PLDT v. NLRC*,⁵⁹ the Court disallowed the grant of separation pay to the respondent employee therein, a traffic operator of PLDT, who was held validly dismissed for dishonesty because she demanded and received ₱3,800.00 in consideration of her promise to facilitate approval of therein complainants' applications for telephone installation. The Court thus declared:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.⁶⁰ (Emphasis supplied.)

The ruling in *PLDT* has to be taken together with the later ruling of the Court in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*,⁶¹ thus:

As may be noted, *PLDT* declared that separation pay or financial assistance should be denied a legally separated employee when the cause for dismissal is for an act constituting serious misconduct or that reflects

⁵⁶ *Supra* note 26.

⁵⁷ *Id.* at 632.

⁵⁸ 247 Phil. 641 (1988).

⁵⁹ *Id.*

⁶⁰ *Id.* at 649.

⁶¹ 580 Phil. 177 (2008).

on the employee's moral character. *PLDT*, however, did not go further to state that the grant or award of separation pay or financial assistance is automatically awarded when the dismissal is for a cause other than that contemplated in said case. This *PLDT* doctrine was later expanded in *Toyota Motors Phils. Corp. Workers Association v. National Labor Relations Commission (Toyota)*, where we held that:

In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. **We, therefore, find that in addition to serious misconduct, in dismissals based on other grounds under Art. 282, like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee.**

In analogous causes for termination, like inefficiency, drug use, and others, the NLRC or the courts may opt to grant separation pay anchored on social justice in consideration of length of service of the employee, the amount involved, whether the act is the first offense, the performance of the employee and the like, using guideposts enunciated in *PLDT* on the propriety of the award of separation pay. x x x

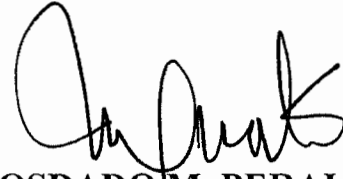
To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family — grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.⁶² (Emphases and underscores supplied; citation omitted.)

Based on the foregoing, as petitioner was validly dismissed for willful breach of trust under Article 282 of the Labor Code, she cannot be granted separation pay.

⁶²*Id.* at 188-189.

WHEREFORE, the petition is denied. The Decision of the Court of Appeals dated December 4, 2015 and its Resolution dated May 31, 2016 in CA-G.R. SP No. 05635-MIN are hereby **AFFIRMED**.


SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
 Associate Justice

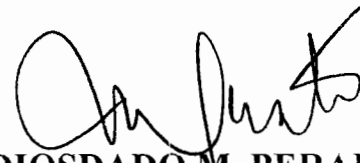

ANDRES B. REYES, JR.
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice


ROSMARI D. CARANDANG
 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.



DIOSDADO M. PERALTA
 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.


ANTONIO T. CARPIO
 Acting Chief Justice
 (Per S.O. No. 2644 dated March 15, 2019)

CERTIFIED TRUE COPY


MISABEL DOMINGO C. BATTUNG III
 Deputy Division Clerk of Court
 Third Division

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