THIRD DIVISION

[G.R. No. 220903. March 29, 2023]

CITIBANK SAVINGS, INC., KEVIN LYNCH, FLORYPPEE V. ABRIGO,* AND ELLIEBETH ENDAYA, PETITIONERS, VS. BRENDA L. ROGAN, RESPONDENT.

D E C I S I O N

GAERLAN, J.:

This is a petition for review[1] under Rule 45 of the Rules of Court, against the May 16, 2014 Decision[2] and the September 30, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 122602. The assailed decision and resolution reversed and set aside the June 22, 2011 Decision[4] and the September 13, 2011 Resolution[5] of the National Labor Relations Commission (NLRC), which upheld the dismissal of respondent Brenda L. Rogan's complaint against petitioners Citibank Savings, Inc., Kevin Lynch, Floryppee V. Abrigo, and Elliebeth Endaya, for illegal dismissal, nonpayment of service incentive leave, separation pay, moral and exemplary damages, attorney's fees, with reinstatement and full backwages.

Petitioner Citibank Savings, Inc. (CSI) was a Philippine-licensed corporation engaged in the banking business.[6] Brenda L. Rogan (Rogan) was hired by CSI as a bank teller on January 23, 1995. She rose through the ranks and became the Branch Cash/Operations Officer (CSO) of CSI's Legaspi Village, Makati branch,[7] with the following functions:

- Monitor and oversee tellering functions and provide consistent and superior service delivery standards.
- Ensure accurate and timely processing of customer transactions to effectively build customer trust and loyalty.
- Ensure all investigations and/or inquiries are satisfactorily handled.
- Proactively look for ways to enhance processes and improve service levels.
- Reinforce CSR strengths and assess areas for improvement through timely and constructive feedback and regular coaching sessions.
- Recommend process improvement with the end view of eliminating work duplication.

- Continue to work in achieving a healthy environment that fosters open and honest communication w/ in and among other units.[8]

On March 18, 2008, Rogan was issued a show cause memo for failing to conduct an actual cash count of the branch's automated teller machine (ATM) for the date of January 29, 2008, and signing a false certification to the contrary.[9] In her written explanation, Rogan admitted the accusation and attributed the omission to heavy workload and lack of personnel.[10] She was therefore suspended for three (3) days with a warning that a repetition of such offense will be dealt with more severely.[11]

On October 19, 2009, CSI received a query from a client of its Legaspi Village Branch regarding a time deposit. In response to the query, CSI reviewed said client's records, and it was discovered that the client only had a savings account.[12] Deeming this irregular, CSI investigated the matter. According to CSI, the Branch Account Officer, Yvette Axalan (Axalan), attempted to stop the investigation on the ground that the client did not lodge any complaint.[13] The investigation nevertheless proceeded, resulting in the following findings:

> 11.1. As appears from the records, [CSI]'s clients, Depositor A and Depositor B, filed an Application for Funds Transfer ("AFT") on 22 June and 7 August 2009, respectively. However, contrary to [CSI]'s policy, it was the Legaspi Village Branch Account Officer, [Axalan], who transacted solely on behalf of these Accounts. There were no existing records in [CSI]'s files that served as basis for verifying the clients' authorized signatories and authenticity of the signatures found in the said application. Such Funds Transfer, which was contrary to respondent Bank's policy, would not have been possible without the processing and approval of [Rogan]. As Branch Cash/Operations Officer, [Rogan] was expected and duty-bound to first verify the signatures appearing on the application by checking them against [CSI]'s copy of the clients' signature card. Stated differently, signature verification is a prerequisite to processing an application for funds transfer. Verily, by omitting to perform this bank mandated process, [Rogan] facilitated the unauthorized transfer of funds to the prejudice of [CSI]. Such omission constituted a violation of [CSI]'s policies on funds transfer.
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> 11.2. As [CSI] discovered, [Axalan] would hand over the funds transfer forms (AFT form) of Depositor A and Depositor B to [Rogan] for her processing of the same. The forms, however, were already properly filled out but without the

> signatures of the concerned clients that would indicate their receipt of the Manager's Checks. [Axalan]'s signature would appear in the Signature Verified and Approval sections of the application forms which signifies that she already approved such.
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> 11.3. On 19 October 2009, [Rogan] processed an application for Demand Draft on behalf of [CSI]'s client. Depositor C. The application was duly approved by [Axalan] without any transaction callback from the Centralized Monitoring Unit ("CMU"), as per [CSI]'s policy. Essentially, the documents were drafted and executed to give the appearance that the transactions were done by the clients personally in the branch, when in truth and in fact, the clients were not in the branch at the date and time of the transaction. Again, [Rogan] was remiss in her duty as she patently failed to verify the signatures appearing on the application. A perusal of the Depositor C's signature in the Application transaction slip shows that it is substantially different from the signature appearing on [CSI]'s signature card. Had [Rogan] strictly performed her ministerial job of verifying the signatures, the application would not have been successfully completed. This omission, again, constituted a violation of [CSI]'s policies on funds transfer.
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> Copies of the said Application for Demand Draft and Depositor C's signature card are attached hereto and made integral parts hereof as "Annex 4".[14]

Through a memorandum dated November 3, 2009 (Show Cause Order), CSI directed Rogan to explain why she should not be disciplinarily sanctioned in connection with the aforequoted suspect transactions. The Show Cause Order reads:

> TO: Brenda L. Rogan CSO – Legaspi Village
> FROM: Elliebeth L. Endaya CSO – Cluster Head
> DATE: 03 November 2009
> RE: Show Cause Memo
>
> In the recent audit of Legaspi Village branch conducted mid of October 2009, the following exceptions were noted as follows:
>
> - You were aware of and allowed Yvette Axalan (AO) to deposit cash on behalf of the client last October 15, 2009.

- You were aware of and allowed the Application of Managers Checks to be requested by Yvette Axalan on behalf of some Corporate Accounts (x x x) and allowed Yvette to successfully consummate the transaction.
- You allowed the processing of application of Demand Draft dated October 19, 2009 that was facilitated by Yvette Axalan on behalf of the client (x x x), and you did not request for transaction callback of CMU. The document tries to make it appear that transaction was done by the client personally in the branch.
- You approved Managers Checks applications without verification against opening documents such as ROF, Board Resolution/Secretary Certificates, signature cards and valid I[D]s.
- Fund transfer was verified, approved and overridden by Yvette Axalan in your presence as CSO last July 30, 2009.
- You allowed the application for funds transfer (AFT) to be taken out of the branch by Yvette Axalan for client's signature on the "Received by" portion to make it appear that client was personally transacting in the branch. You delivered the MC/DD to Yvette for delivery to clients despite your awareness that bank employees cannot transact in behalf of the client. Transactions were dated June 22 (3.6MM) and August 7, 2009 (8,961.66).

In line with this you are hereby directed to submit your written explanation within twenty-four (24) hours from your receipt hereof why no disciplinary action should be imposed on you.

You are fully aware, of course, of your obligation as Customer Service Officer to impose branch's control and to comply with the Bank's policy on the following:

- Bank 101 Transacting in Behalf of the Client

- Purchase of Managers Check and Demand Draft
- Manually [Initiated] Funds Transfer (MIFT)
- Fund Transfer
- Signature verification versus Oscar or ROF, Signature cards, Board Resolution/Secretary Certificate
- Signature verification, approval and override of AO in the presence of

CSO

Unless satisfactorily explained, your deviation from the policy constitutes a violation and which may warrant the imposition of the appropriate disciplinary actions against you.

In accordance with law and CSI policy, we shall also be conducting an administrative hearing to give you the opportunity to explain your side. You are hereby notified that this will be on November 5, 2009. 2 pm, at the 19/F Citibank Square Bldg. Libis, QC.

Pending investigation on the matter, you are hereby placed under preventive suspension for 30 days effective immediately. The period under preventive suspension is without pay.

Please be advised that should you fail to submit a written explanation within 24 hours and/or attend the administrative hearing on November 5, 2009, we shall be constrained to resolve this case with whatever evidence we have on hand.

For your strict compliance.[15]

Rogan submitted a written explanation, which she further clarified in an administrative hearing on November 5, 2009. In the hearing, she denied causing any damage or loss to the bank, and maintained the validity of all the transactions she handled.[16]

On January 11, 2010, CSI issued a Notice of Resolution (Termination Notice) finding Rogan guilty of failing to comply with the following internal policies:

a. Bank 101: Personal Bankers are not allowed to transact in behalf of their client;

b. Purchase of Manager's Checks and Demand Draft;

c. Manually Initiated Fund Transfer (MIFT)[17]

d. Fund Transfer

e. Signature verification versus signature cards, Board Resolution/Secretary's Certificate;

f. Signature verification, approval and override of Account Officer of her own client's transactions, when the client is not in the branch.[18]

Consequently, CSI informed Rogan that she was being terminated from employment, effective immediately.[19] In response, Rogan issued a written apology to the disciplinary committee, where she asked to be allowed to resign instead of being terminated from employment.[20] The records contain no indication of CSI's action on the request.

On March 17, 2010, Rogan filed a complaint for illegal dismissal and nonpayment of separation pay against CSI and its president, petitioner Kevin Lynch (Lynch). Rogan also impleaded petitioners Floryppee V. Abrigo (Abrigo) and Elliebeth Endaya (Endaya), in their respective capacities as Branch Manager and Branch Services Cluster Head of CSI's Legaspi Village branch.[21]

In her pleadings before the NLRC Regional Arbitration Branch, Rogan alleged that during her fifteen years of service with CSI, she received awards and incentives for her perfect attendance and exemplary performance as a bank teller.[22] She argued that the Show Cause Order and Termination Notice against her specified neither the company policies she allegedly violated nor the imposable sanction therefor.[23] She also disavowed any involvement in the aforementioned suspect transactions.[24] It was not her duty to verify client signatures for banking transactions, as this is a function of the bank tellers, and not the Branch Cash Officer.[25] She reiterated that the transactions were not prejudicial to the bank as they only involved a transfer of funds between different accounts of a single client, and CSI failed to adduce proof that the transactions were actually submitted to her for verification. Furthermore, such transactions are classified as First Party transactions which are deemed safe by the bank and therefore exempted from the strict application of internal banking controls such as the MIFT policy.[26] CSI thus acted unfairly and unjustly when it severed her employment for a transaction that was deemed excusable under the bank's own policy guidelines. Finally, Rogan argued that the Show Cause Order is not consistent with due process, as it did not give her a reasonable opportunity to prepare her defense.[27]

In response, CSI asserted that Rogan's violations are all specified in the Show Cause Order and the Termination Notice. These violations constitute two valid grounds for termination under the Labor Code: gross and habitual neglect[28] and fraud/willful breach of trust.[29]

On September 8, 2010, the Labor Arbiter (LA) issued a Decision[30] dismissing Rogan's complaint. The LA ruled that Rogan's dismissal was justified on the grounds of gross neglect of duty and loss of trust and confidence. Anent the first ground, the LA held that as Branch Cash/Operations Officer, Rogan had the duty to verify the signatures of clients for the purpose of processing withdrawals and other fund transfers; and she failed in this regard with respect to the aforementioned transactions which were approved solely by Axalan, in contravention of CSI's policies. The fact that Axalan was able to process multiple suspect transactions is proof that Rogan was habitually neglectful of her duties.[31] As regards the second ground, the LA sustained CSI's position that Rogan held a position of trust and confidence, as she was privy to the fund transfer processes of the bank. Her gross neglect of duty in failing to conduct cash counts and allowing suspicious fund transfers is enough basis for CSI to lose trust and confidence in her ability to handle its confidential business processes.[32]

In rejecting Rogan's defenses, the LA held that actual loss is not necessary to support a dismissal on the basis of gross neglect of duty. Rogan failed to prove that she had no part in the suspect transactions processed by Axalan.[33] As Branch Cash/Operations Officer, Rogan cannot feign non-involvement in the suspect transactions.[34] Likewise, Rogan cannot claim length of service and previous exemplary performance as mitigating circumstances, as she committed serious infractions of company policy.[35] The LA agreed that CSI cannot be compelled to continue employing a person who has lost the trust and confidence of management, in view of the high standard of diligence imposed by law on banking operations.[36] The LA likewise held that Rogan was afforded due process, as she was notified of the charges against her, which she was able to address and explain through a written reply.[37]

Rogan appealed to the NLRC.[38] The national labor tribunal dismissed her appeal and upheld the validity of her termination from CSI. The NLRC found that Rogan was terminated for failure to comply with CSI's aforementioned policies. Her violations amounted to "*gross and habitual neglect of her duties resulting in [CSI]'s loss of trust and confidence*."[39] The NLRC ruled that Rogan occupied a managerial position, as

> part of her duties [include] x x x monitor[ing] and overs[ight of] tellering functions and provid[ing] consistent and superb service delivery standards. Thus, as the head and supervisor of the tellers in the branch and considering the sensitivity of her functions, including the approval of Application for Funds

> Transfer, complainant clearly qualifies as a managerial employee and one holding a position of trust and confidence. Additionally, her job title – Branch Cash Officer – signifies the importance of her functions and her status as a managerial employee.[40]

With respect to the suspect transactions, the NLRC rejected Rogan's defenses, noting that she did not specifically deny approving said transactions.[41] While Rogan averred that the duty to verify client signatures is lodged with the tellers, it was also established that the suspect transactions were verified not by a teller, but by Axalan, who is the branch Account Officer.[42] Thus, Rogan approved the suspect transactions with full knowledge that the signatures therein were not verified by a teller, in violation of CSI's policy on "Separation of Functions."[43] Rogan cannot absolve herself of the duties of signature verification, as it is implicitly included in her duties and responsibilities as a Branch Cash/Operations Officer.[44] The NLRC also rejected her claim that Axalan is her superior officer, finding that Axalan was not a manager but a mere Account Officer.[45] The NLRC likewise rejected Rogan's assertion regarding the "safe" classification of the suspect transactions, for being contrary to the jurisprudential standard of extraordinary diligence that banks are required to observe in their dealings with cash deposits.[46] According to the NLRC, the mere fact that Axalan was able to process the suspect transactions despite the obvious red flags attendant thereto, indicates gross neglect on Rogan's part:

> A simple examination of the Application for Funds Transfer dated July 30, 2009 and the pertinent signature should have raised red flags before complainant signed her approval in said application. First, the fact that the application and the signature card bore the same dates should have raised complainant's suspicion since signature cards are normally prepared at the time of the opening of bank accounts. Second, the signatures in the application and in the signature card are dissimilar and were clearly not made by the same person. Third, the signature card contained two different sets of signatures for one of the account holders.[47]

According to the NLRC, the foregoing circumstances show that Rogan was neglectful not only with regard to the conduct of signature verification but also in the safekeeping of client signature cards. Said the NLRC:

> Again, [Rogan]'s failure to safeguard these documents is corroborated by the identical dates stated in the Application for Funds Transfer dated July 30, 2009 and the signature card for the same account. It is of public knowledge that signature cards are required to be signed by the accountholders when they open their bank accounts. Thus, it [boggles] the mind why signature cards would be allowed to be prepared after the accounts have already been opened and on the same day when withdrawals or fund transfers are being processed. The only possible explanation is that the signature cards for these accounts have been lost.[48]

The NLRC agreed with the LA that the absence of actual loss or damage to CSI is of no moment, as this is not an element of gross or habitual neglect as a just cause for termination.[49] Finally, the NLRC ruled that Rogan was not deprived of due process despite having been given only twenty-four hours to prepare an explanation. The national labor tribunal found that CSI not only accepted Rogan's belatedly submitted written explanation, but also conducted a subsequent administrative investigation in which Rogan was able to participate.[50]

The NLRC having denied her motion for reconsideration,[51] Rogan elevated the matter to the CA through a Rule 65 petition for *certiorari*.[52]

Reversing the labor adjudication tribunals, the CA held that Rogan was illegally dismissed, and that CSI must either reinstate or remunerate[53] her, subject to the imposition of what it deemed to be the appropriate penalty for Rogan's infraction: suspension for one month without pay.[54]

As regards the suspect transactions in relation to the bank's MIFT and Bank 101 policies, the appellate court ruled that: 1) the transactions in question were deemed safe and therefore exempted from the usual verification requirements;[55] 2) the show cause directive to Rogan does not mention the MIFT policy, the violation of which formed part of the grounds for her termination;[56] 3) the evidence does not establish the existence of the Bank 101 policy prohibiting CSI employees to transact in behalf of clients;[57] and 4) assuming that the Bank 101 policy did exist, there was likewise no proof that said policy was made known to Rogan.[58]

The CA further held that Rogan's lapses with respect to the suspect transactions did not merit the penalty of dismissal. The appellate court described Rogan and Axalan's actuations

as "*perform[ance of employees] beyond the mandate of their positions motivated solely by their desire to assist clients with the end view of winning their loyalty and continuing patronage which definitely is acting for the best interest of the bank*."[59] The CA further emphasized that: 1) no client complained about the suspect transactions; 2) CSI did not allege or claim loss or damage by virtue of said transactions; and 3) there was no proof that Rogan benefited from said transactions in any way.[60] In view of these circumstances, the CA held that Rogan's lapses did not rise to the level of willful breach of trust that would justify her dismissal on the basis of loss of trust and confidence.[61] Consequently, the CA ruled that CSI abused its prerogative of dismissal, and that the more appropriate penalty is suspension of one (1) month.[62] The appellate court thus disposed:

> **WHEREFORE**, the Petition is hereby **GRANTED**. The Decision dated 22 June 2011 and the Resolution dated 13 September 2011 of the NLRC is **REVERSED** and **SET ASIDE**. [CSI, Lynch, Abrigo, and Endaya] are **ORDERED** to reinstate [Rogan] to her former position without loss of seniority rights and other privileges and to pay [Rogan] full backwages inclusive of allowances, minus the sum equivalent to her one (1) month suspension and to pay other benefits from the time compensation was withheld up to her actual reinstatement[.]
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> If reinstatement is no longer possible, to pay [Rogan] separation pay in the amount of one (1) month salary for every year of service.
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> Let this case be remanded to the Labor Arbiter for proper computation of the full backwages due [Rogan], in accordance with Article 279 of the Labor Code, as expeditiously as possible and the amount of separation pay if proper under the circumstances.
>
> **SO ORDERED.**[63]

With the CA denying[64] their motion for reconsideration,[65] petitioners now ask this Court to reinstate the NLRC's disposition of the case. The arguments in the parties' pleadings[66] pose the following issues, which will be resolved *in seriatim*:

1. Whether Rogan is guilty of gross and habitual neglect of duty in connection with the suspect transactions processed by her colleague Axalan;

2. Whether Rogan's infractions constitute valid basis for dismissal on the ground of loss of

trust and confidence; and

3. Whether CSI observed due process in dismissing Rogan.

At the outset, it must be noted that these matters involve questions of fact which may no longer be passed upon in a Rule 45 review of a labor adjudication; however, this Court is not precluded from reviewing such matters if, as in the case at bar, the CA's findings and conclusions diverge from those of the labor tribunals.[67]

Gross and habitual neglect of duty

CSI contends that the CA erred in finding the suspect transactions safe and exempted from verification requirements. Assuming that the transactions were safe and deemed exempted, Rogan was nevertheless remiss in approving them, as they also violated the Separation of Functions policy, since the receipt of instructions and actual processing were conducted by the same person: Axalan.[68] CSI likewise objects to the CA's ruling regarding the existence, reasonableness, and communication of the Separation of Functions policy. The bank argues that said policy is found in its Policy Bulletin, knowledge of which Rogan never denied. Given the fiduciary and public-interest nature of the banking business, policies such as the Separation of Functions policy, which ensure depositor protection and are required by the Manual of Regulations for Banks (MORB), should be deemed proper and reasonable.[69] Contrary to Rogan's assertion, the same Separation of Functions policy likewise prohibits override transactions. Furthermore, CSI employees cannot waive the verification requirements, since these are also mandated by the MORB.[70] CSI thus asserts that Rogan's processing of the suspect transfers without signature verification constitutes blatant violations of CSI company policy. Rogan's repeated failure to observe company regulations thus amount to gross and habitual neglect of duty, even if CSI suffered no loss or damage.[71]

Rogan argues that the CA's findings must be upheld. She emphasizes that: 1) the subject transactions need not undergo signature verification as they are deemed safe under the MIFT policy;[72] 2) the existence and due communication of the Separation of Functions policy was not proven;[73] 3) there is no proof that CSI prohibits "override transactions," and in the case at bar, it was Rogan's superior officer, Axalan, who performed the override.[74]

Under Article 297(b) of the Labor Code, employers may dismiss their employees on the basis of ***gross and habitual neglect***. This ground covers negligence, carelessness, and even inefficiency of employees in the discharge of their duties.[75] However, such negligence, carelessness, or inefficiency must not only be ***gross***, *i.e.*, "*glaringly and flagrantly*

noticeable because of its inexcusable objectionableness";[76] but also ***habitual**, i.e.*, neglect which is a "*settled tendency of behavior or normal manner of procedure*."[77] Gross neglect of duty has been defined as a repeated failure to perform one's duties over a period of time, depending on the circumstances,[78] or a "*flagrant and culpable refusal or unwillingness of a person to perform a duty*.[79] The concept of gross and habitual neglect has been correlated with the more well-defined concept of gross negligence. In upholding the dismissal of a storage clerk for failure to report a "massive shortage of empty gas cylinders" and other work-related lapses, this Court held:

> Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."
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> To our mind, such numerous infractions are sufficient to hold him grossly and habitually negligent. His repeated negligence is not tolerable. The totality of infractions or the number of violations he committed during his employment merits his dismissal. x x x.[80]

Applying these parameters to the present case, we sustain the CA's finding that Rogan's lapses with respect to the subject transactions do not rise to the level of gross and habitual neglect.

The Show Cause Order identifies three distinct incidents of transaction mishandling on Rogan's part: 1) allowing applications of manager's checks requested by Axalan on behalf of two corporate accounts; 2) a cash deposit made on October 15, 2009 by Axalan for and in behalf of a client; and 3) a series of transactions dated June 22, July 30, August 7, and October 19, 2009, involving a joint account. The records of the June 22, August 7, and October 19 transactions were altered to make it appear that the accountholders personally transacted in the branch premises; the July 30 and October 19 transactions were processed solely by Axalan, either without callback[81] or signature verification by another bank employee.[82] The sparse documentation in the records pertains only to the series of transactions involving the joint account; the other two incidents are mentioned only in the

Show Cause Order. There is also no record of what transpired at the November 5, 2009 administrative hearing.

In her letter dated November 5, 2009 and addressed to Endaya and a certain Randy Uson, Rogan admitted to "*commit[ing] mistakes*",[83] but she did not specifically admit the charges in the Show Cause Order. In the proceedings *a quo*, Rogan relied mainly on four defenses: 1) that signature verification is not her duty; 2) that Axalan was her superior officer and she could not therefore stop the former's transactions; 3) the joint account transactions were exempt from the signature verification requirements; and 4) CSI had no prohibition against its employees transacting in behalf of clients.

At the outset, we reiterate that while CSI blames Rogan for lapses in connection with three separate incidents, there is evidence on record for only one of those incidents: the series of transactions involving a joint account. These four transactions were processed within a time frame of five (5) months in a single year, without any report of loss or damage to the bank or its clients.[84] The transactions all involved transfers between accounts owned by the same joint depositors, who did not raise any complaint in connection therewith. Given this factual context, we agree with the CA that these transactions were deliberately processed by Axalan in the name of customer convenience and satisfaction, in the process bypassing the signature verification and Separation of Functions policies of the bank.

Under CSI's MIFT Policy Bulletin, awareness and knowledge of which Rogan admits, all external MIFT instructions should be covered by a MIFT Agreement, which is a clause or set of clauses integrated into the terms and conditions presented by the bank to new accountholders.[85] The MIFT Agreement, in general, provides that: 1) being initiated by human intervention, MIFTs pose an increased risk of fraud or error compared to automated transfers; and 2) if the depositor or client thus initiates a MIFT, and such MIFT instruction is acted upon by a bank officer or employee in accordance with relevant security procedures or under the proper standard of care, then the depositor or client shall be responsible for any damage suffered by him/her or the bank in connection with said transaction.[86] The MIFT Policy Bulletin also provides that the MIFT Agreement is exempted for First Party Transfers, which are defined as "*transactions within the customer's own accounts (within the bank & within country), where the owners of the accounts and the mode of operation (account ownership pattern) across all accounts are the same*"; such transfers are also exempted from callback.[87] The Policy Bulletin likewise provides that CSOs such as Rogan are "*[e]mpowered to approve (depending on designation) for transaction amounts beyond set limits or exception processing.*"[88] However, it must be noted that First Party Transfers

are exempted only from the MIFT Agreement, but not from the whole MIFT Policy.[89] Thus, clients who initiate First Party Transfers will not be held liable for any loss or damage to them or to the bank in connection with such transfers; however, the bank's employees are still required to observe the applicable provisions of the MIFT Policy with respect to such transfers.[90] The first paragraph of item number 8 of the MIFT Policy Bulletin states:

> 8. MAIL/MESSENGER, including MTS, AND WITHDRAWAL FORMS AGAINST STATEMENT SAVINGS
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> All written requests, including MTS and Withdrawal Forms, via representative should bear the accountholders' signatures. Verification of accountholder's signature on the request/form is mandatory to ensure the validity of the instruction and account ownership[;][91]

while item number 12.1 thereof states:

> 12. SEPARATION OF FUNCTIONS
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> 1[2].1 Recipient of customer instruction should not perform the signature-verification nor the callback. Exception is for OTC (over-the-counter) where the teller/processor receiving the instruction through the messenger, can be treated as an 'independent' person, and can perform the signature verification. However, the callback function should be independent of the teller-recipient.[92]

A perusal of the transaction slips for the joint accounts presented by CSI indicates that the transactions were indeed First Party Transactions as defined in the MIFT Policy Bulletin.[93] It is likewise undisputed that Axalan processed these transactions all by herself without having the signatures in the transaction slips verified by another bank employee, in violation of the aforequoted provisions of the MIFT Policy. It must be noted that Axalan is the branch ***Account Officer***, while Rogan is the Cash/Operations Officer. Between them, it is Axalan who is more likely to interact with the branch's clients and take instructions from them regarding their deposits. CSI likewise admits that Axalan had the authority to process transactions, subject to compliance with the MIFT Policy, including signature verification.[94] While we agree that signature verification is not part of Rogan's duties, we find that enforcement of the MIFT Policy falls within her remit, as she is tasked with monitoring and

oversight of tellering functions, providing consistent and superior service delivery standards, and **ensuring accurate and timely processing of customer transactions to effectively build customer trust and loyalty**. These responsibilities of CSOs such as Rogan are precisely the bases for their authority to approve "exception processing" of transactions which do not comply with the MIFT Policy. Thus, in the absence of any evidence that the authority to approve exception processing was vested in another employee in the Legaspi Village Branch, it is more reasonable to conclude that Rogan was simply exercising her prerogatives under the MIFT policy when she allowed the joint account transactions to undergo processing by Axalan, who was in a unique position to accept and process instructions directly from clients by virtue of her job as Account Officer. The absence of other evidence, such as transcripts, notes, or summations from the administrative hearing, as well as the sanctions imposed on Axalan, means that this Court and the tribunals *a quo* have no way of delving deeper into the circumstances surrounding the said transactions. What appears from the record is that after the administrative hearing, Rogan issued an apology admitting her mistakes, without admitting any specific lapse or violation of the MIFT Policy. To this Court's mind, Rogan could have realized after the administrative investigation that her exercise of prerogatives under the MIFT Policy with respect to the suspect transactions was improper or irregular, even if, as the CA posits, she and Axalan were simply making an exception for a loyal client in furtherance of their duty to "effectively build customer trust and loyalty" by "enabl[ing] customer convenience,"[95] as stated in the MIFT Policy. In view of the foregoing findings, we hold that there is no substantial evidence to prove that Rogan's neglect was so gross and habitual as to constitute just cause for the termination of her employment.

Breach of trust and confidence

Breach of trust and confidence as a just cause for termination of employment is governed by Article 297(c) of the Labor Code, which allows employers to dismiss employees on the ground of fraud ***or*** willful breach by employees of the trust reposed in them by their employers. The just cause referred to in the statute is not the loss of trust and confidence *per se*, but the willful breach which caused such loss of trust and confidence.[96] Jurisprudence thus requires clear and substantial proof of the employee's particular acts which breached the employer's trust and confidence.[97] "*While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt, it being sufficient that there is some basis for the misconduct and that the nature of the employee's participation therein rendered him unworthy of the trust and confidence demanded by his position.*"[98]

Breach of trust and confidence as a just cause for dismissal has been held applicable only to two classes of employees who are akin to agents:[99] employees with managerial and/or human resource prerogatives, and custodians of the employer's money or property.[100] In Rogan's case, her functions relate to the implementation of CSI's policies on tellering and transaction management. It is settled that the relationship between a bank and its depositors is in the nature of a simple loan, whereby the amounts deposited with the bank become its property.[101] As her job involves ensuring the promptness and accuracy of the bank's cash transfers, Rogan is essentially a custodian of the bank's property; she therefore occupies a position of trust and confidence within CSI, as she is charged with overseeing the proper flow of cash transfers within her branch.

Given the nature and purpose of their business, banks are required to exercise elevated standards of diligence in almost all aspects of their operations: from the handling of deposits,[102] to their dealings in real property,[103] and the selection and supervision of their employees.[104] As regards this last aspect, we have recently reiterated that banks must manage their employees with the highest standards of diligence:

> RA 8791 enshrines the fiduciary nature of banking that requires high standards of integrity and performance. The statute now reflects jurisprudential holdings that the banking industry is impressed with public interest requiring banks to assume a degree of diligence higher than that of a good father of a family. Thus, all banks are charged with extraordinary diligence in the handling and care of its deposits as well as the highest degree of diligence in the selection and supervision of its employees. The foregoing obligation of banks is absolute and deemed written into every deposit agreement with its depositors.
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> x x x x
>
> Allied Bank is expected to act with extraordinary diligence required of banks. We cannot overemphasize that the highest degree of diligence required of banks likewise contemplates such diligence in the selection and supervision of its employees. The very nature of their work which involves handling millions of pesos in daily transactions requires a degree of responsibility, care and trustworthiness that is far greater than those expected from ordinary clerks and employees. The bank must not only exercise "high standards of integrity and performance," it must also insure that its employees do likewise because this is

> the only way to insure that the bank will comply with its fiduciary duty.[105]

Failure to observe the highest standards of diligence in the supervision and selection of employees opens banks to liability. In *Bank of the Philippine Islands v. Court of Appeals*,[106] an impostor was able to pre-terminate the money market placement of a bank client because the bank employees failed to conduct callback and signature verification. Worse, the impostor was able to receive checks representing the value of the money market placement, which she then deposited in another bank. We sustained the finding of the Philippine Clearinghouse Corporation that "the banks were negligent in the selection and supervision of their employees," and ordered them to proportionally shoulder the losses and costs associated with the transactions.

In *Dra. Oliver v. Philippine Savings Bank, et al.*,[107] the acting branch manager, who was also assistant vice-president of the bank, convinced a depositor to allow the use of the latter's deposited funds as bridge financing, from which the depositor will earn a commission. The bank officer further convinced the depositor to open a credit line to finance the operation, and the depositor entrusted her passbook to the bank officer for such purpose. However, the bank officer used the depositor's funds to finance other loans without the depositor's consent, causing the credit line to fall due, which in turn led to the bank filing a collection case against the depositor. In holding the bank solidarily liable with its officer, we held:

> Castro, as acting branch manager of PSBank was able to facilitate the questionable transaction as she was also entrusted with Oliver's passbook. In other words, Castro was the representative of PSBank, and, at the same time, the agent of Oliver, earning commissions from their transactions. Oddly, PSBank, either consciously or through sheer negligence, allowed the double dealings of its employee with its client. Such carelessness and lack of protection of the depositors from its own employees led to the unlawful withdrawal of the P7 million from Oliver's account. Although Castro was eventually terminated by PSBank because of certain problems regarding client accommodation and loss of confidence, the damage to Oliver had already been done. Thus, both Castro and PSBank must be held solidarily liable.[108]

With the foregoing considerations in mind, we find that Rogan's accumulated lapses breached the trust and confidence reposed in her by CSI.

As explained above, there is substantial evidence of several noncompliant transactions that were processed in CSI's Legaspi Village Branch under Rogan's watch. Verily, Rogan was remiss in the implementation of CSI's MIFT Policy with respect to the transactions in question, even if she could have been merely motivated by the desire to build customer loyalty and did not cause loss or damage to any party. In fact, she acknowledged committing lapses and even offered to resign. While Rogan's lapses with respect to the subject transactions do not, by themselves, constitute gross and habitual neglect, we find that they were enough to finally breach the trust and confidence reposed in her by CSI. "*[F]itness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other*".[109] It must be noted that Rogan had been previously suspended for failing to conduct a cash count and misrepresenting such lapse in an official company document. In her suspension notice, she was formally warned that "*any similar violations in the future will be dealt with more severely.*"[110] Given the extraordinary level of diligence demanded by law from banks and the sensitive nature of Rogan's duties, her accumulated violations of company policies, which all relate to the proper management and disposition of cash, were enough for CSI to lose trust and confidence in her. We therefore sustain the concurrent conclusion of the LA and the NLRC that her dismissal on the basis of loss of trust and confidence is justified.

Due process

Rogan argues that CSI did not observe due process in dismissing her, because the Show Cause Order did not clearly specify the company rules or policies she allegedly violated; and she was given only twenty-four (24) hours to respond thereto. Rogan asserts that she should have been given at least five (5) days to respond to the charges, in accordance with the guidelines laid down in the case of *King of Kings Transport, Inc. v. Mamac*[111] (*King of Kings*). We do not agree.

We find that the Show Cause Order, which constituted the first written notice to Rogan, is substantially compliant with the requirements of procedural due process that are implemented by the *King of Kings* guidelines. Contrary to Rogan's claims, the Show Cause Order contains not only the facts and circumstances that form the basis of the charges against her, it also specifically states that:

> You are fully aware, of course, of your obligation as Customer Service Officer to impose branch's control and to comply with the Bank's policy on the following:

- Bank 101 Transacting in Behalf of the Client
- Purchase of Managers Check and Demand Draft
- Manually [Initiated] Funds Transfer (MIFT)
- Fund Transfer
- Signature verification versus Oscar or ROF, Signature cards, Board Resolution/Secretary Certificate
- Signature verification, approval and override of AO in the presence of CSO

> Unless satisfactorily explained, your deviation from the policy constitutes a violation and which may warrant the imposition of the appropriate disciplinary actions against you.[112]

The aforequoted passage shows that the policies alleged to have been violated by Rogan were all enumerated in the Show Cause Order.

However, it must be noted that the Show Cause Order does not specifically state that Rogan was being terminated; it only states that she may be meted the "*appropriate disciplinary actions*" if warranted by the results of the investigation. The whole point of the Show Cause Order was to allow Rogan to submit her evidence and defenses in conjunction with CSI's own investigation, in order to determine the appropriate sanction that may be meted against her. While she may have been given only twenty-four (24) hours to respond to the Show Cause Order, the NLRC, nevertheless, found that CSI still accepted her belatedly submitted explanation. She likewise participated in the administrative investigation, and the final resolution of her case was made only in January 2010, or almost two (2) months after the issuance of the Show Cause Order. The Termination Notice issued by CSI clearly states that "*[a]fter a careful review and deliberation of the evidence and [Rogan's] explanations, including [he]r statements/answers during the administrative hearing, Management finds sufficient and compelling evidence of [he]r inability to comply with [CSI's] policies x x x*"; accordingly, she was found guilty of "*breach[ing] [he]r duties as a B[ranch] C[ash] O[fficer].*" Given these circumstances, we find that CSI observed procedural due process in dismissing Rogan.

Separation pay

Taking together the existence of just cause for termination, her apologetic admission of

fault, as well as her length of service, previous exemplary performance, and the circumstances which led to her dismissal, we sustain the award of separation pay to Rogan. Considering that she was validly dismissed for a just cause, the award of separation pay shall be in the form of financial assistance. *"As a measure of social justice, the award of separation pay/financial assistance has been upheld in some cases even if there is no finding of illegal dismissal,"*[113] *"where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his [or her] moral character."*[114] Here, Rogan is being dismissed for an accumulation of relatively minor lapses. There is no proof of any material benefit or gain to Rogan in connection with the noncompliant transactions processed by Axalan; there was likewise no proof of any pecuniary loss or damage to CSI or any of its clients in connection therewith. Ultimately, Rogan's dismissal was necessitated by the nature and character of her lapses, as calibrated against the sensitive nature of her position and her employer's obligation to exercise extraordinary diligence in the selection and supervision of its employees. We are of the considered opinion that such a situation justifies a minor shifting of the scales of justice in favor of labor in the form of separation pay as financial assistance.

Finally, considering the absolute dearth of evidence to justify any liability on the part of petitioners Lynch, Abrigo, and Endaya in connection with Rogan's termination, we hold that the obligation to give separation pay should vest upon CSI alone.

WHEREFORE, the present petition is **PARTIALLY GRANTED**. The May 16, 2014 Decision and the September 30, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 122602 are hereby **REVERSED** and **SET ASIDE**. Judgment is hereby rendered **ORDERING** Citibank Savings, Inc. and/or its successors-in-interest to **PAY** Brenda L. Rogan separation pay as financial assistance, in the amount of one-half (1/2) month's salary for every year of service. This case is hereby **REMANDED** to the Labor Arbiter for the proper computation of the amount of separation pay due to Brenda L. Rogan.

SO ORDERED.

Caguioa (Chairperson), Inting, Dimaampao, and *Singh, JJ.*, concur.

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[*] Also referred to in the records as "Florypee V. Abrigo".

[1] *Rollo*, pp. 13-40.

[2] *Id.* at 52-64. Rendered by the Special 9th Division composed of Associate Justices Normandie B. Pizarro, Francisco P. Acosta (*ponente*), and Myra V. Garcia-Fernandez.

[3] *Id.* at 66-67.

[4] *Id.* at 297-316. Rendered by the NLRC 5th Division, composed of Commissioners Leonardo L. Leonida (presiding), Dolores M. Peralta-Beley (*ponente*), and Mercedes R. Posada-Lacap.

[5] *Id.* at 335-336.

[6] *Id.* at 114. According to its counsel, Citibank was acquired by BDO Unibank, Inc. on March 25, 2014, thereby making BDO Unibank, Inc. the former's transferee-in-interest under Rule 3, Section 19 of the Rules of Court. *Id.* at 13.

[7] *Id.* at 95, 113, 115.

[8] *Id.* at 16-17, 339-340.

[9] *Id.* at 145.

[10] *Id.* at 146.

[11] *Id.* at 147-148.

[12] *Id.* at 117.

[13] *Id.* at 117-118.

[14] *Id.* at 118-120.

[15] *Id.* at 108-109.

[16] *Id.* at 93-94.

[17] MIFTs include "include instructions received from customers xx x or from [within the bank and its subsidiaries], which are initiated via phone, fax, paper mail, MTS (Money Transfer Slip), customer's check (on-us), withdrawal forms against Statement Savings, and via [the bank's online platform]. External and internal MIFT include all transactions that end with a transfer of funds out of the institution, as well as, with movement of funds within internal Citibank accounts, requiring intervention by the bank for execution of the request."

Id. at 159.

[18] *Id.* at 110, 121.

[19] *Id.*

[20] *Id.* at 184.

[21] *Id.* at 86-88, 114.

[22] *Id.* at 95.

[23] *Id.* at 93-94.

[24] *Id.* at 187.

[25] *Id.* at 188.

[26] *Id.* at 188-189.

[27] *Id.* at 190-191.

[28] *Id.* at 124-136.

[29] *Id.* at 126-131.

[30] *Id.* at 215-238. Rendered by Labor Arbiter Fedriel S. Panganiban of the National Capital Region Arbitration Branch.

[31] *Id.* at 226-229.

[32] *Id.* at 229-232.

[33] *Id.* at 231-232.

[34] *Id.*

[35] *Id.* at 232-234.

[36] *Id.* at 233.

[37] *Id.* at 234-235.

[38] Memorandum of Appeal, *id.* at 239-270.

[39] *Id.* at 307.

[40] *Id.* at 314. Citations omitted.

[41] *Id.* at 308.

[42] *Id.*

[43] *Id.* at 309. The policy states: "Recipient of customer instruction should not perform the signature verification nor the callback. Exception is for the OTC (over-the-counter) where the teller/processor receiving the instruction through the messenger, can be treated as an 'independent' person, and can perform the signature verification. However, the callback function should be independent of the teller-recipient."

[44] *Id.*

[45] *Id.* at 309-310.

[46] *Id.* at 311.

[47] *Id.* at 311-312.

[48] *Id.* at 312.

[49] *Id.* at 313-314.

[50] *Id.* at 315.

[51] *Id.* at 335-336.

[52] *Id.* at 337-374.

[53] In the form of separation pay, if reinstatement is no longer possible. *Id.* at 63.

[54] *Id.*

[55] *Id.* at 59.

[56] *Id.* at 59-60.

[57] *Id.* at 60.

[58] *Id.*

[59] *Id.* at 60-61.

[60] *Id.* at 61.

[61] *Id.* at 61-62, citing **Gonzales v. NLRC**, 407 Phil. 486, 500 (2001) and **Gonzales v. NLRC**, 339 Phil. 323, 327 (1997).

[62] *Id.* at 62-63, citing **Manila Memorial Park Cemetery, Inc. v. Panado**, 524 Phil. 282 (2006).

[63] *Id.* at 63-64.

[64] *Id.* at 66-67.

[65] *Id.* at 68-80.

[66] Petition, *id.* at 13-40, and Reply, *id.* at 472-481; Comment, *id.* at 440-450.

[67] **Atienza v. TKC Heavy industries Corp., G.R. No. 217782**, June 23, 2021; **The Peninsula Manila v. Jara, G.R. No. 225586**, July 29, 2019; **Ang v. PNB**, 635 Phil. 117, 124-125 (2010); **Cadiz v. Court of Appeals**, 510 Phil. 721, 728 (2005). See also **Century Iron Works, Inc., et al. v. Bañas**, 711 Phil. 576, 585 (2013).

[68] *Rollo*, pp. 27-29, 476-477.

[69] *Id.* at 476-477.

[70] *Id.* at 472-475.

[71] *Id.* at 30-31, 395.

[72] *Id.* at 446-447.

[73] *Id.* at 447.

[74] *Id.*

[75] **Century Iron Works, Inc., et al. v. Bañas**, *supra* note 67 at 589-590.

[76] **Bawasanta v. People, G.R. Nos. 219300, 219323 & 219343**, November 17, 2021.

[77] Philip Babcock Gove, ed. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 1017 (1993).

[78] **Lafuente v. Davao Central Warehouse Club, Inc., G.R. No. 247410**, March 17, 2021; **Sugarsteel Industrial, Inc., et al. v. Albina, et al.**, 786 Phil. 318, 327 (2016).

[79] **Philippine Savings Bank v. Genove, G.R. No. 202049**, June 15, 2020.

[80] **Century Iron Works, Inc. v. Bañas**, *supra* note 67 at 589-590.

[81] As discussed in CSI's MIFT Policy Bulletin, callback is the process of calling the client's registered contact number to inform them of a pending transaction and to verify their consent to such transaction. *Rollo*, pp. 164-165.

[82] *Id.* at 108.

[83] *Id.* at 153.

[84] In its pleadings before the NLRC, CSI did not allege any loss or damage resulting from the transactions in question. It merely argued that Rogan "knew and is expected to know that lapses in controls could result in potential litigation and financial losses to the bank"; and that actual loss is not a prerequisite to a lawful dismissal. Reply to Rogan's Position Paper, *id.* at 202.

[85] *Id.* at 159.

[86] AMENDED AND RESTATED GLOBAL CUSTODIAL SERVICES AGREEMENT ALTMFX TRUST", accessed February 27, 2023 at https://www.lawinsider.com/contracts/2uZ2voqjpWl#mift; archive link at https://web.archive.org/web/20230227042429/https://www.lawinsider.com/contracts/2uZ2voqjpW1; "FORM OF GLOBAL CUSTODIAL SERVICES AGREEMENT BETWEEN THE REGISTRANT AND CITIBANK", accessed February 27, 2023 at https://www.sec.gov/Archives/edgar/data/1816125/000179420220000453/ex99gi.htm; archive link at https://web.archive.org/web/20230227042638/https://www.sec.gov/Archives/edgar/data/153

5174/000119312512291965/d369274dex99gl.htm.

[87] *Id.* at 160.

[88] *Id.* at 167.

[89] *Id.* at 160.

[90] *Id.* at 388-389.

[91] *Id.* at 161.

[92] *Id.* at 163.

[93] *Id.* at 149-151.

[94] *Id.* at 391.

[95] Item no. 4 of the MIFT Policy Bulletin, *id.* at 160.

[96] See **Davao Contractors Dev't. Cooperative (DACODECO) v. Pasawa**, 610 Phil. 16, 26 (2009).

[97] **The Peninsula Manila v. Jara**, *supra* note 67; **Brent Hospital Inc. v. NLRC**, 354 Phil. 314, 321 (1998).

[98] **Buenaflor Car Services, Inc. v. David**, 798 Phil. 195, 204 (2016).

[99] Breach of trust and confidence as a ground for dismissal appears to have been derived from the principal's power to terminate an agency relation. See **Tabacalera Insurance Co. v. NLRC**, 236 Phil. 714, 723 (1987) and **Manila Trading v. Manila Trading Laborers' Assn.**, 83 Phil. 297, 301-302 (1949).

[100] **Paez v. Marinduque Electric Cooperative, Inc., G.R. No. 211185**, December 9, 2020; **Lagahit v. Pacific Concord Container Lines, et al.**, 778 Phil. 168, 185 (2016); **University of the Immaculate Conception v. Office of the Secretary of Labor and Employment, et al.**, 769 Phil. 630, 657 (2015).

[101] CIVIL CODE, Article 1980, **Allied Banking Corp. v. Spouses Macam**, *infra* note 105; **People v. Go, et al.**, 740 Phil. 583, 611 (2014); **Central Bank of the Philippines v.**

Citytrust Banking Corp., 597 Phil. 609, 614 (2009).

[102] **Philippine National Bank v. Raymundo**, 802 Phil. 617, 631-632 (2016); **Philippine National Bank v. Santos, et al.**, 749 Phil. 948, 959 (2014).

[103] **BPI Family Savings Bank, Inc. v. Spouses Soriano, G.R. No. 214939**, June 8, 2020.

[104] **Bank of [the] Philippine Islands v. Court of Appeals**, 290 Phil. 452, 480 (1992).

[105] **Allied Banking Corp. v. Spouses Macam, G.R. No. 200635**, February 1, 2021. Citations omitted.

[106] *Supra* note 104.

[107] 783 Phil. 687 (2016).

[108] *Id*. at 709.

[109] **Century Iron Works, Inc., et al. v. Bañas**, *supra* note 67 at 590, citing **Valiao v. Court of Appeals**, 479 Phil. 459, 470-471 (2004).

[110] *Rollo*, p. 148.

[111] 553 Phil. 108 (2007).

[112] *Rollo*, pp. 108-109.

[113] **Expedition Construction Corp., et al. v. Africa, et al.**, 822 Phil. 1044, 1059 (2017).

[114] **Cadavas v. Court of Appeals, G.R. No. 223765**, March 20, 2019, citing **Philippine Long Distance Telephone Co. v. NLRC**, 247 Phil. 641, 644 (1988).

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