# RICARDITO R. AQUINO AND NELIA M. SARMIENTO, PETITIONERS, VS. RURAL BANK OF PINAMALAYAN, INC., MARIA CHRISTINA L. DELOS REYES, RONALD I. PHI, GEOFFREY V. RUBIA, AVA MARCIA A. ALI...

Ponente: VILLON, J.

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**VILLON, J.:**

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the decision[1] dated October 25, 2011 and resolution[2] dated December 29, 2011 issued by public respondent National Labor Relations Commission (NLRC), Sixth Division, in NLRC LAC No. 05-001335-11. The assailed issuances affirmed the March 10, 2011 decision[3] of Labor Arbiter Enrico Angelo C. Portillo in NLRC-RAB-IV-09-01801-10-M dismissing the complaint for illegal dismissal filed by petitioners Ricardito R. Aquino (or "Aquino") and Nelia Sarmiento (or "Sarmiento") against private respondents Rural Bank of Pinamalayan, Inc. (or "RBPI") and its corporate officers.

The factual and procedural antecedents of the case are as follows:

Petitioners are former employees of RBPI-Gloria Branch. Aquino, who occupied the position of Officer-in-Charge, and Sarmiento, the bookkeeper, started their employment with RBPI in 1995 and 2002, respectively.

Sometime in 2010, an audit examination of the books and records of RBPI-Gloria Branch covering the years 2007 and 2008 was conducted. Thereafter, a report[4] dated June 3, 2010 was prepared by independent auditor Melchor T. Vanguardia (or "Vanguardia") and his audit team which disclosed several irregularities and anomalies committed by petitioners in the performance of their duties, to wit:

> "The following have been noted and is now refer (sic) to the Board of Directors of the Rural Bank of Pinamalayan, Inc. for action, viz:
>
> 1. Issuing an Official Receipt by the custodian without cash inflow or cash received. This has been confirmed by an officer of the bank and the auditors who conducted the audit. This was part of the operation on how they were able to conceal fraud and manipulated the records. The summary of the auditor of cash clearly explain (sic) how they were able to reconcile the book balances versus the teller's and bookkeeper's proof sheet and yet the bank balances which is (sic) presumed to be correct does (sic) not reconcile with the book balances at least for the years ending December 31, 2008 and 2007. xxx
>
> 2. There were irregular deposit slip (sic) and withdrawal slip (sic) that were part of the file of the bank but virtually not official because they were observed to be manipulated and was (sic) not taken in the passbook of the bank because it (sic) was never accepted by the bank. The manager of the said bank was even shocked upon seeing the same. That needs legal consultation perhaps and the documents are being kept by an officer of the bank for safety.

> 3. There were deliberate attempts to postpone, delay, over foot or underfoot entries and transactions as a part of the grand plan to manipulate the records/books of the bank: e.g. postponement or delaying of deposits tantamount to lapping/kitting of transaction, over footing/under footing of the transactions in the proof sheet to force balance the same and in order to conceal the effects of fraud.
>
> 4. There were violations of the standard operating : procedures as regards the following:
>
> - Procedures in the operations of the CTD, Cashiers Checks, Cash Advances. x x x
>
> - The deliberate attempt not to sign the accountable papers like the cashier's and teller's proof sheet by persons required to do so.
>
> - No courtesy and cooperation to the auditors when conducting inquiry on operations.
>
> - The subject amount of fraud of the subject employees can not be established yet but I am presenting to you amounts and transactions which needs (sic) to be verified by collaboration with management perhaps or other regulatory agencies as regards acceptable explanations from those people involved."[5]

On June 9, 2010, petitioners received a copy of the foregoing audit report, along with a demand letter[6] from RBPI, through its President, private respondent Christina T. Delos Reyes (or "Delos Reyes"), requiring them to "present a detailed explanation of the 'unexplainable transactions' amounting to Php14,478,436 and/or remit payment of approximately Php5,000,000.00 which constituted the "unaccounted difference." Petitioners returned Vanguardia's report on the following day for the reason that the same was unsigned.[7]

On June 30, 2010, petitioners made a reply[8] to RBPI's demand letter, questioning Vanguardia's findings and denying any discrepancy in the books of RBPI-Gloria Branch. Nevertheless, petitioners were placed under a thirty-day preventive suspension beginning July 16, 2010.[9] Petitioners also appeared at the hearing conducted by the Audit Committee which was scheduled on July 27, 2010, though they refused to answer any question concerning the allegations made against them.[10] On August 17, 2010, petitioners were found guilty of serious misconduct, fraud and willful breach of trust, for which their employment were terminated.[11]

On September 27, 2010, petitioners instituted the instant case before the arbitration branch of the NLRC.[12] On March 10, 2011, the Labor Arbiter (LA) dismissed petitioners' complaint for lack of merit. Aggrieved, petitioners interposed an appeal to the NLRC which, in turn, rendered the assailed decision dated October 25, 2011 affirming the findings of the LA. Thus:

> "WHEREFORE, the Appeal for lack of merit is DISMISSED and the Assailed Decision of the Labor Arbiter dated March 10, 2011, AFFIRMED.
>
> SO ORDERED."[13]

Petitioners' motion for reconsideration was likewise denied in the assailed resolution dated December 29, 2011.

Hence the present recourse, petitioners raising the following issues:

> WHETHER OR NOT THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN:
>
> - IT RULED THAT THE PRIVATE RESPONDENTS DID NOT VIOLATE SECTION 2 OF RULE XIV OF THE OMNIBUS RULES IMPLEMENTING THE LABOR CODE IN THE DISMISSAL OF THE PETITIONERS.
>
> - IT RULED ON VANGUARDIA'S ERRONEOUS AUDIT REPORT IN UPHOLDING THE DISMISSAL OF THE PETITIONERS.


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- IT RULED THAT THERE WAS BASIS FOR THE PRIVATE-RESPONDENTS ALLEGATIONS THAT PETITIONERS COMMITTED UNSAFE BANKING PRACTICES;

- IT RULED THAT THERE WAS BASIS FOR THE PRIVATE-RESPONDENTS ALLEGATIONS THAT THE PETITIONERS MANIPULATED THE EMPLOYEES CASH ADVANCES THROUGH ISSUANCE OF FALSIFIED CASHIER'S CHECKS AND OFFICIAL RECEIPTS

- IT RULED THAT PETITIONER AQUINO VIOLATED THE DOSRI RULE.

- IT RULED THAT PRIVATE RESPONDENTS ARE NOT LIABLE TO PAY PETITIONERS FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[14]

Petitioners contend that they were denied their right to procedural due process; that the audit report upon which their dismissal was based was full of erroneous findings; that there was no proof that they defrauded RBPI; that they did not falsify any cashier's checks and official receipts to grant cash advances to employees; and that the cash advances that Aquino obtained from RBPI were not covered by the DOSRI rule.

RBPI, for its part, maintains that petitioners were afforded their right to due process; that their acts and omissions constituting the bases for their dismissal were clearly specified in Vanguardia's audit report; that petitioners' allegations on the inaccuracy of the said audit report were unfounded; and that petitioners' serious misconduct and willful breach of their employer's trust were sufficient bases for their termination from employment.

First, the procedural issues raised by petitioners. It is fundamental that in order to validly dismiss an employee, the employer is required to observe both substantive and procedural due process – the termination of employment must be based on a just or authorized cause and the dismissal must be effected after due notice and hearing.[15] Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination. Even if the aforesaid procedure is conducted after the filing of the illegal dismissal case, the legality of the dismissal, as to its procedural aspect, will be upheld provided that the employer is able to show that compliance with these requirements was not a mere afterthought.[16]

Applying the foregoing standards, the Court finds petitioners' plea of denial of due process to be unsubstantiated. Records show that they were duly informed of the charges made against them through RBPI's demand letter dated June 5, 2010, which letter was accompanied by Vanguardia's audit report specifying the most minute detail of each and every anomaly in the books of RBPI-Gloria Branch. Petitioners were also given the chance to explain their side at the July 27, 2010 hearing conducted by the Audit Committee. It was only after their persistent refusal to cooperate with the required processes that petitioners were duly informed of their termination from service. Thus, they cannot feign denial of due process where they had been afforded the opportunity to present their side.[17]

This brings Us to the issue on the validity of petitioners' dismissal. Article 282[18] of the Labor Code enumerates the just causes for the valid termination of an employee. The burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, therefore, illegal.[19] RBPI asserts serious misconduct and willful breach of trust as grounds for petitioners' dismissal. We find that RBPI was able to establish by substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,[20] that indeed, petitioners were guilty of the said offenses At this juncture, We quote with affirmation the following ratiocination of the NLRC:

> “xxx In the auditor's report, first quarter of 2007, as reported by Ronald M. Aliwalas, the audit noted anomalies in the advances of employees, irregularity in the account Cash and other Cash Items, missing CTD's Cashier's checks issued with no deposit slip, accumulated documentary stamp taxes and withheld taxes, personal cash

advance of employees exceeding their one month pay and other violations of ICS and MORB. The advances to employees are composed of personal cash advances which are made at the first week of each month by means of Cashier's Check [CC] and are paid at the end of the month evidenced by an Official Receipt [OR]. It was found out that the balances of the advances which was paid at the end of each month, evidenced by an OR, suggests that such were not actually paid and that such balances have been carried outstanding to the next months. Further, detailed examination of the advances to employees revealed that Complainant-Aquino made advances of P10,000.00 on January 8, 2007 and P40,000,000 on January 9, 2007 without the written approval of the Board of Directors. In the succeeding months both the Complainants-Aquino and Sarmiento made additional advances without authority from the Board in violation of Section 36 of the GBL and Section X334 of MORB. That the audit team likewise noted irregularity in account Cash and Other Cash Items [COCI], to wit:

'Based on the deposit slips attached from Jan 2-17, 2007, there had been made deposits made during these dates but there was only a single entry in the passbook which was credited on January 18, 2007 amounting to P1,167,340.61. According to respondents, the late deposit practiced by the complainants violated the bank's policy in the ICS and Section X185 of MORB. Regarding the alleged time deposit in the amount of P700,000.00 which was allegedly withdrawn by one Dra. Editha Fernandez through an affidavit of loss, it was found out that after check of the bookkeeper's sheet and passbook on October 4, 2006, there was no time deposit received and no actual deposits of P500,000.00 and P200,000.00 were made on that day. In the auditor's report, second quarter of 2007, as reported by Hazel Jane Dimaala, the reported irregularities include unreliable teller's blotter, bookkeeper's blotter and validation lists, unsubstantiated expenses, late deposits, recorded withdrawals with no corresponding deposits slip, unrecorded deposits, etc. In the auditor's report, third quarter of 2007, as reported by Zyrine Q. Cagalfin, it was reported that bookkeeper's proof sheet and teller's blotter do not reconcile, most of the proof sheets have erasures, the supporting documents attached to the proof sheets are unreliable, unrecorded deposits late deposits and PETNET money transfer without supporting documents. In the auditor's report, fourth quarter of 2007 as reported by Rolly Boy M. Cadiz, the noted anomalies are late recording of deposits, huge discrepancies between deposit/withdrawal slips, various deposits to depositary banks from October to December with no deposits slips in the total amount of P1,811,865.62, missing CTD, etc. In the auditor's report in the first quarter of 2008, as reported by Ronald M. Aliwalas, the anomalies include the issuance of official receipts by complainant Sarmiento to non-existent payment of employees for their advances and her removal from said account balance of her advance amounting to P7,000.00 that was not paid, irregular issuance of CC's to Ricardo Masculino supposedly for the payment of PETNET and issuance of OR even if no actual cash or check received, unrecorded deposits to FADB and PNB in the amounts of P26,328.31 in Feb 2008 and P415,824.86 in Mar 2008 and P85,903.09, late deposit of P500,000.00 received on March 17, 2008 but deposited on March 31, 2008, withdrawal of P300,000.00 from PNB without withdrawal slip, missing cashier's check for agri-loan of P129,075.00, unrecorded cash receipt in the amount of P177,876.98, etc. In the auditor's report, second quarter of 2008 as reported by Hazel Dimaala, some observations were made regarding unreliable cash on hand account, teller's blotters, bookkeeper's blotters and validation slips for not being updated, missing deposit and withdrawal slips, cash received for money transfer was not supported by any document, etc. In the auditor's report, third quarter of 2008 as reported by Zyrine Q. Cafalgin, the observations include missing documents like OR's, unrecorded surrendered CTD, late deposits, deposit slips not machine validated, unpaid cash advance of complainant Aquino in the amount of P3,000.00, and fictitious withdrawal slip for P100,000.00 on July 25, 2008. The auditor's report, fourth quarter of 2008 as reported by Rolly Boy M. Cadiz include incorrect postings in the teller's blotter's, proof sheets, incorrect recording of deposits and withdrawals, inconsistencies in the validation lists and missing OR's.'

We find that the above findings of the audit team are detailed, and the Complainant failed to explain and rebut the allegations of irregularities."[21]

Misconduct is improper or wrongful conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error

of judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such grave and aggravated character and not merely trivial or unimportant. It is also important that the misconduct be in connection with the employee's work to constitute just cause for his separation.[22] Indeed, the standard proof of a company's financial standing is its financial statements duly audited by credible external auditors,[23] as in this case. We note the exhaustive nature of Vanguardia's report, as well as the individual assessments of the members of his team on the books of RBPI, and give much credence to the same in the absence of evidence to the contrary. Thus, the Court affirms the finding that petitioners are guilty of serious misconduct.

Then, too, it stands to reason that by virtue of the nature of their positions, petitioners may also be dismissed on the ground of loss of trust and confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[24] The Supreme Court, in Norma Mabeza v. NLRC,[25] declared that:

> "Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. xxx"

Bristol Myers Squibb (Phils.), Inc. v. Richard Nixon A. Baban,[26] adds:

> "xxx 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 require the employer's full trust and confidence. 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. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him."

As Officer-in-Charge and bookkeeper of RBPI-Gloria Branch, much trust and faith had been reposed by the bank upon petitioners because of the sensitive nature of their positions. Their dishonesty in the recording of the transactions of the branch constitute a willful breach of this trust. Consequently, RBPI did not err in terminating their employment.

Findings of fact made by Labor Arbiters and affirmed by the NLRC are not only entitled to great respect, but even finality, and are considered binding if the same are supported by substantial evidence.[27] An examination of the evidence at hand shows no cogent reason to deviate from this longstanding rule. A writ of certiorari is an extraordinary prerogative writ that is never demandable as a matter of right. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[28] Nothing of that sort is obtaining in this case.


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WHEREFORE, in light of all the foregoing, the petition is hereby DISMISSED for lack of merit.

**SO ORDERED.**

Macalino and Corales, JJ., concur.

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[1]Rollo, pp. 56-71.

[2] Rollo, pp. 73-74.

[3] Rollo, pp. 77-87.

[4] Rollo, pp. 112-229.

[5] Rollo, p. 115

[6] Rollo, p. 111.

[7] Rollo, p. 88.

[8] Rollo, pp. 230-231.

[9] Rollo, p. 237.

[10]Rollo, pp. 275-277.

[11] Rollo, pp. 278-279.

[12] Rollo, pp. 280-282.

[13] Rollo, p. 67.

[14] Rollo, p. 13.

[15] Kakampi v. Kingspoint Express and Logistic, G.R. No. 194813, April 25, 2012.

[16] New Puerto Commercial v. Rodel Lopez, G.R. No. 169999, July 26, 2010.

[17] John C. Arroyo v. Rosal Homeowners Association, Inc., G.R. No. 175155, October 22, 2012.

[18] Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

- Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

- Gross and habitual neglect by the employee of his duties;

- Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

- Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

- Other causes analogous to the foregoing.

[19] Alps Transportation v. Elpidio M. Rodriguez, G.R. No. 186732, June 13, 2013.


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[20] Camilo A. Esguerra v. United Philippines Lines, Inc., G.R. No. 199932, July 3, 2013.

[21] Rollo, pp. 66-69.

[22] Jonathan I. Sang-an v. Equator Knights Detective and Security Agency, Inc., G.R. No. 173189, February 13, 2013.

[23] Francis Ray Talam v. NLRC, G.R. No. 175040, April 6, 2010.

[24] Prudential Guarantee and Assurance Employee Labor Union v. NLRC, G.R. No. 185335, June 13, 2012.

[25] G.R. No. 118506, April 18, 1997.

[26] G.R. No. 167449, December 17, 2008.

[27] Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, G.R. No. 155306, August 28, 2013.

[28] Ebrencio F. Indoyon, Jr. v. Court of Appeals, G.R. No. 193706, March 12, 2013.


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