

ASSOCIATED CITIZENS BANK, PETITIONER, VS. HONORABLE BLAS F. OPLE, MINISTER OF LABOR, ANTONIO TRIA TIRONA, AS LABOR ARBITER OF THE DEPARTMENT OF LABOR, AND JOSE S. ARAMBULO, RESP...

G.R. No. L-48896. February 24, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this case is whether a managerial employee who had worked in the Bank for thirteen years and who, with the approval of the Department of Labor, was dismissed for having committed a grave abuse of authority, is entitled to separation pay equivalent to his salary for thirteen months plus accruing benefits.

Jose S. Arambulo joined the Citizens Bank and Trust Company on January 16, 1963. He became an assistant vice-president and concurrently manager of the bank's Ylaya or Divisoria branch for ten years.

On January 1, 1976, Norberto K. Katigbak, the executive vice-president, transferred Arambulo to the office of the president of the Associated Citizens Bank (a merger in 1975 of the Associated Banking Corporation and the Citizens Bank and Trust Company).

In a memorandum dated January 9, 1976, Katigbak advised Arambulo that he (Arambulo) was under preventive suspension or forced vacation leave and that should the Credit Operations Review Unit, which was auditing the unauthorized loan disbursements and overdrafts made in the Ylaya Branch, find that Arambulo had acted beyond the limits of his authority, that would be a ground for terminating his services (p. 31, Rollo).

The auditing or investigating committee, composed of Roman S. Bernardo, senior vice-president; Rafael Noriega, vice-president, and Michael Co, assistant vice-president, in a memorandum dated February 27, 1976, found that Arambulo had committed irregularities and abuse of discretion prejudicial to the bank. The committee recommended Arambulo's dismissal and appropriate legal action to protect the interest of the bank (pp. 9-10, Rollo).

The investigating committee pinpointed the following irregularities committed by Arambulo:

"1. Current Account No. 1212 in the name of Clarita Villanueva with an initial cash deposit of P1,000.00 was approved by Mr. Arambulo on August 3, 1974.

"The operation of the account was characterized by a daily check deposit in big amounts from P150,000.00 to P300,000.00 in aggregate, with simultaneous withdrawal of various checks almost in equal amounts which were honored or approved by Mr. Arambulo although the checks deposited were not yet properly cleared.

"This manner of operation continued up to December 29, 1975 on which date the account showed an overdraft balance of P360,010.51 as a result of various checks drawn against the account which were approved by Mr. Arambulo although no corresponding deposit has been made.

"The amount of overdrawing was aggravated when it increased to P581,400.51 on January 5, 1976 as a result of the return by other banks of various checks deposited on December 24, 1975 and which were treated as COCI on said date. The outstanding overdraft balance as of February 26, 1976 amounted to P504,269.26.

"Our head office records also showed that on October 22, 1975, a loan of P210, 000.00 was approved by the Loan Committee in favor of Clarita Villanueva upon the recommendation of Mr. Arambulo for the purpose of regularizing the TOD (temporary overdraft) granted by him amounting to P210, 007.30 as of September 29, 1975. This was granted against chattel mortgage on inventory for P854,130.20 with present balance of P171,255.26" (pp. 9-10, Rollo).

The investigating committee also found that Arambulo irregularly approved other temporary overdrafts and loan accounts amounting to P258,564.09 for fifteen customers which were still outstanding (p. 10, Rollo).

The temporary overdrafts and drawings against uncollected deposits, which Arambulo permitted in the Ylaya branch, were allegedly in contravention of the bank president's office order dated March 16, 1975. The bank president called the attention of branch managers to the Monetary Board Memorandum May 26, 1972 which defined the conditions under which temporary overdrafts and drawings may be allowed.

In said order, the bank president (Arambulo's brother and a major stockholder of the bank, p. 12, Rollo), directed that all temporary overdrafts, whether secured or unsecured by assignment of deposits, should be phased out by April 15, 1975; that the drawings against uncollected deposits should be permitted for the accommodation of valued clients only and should be non-recurrent; that the uncollected deposits should be evidenced by manager's or cashier's checks and that the withdrawal should not exceed 50% of the face value of the checks (pp. 77-78, Rollo).

In a letter dated March 22, 1976, Bernardo asked Arambulo to submit an explanation regarding the said temporary overdrafts and drawings against uncollected deposits (pp. 32-33, Rollo).

Arambulo in his reply of April 1, 1976 alleged that he did not commit any abuse of discretion as branch manager; that the questioned transactions were in accordance with sound banking practices; that he had to retain the goodwill of the customers, considering that twenty-one banks had branches in the Ylaya area; that it had been a practice to grant credit accommodations to good clients with good reputation; that the account of Clarita Villanueva was fully secured and that the other accounts had been referred to the legal department (pp. 34-35, Rollo).

Even before Arambulo had submitted his explanation, or on March 23, 1976, the bank applied for clearance to suspend Arambulo effective January 9, 1976 pending investigation of "anomalous practices" in the Ylaya branch (p. 216, Rollo).

On April 22, 1976, Arambulo, 44, filed with Regional Office No. IV this case for illegal suspension and dismissal (p. 36, Rollo).

While that case was pending, or on July 15, 1976, Katigbak sent Arambulo a letter, dismissing him from the service for cause, retroactive to the date of his suspension (p. 29, Rollo).

Katigbak in that letter (substantially a repetition of his letter of March 22, 1976) reminded Arambulo that the latter had allowed the current account of Clarita Villanueva to be overdrawn by P360,000 on December 29, 1975 and that the overdraft increased to P574, 962.51 on January 2, 1976 because the checks, which she deposited, were dishonored (p. 29, Rollo).

Katigbak reiterated his previous charge that Arambulo allowed the said overdraft in spite of the fact that the loan of P210,000, which Arambulo had arranged to be granted to Clarita Villanueva to cover up a previously unauthorized temporary overdraft, had not yet been paid.

The result was that as of July 15, 1976 Clarita Villanueva's temporary overdraft had still an outstanding balance of P255,358, a situation which constituted a violation of the bank's policy and the Central Bank's regulation against "kiting" (p. 29, Rollo). (Merriam-Webster defines a "kite" as "a check drawn against uncollected funds in a bank account" or "a check that has been fraudulently raised before cashing").

Katigbak informed Arambulo that the investigating committee concluded that Arambulo committed a grave abuse of authority as a branch manager by exposing the bank to possible losses and of being penalized by the Central Bank and that Arambulo continued that "irregular banking practice in spite of persistent admonition from the bank management" (p. 29, Rollo).

On October 5, 1976, the legal officer of Regional Office No. 4 of the Department of Labor, acting on the bank's application for clearance to terminate the services of Arambulo and two other employees, to which Arambulo did not interpose any opposition, granted the application pursuant to article 272 of the Labor Code, now article 283 (p. 30, Rollo).

The Labor Arbiter in his decision of October 11, 1976 held that there was no valid ground for suspension or dismissal; that Arambulo was deprived of due process of law; that the bank was inconsistent in first intending to allow Arambulo to resign and then later dismissing him; that Arambulo did not violate any bank regulation; that the bank had acquiesced in the practice of Arambulo and that under the bank's office order the penalty for the first offense was two week's suspension and not dismissal (pp. 51-54, Rollo).

The Labor Arbiter ordered the bank to reinstate Arambulo with full backwages and accrued benefits and without loss of seniority rights. If reinstatement even to an equivalent position would not be possible, the bank was ordered to pay him backwages or separation pay, "whichever is higher" (the decision is not quite clear) (p. 56, Rollo).

From that decision, the bank appealed to the National Labor Relations Commission. Commissioners Diego P. Atienza and Cleto T. Villatuya in a decision dated October 28, 1977 reversed the decision of the Labor Arbiter and dismissed Arambulo's complaint. Commissioner Geronimo Q. Quadra voted for the affirmance of the Labor Arbiter's decision.

Commissioners Atienza and Villatuya, on the basis of the facts set forth in the investigating committee's memorandum of February 27, 1976, Bernardo's letter of March 22, 1976 and Katigbak's dismissal letter of July 15, 1976 (pp. 9-10, Rollo, Annexes D and G of Petition), concluded that Arambulo repeatedly violated the bank regulation on temporary overdrafts and drawings against uncollected deposits and was, there-fore, guilty of serious misconduct or willful disobedience to the bank's order in connection with his work (pp. 78-79, Rollo).

The two commissioners reasoned out that no temporary overdrafts could be allowed after April 15, 1975 and that Clarita Villanueva should not have been allowed to issue checks against uncollected deposits because she was not a valued client (p. 78, Rollo).

The two Commissioners also noted that under Policy Instruction No. 8 of the Secretary of Labor, Arambulo, as a managerial employee, could be suspended or dismissed without prior clearance from the Secretary of Labor. They disagreed with the Labor Arbiter's conclusion that Arambulo was denied due process of law (pp. 78-79, Rollo).

Arambulo appealed to the Secretary of Labor. The Secretary in his order of April 11, 1978 (48 days before the issuance of Presidential Decree No. 1391 which eliminated appeals from the NLRC to the Secretary of Labor) reversed the NLRC decision and ordered the bank to pay Arambulo "separation pay equivalent to one month salary for every year of service and other accruing benefits" (p. 220, Rollo).

The socio-economic analyst of the NLRC computed Arambulo's separation pay at P27,300 which amount was arrived at by multiplying his basic monthly salary of P2,100 by 13 (p. 121, Rollo).

However, Arambulo submitted a different computation. According to his inflated computation, his separation pay for thirteen months amounts to P65,000 because the basic salary of a "senior assistant vice-president" in 1978 was P5,000 a month.

He said that he was entitled to accruing benefits amounting to P132,672.04 consisting of allowances, vacation leave, sick leave, profit-sharing benefits and bonuses for the period from 1976 to September 13, 1978. He computed his separation pay and accruing benefits at P197,672.04 as of September 13, 1978 (p. 127, Rollo).

We hold that the Secretary of Labor erred in reversing the decision of Commissioners Atienza and Villatuya. No grave abuse of discretion was committed by the latter in confirming Arambulo's dismissal for "serious misconduct or willful disobedience by the employee of the orders of his employer or representative in connection with his work" (Art. 272[b], now art. 283[b], Labor Code).

Arambulo's repeated violation of the bank president's office order and the Central Bank's memorandum against temporary overdrafts and drawings against uncollected deposits constituted a clear abuse of authority.

Obviously, Arambulo committed the irregularities complained of to suit his own purpose and not primarily to serve the interest of his employer. If he wanted to act in good faith, he should have obtained express authorization from the head office to allow the temporary overdrafts and drawings against uncollected deposits.

The contention that Arambulo was denied due process because he was not formally investigated is not correct. He was given plenty of time to present his side of the case. He was repeatedly informed of the charges against him which were based on documentary evidence consisting of the records of the Ylaya branch which he had managed. He was familiar with those records.

It was not necessary to undergo the ritual of holding a hearing and presenting those records for his inspection. His having allowed the temporary overdrafts and drawings against uncollected deposits, the irregularities imputed to him, was an uncontestable fact. He did not deny it.

His infringement of the office order and the Central Bank's memorandum is likewise incontrovertible. The management, having lost its confidence in Arambulo, had the right to determine what disciplinary action should be taken against him under the termination of employment provisions of the Labor Code.

WHEREFORE, the order of the Secretary of Labor dated April 11, 1978 is reversed and set aside for having been issued with grave abuse of discretion.

We affirm the decision of the NLRC dated October 28, 1977 dismissing respondent Arambulo's complaint for illegal suspension and dismissal. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Fernandez and De Castro, JJ., concur.

Barredo, J., concurring. It appears that when the legal officer of Regional Office No. 4 with the Department of Labor approved the application with petitioner for clearance to terminate his services, Arambulo did not interpose any opposition. The need of the findings and conclusions in the main opinion should indeed follow solidarity.

Abad Santos, J., is abroad.

Fernandez, J., was designated to sit in the Second Division.

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