

**PREMIERE DEVELOPMENT BANK/ HERMINIO M. FAMATIGAN, JR.,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
(FIFTH DIVISION) HONORABLE COMMISSIONERS: MERCEDES R.
POSADA-LACAP, L...**

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

Via this Petition for Certiorari under Rule 65 of the Rules of Court, petitioners seek the nullification and setting aside of the Decision[1] dated April 25, 2011 as well as the June 17, 2011 Resolution[2] of the National Labor Relations Commission, Fifth Division (NLRC) in NLRC-LAC No. 08-001972-10 (NLRC NCR-10-14683-09) which affirmed the Labor Arbiter's July 26, 2010 Decision[3] awarding separation pay to Charles Singson (private respondent) and denied their Motion for Reconsideration[4], respectively.

Culled from the records are the following antecedents:

Petitioner Premiere Development Bank is a domestic banking institution with thirty-eight (38) branches located in and outside Metro Manila while co-petitioner Herminio Famatigan is the president thereof. Private respondent, on the other hand, has been in the employ of petitioner bank since November 11, 1985 until November 11, 2008. Though initially hired as a messenger on probationary status, private respondent was later on conferred with regular employment and thereafter held higher position in the bank. At the time of his dismissal, he was a Customer Service Operations Head (CSOH).

As CSOH, private respondent was tasked, among others, with the safekeeping of checkbooks and accountable forms. On March 26, 2008, he was assigned to petitioner bank's Quezon Avenue Branch under its then Branch Manager Corazon Pinero (Ms. Pinero). On July 22, 2008, private respondent received a Show-cause Memorandum from Ms. Ruby Go, Regional Operations Head – West Region, concerning his alleged operational lapses in handling branch accountable forms, particularly the inventory control of checkbook supplies. According to Ms. Go, there were no records to prove that he was properly monitoring issuances of the forms in his custody as the result of surprise inventory revealed missing checkbooks and unaccounted items. Private respondent was thus required to explain in writing why no disciplinary sanction should be imposed on him for habitual neglect of duties.

Before private respondent could respond to the show-cause notice, the matter was referred to petitioner bank's Investigation Committee which on July 22, 2008 issued Memorandum Order No. 08-06 stating as follows:

“RE:

MISSING CHECKBOOKS AND IMPROPER HANDLING OF ACCOUNTABLE FORMS

This Committee received reports of the result of Inventory of Outstanding Pre-Encoded Checkbooks of Quezon Avenue Branch as of July 11, 2008 with the following findings to wit;

- There are missing 38 personal and 3 CA plus or a total of 41 pre-encoded checkbooks per actual count.

- Part of the missing 41 pre-encoded checkbooks are 8 CA personal accounts and 2 CA Plus with material deficiencies (e.g. photocopies of signature card (SC) only instead of the original copies, two CA plus account with complete account opening form have deposit slips of P5,000.00 only instead of P10,000.00, etc.)

- Admission of Ms. Pinero that the remaining 31 checkbooks composed of 30 Personal and 1 CA plus were left to clients who wanted to open an account with the Bank and without acknowledgment receipt and account opening forms given to clients.

In order to shed light to these violations of standard instructions and procedures on the maintenance of records of all accountable forms and those received from clients and to answer clarificatory questions that may be raised by members of the Investigation Committee pertaining to these findings, you are invited to join the meeting to be held on Monday, 28 July 2008, at 2:00 on the afternoon in the Boardroom.

In the same vein, you are also required to submit a written explanation regarding these findings and submit the same within 24 hours from receipt of this memorandum.”

During the conference held by the Investigation Committee on August 15, 2008, private respondent admitted that he allowed Branch Manager Ms. Pinero, to take checkbooks and other accountable forms out of the bank's premises. He, however, tried to rationalize the same by saying that it was a senior officer with lengthy tenure and good reputation who asked him to do it. Moreover, he trusted the branch manager to do the right thing with the checkbooks as he reasonably expected the latter to know what she was doing. Private respondent consented to the bringing out of checkbooks as the branch manager told him that it was part of her marketing strategy to procure more clients for the bank. He insisted though that he did not receive any consideration therefor and that the reported missing checkbooks were returned to his custody by Ms. Pinero after the inventory.

In the meantime, private respondent was transferred to petitioner bank's branch in Pedro Gil. Pending the conclusion of the investigation, private respondent was again called to explain through a Memorandum[5] under date September 30, 2008, this time for his alleged inaccurate reporting of branch Returned Checks and Other Cash Items (RCOCI) in the total amount of P46,279.33. The Memorandum stated that the unbalanced RCOCI created a complexity in the branch book. Thus, the uncovered amount was treated as an account receivable for his account.

A month after, he was reassigned to Sampaloc Branch. Upset by his frequent transfers, private respondent tendered his resignation letter[6] on November 10, 2008 effective 30 days from submission. This was apparently not accepted by petitioner bank because the following day or on November 11, 2008, it issued a notice terminating the services of private respondent for committing acts inimical and prejudicial to the interest of the company.

Aggrieved by his termination, private respondent instituted a complaint for Illegal Dismissal with claim for Actual, Moral and Exemplary Damages as well as Attorney's Fees against petitioner bank. The case was initially docketed as NLRC-NCR Case No. 11-15858-2008 and assigned to Labor Arbiter Felipe T. Garduque, III. It was, however, dismissed without prejudice by Order dated August 25, 2009 for failure of private respondent to attach a certificate of non-forum shopping. Upon its refiling, the case was docketed anew as NLRC-NCR Case No. 10-14683-09 and assigned to Labor Arbiter Jose De Vera.

On July 26, 2010, the Labor Arbiter rendered judgment finding the dismissal of private respondent to have been based on justifiable grounds. He ruled that private respondent had committed not only a violation of the bank's Code of Conduct but also gross and habitual neglect of duty when he repeatedly allowed his branch manager to bring the checkbooks out of the bank's premises. The Labor Arbiter further held that the fact that petitioner bank did not suffer from any actual damage or loss is not material to the determination of the validity of his termination. Notwithstanding, private respondent was awarded separation pay considering the ground for dismissal did not involve serious misconduct or a crime involving moral turpitude. The fallo of the said decision states:

“WHEREFORE, all of the foregoing premises being considered, judgment is hereby rendered declaring complainant to have validly dismissed for cause, but on the ground of equity, social justice and compassion, complainant is awarded separation pay by way of financial assistance computed at one-half month pay for every year of service, or the equivalent amount of P218,500.00.

SO ORDERED.”[7]

Dissatisfied with the aforesaid ruling, petitioners appealed to the NLRC. On April 25, 2011, the NLRC issued its now assailed Decision affirming the grant of separation pay. In finding for private respondent, the NLRC declared that while the latter was definitely in breach of duty when he allowed the branch manager to take out the checkbooks, such breach did not reflect on his moral character but merely shows weakness of disposition and grievous error in judgment. The NLRC thus disposed:

“IN VIEW OF THE FOREGOING, the assailed decision is AFFIRMED en toto.

SO ORDERED.”

Undaunted, petitioners sought reconsideration of the above decision but their efforts proved futile. By Resolution dated June 17, 2011, the NLRC denied due course petitioners' motion.

Hence, the instant petition alleging that:

I

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY RULED THAT PRIVATE RESPONDENT IS STILL ENTITLED TO THE PAYMENT OF SEPARATION PAY AS AND BY WAY OF FINANCIAL ASSISTANCE EVEN WHEN IT SUSTAINED THE LABOR ARBITER'S FINDING OF A VALID TERMINATION AND/OR TERMINATION FOR JUST CAUSE OF THE PRIVATE RESPONDENT BY THE PETITIONER BANK.

II

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY RULED THAT PRIVATE RESPONDENT IS STILL ENTITLED TO THE PAYMENT OF SEPARATION PAY AS AND BY WAY OF FINANCIAL ASSISTANCE BECAUSE THE GROUND FOR DISMISSAL DID NOT AMOUNT TO A SERIOUS MISCONDUCT AND WAS NOT DONE WITH WRONGFUL INTENT OR REFLECTED ON HIS MORAL CHARACTER.

We note at the outset that the validity of private respondent's termination from service is no longer at issue. Thus, the two questions posed for Our determination boil down to the propriety of awarding separation pay to private respondent despite a finding that his dismissal was for a valid cause.

Petitioners maintain that an employee who has been dismissed for any of the just causes enumerated under Article 282[8] of the Labor Code is not entitled to separation pay. This is because the clear consequence of a valid termination is the forfeiture of the monetary awards and benefits that an employee ought to receive under the law. Since private respondent's dismissal was for a cause, petitioners argue that the grant of separation benefits to him, even by way of financial assistance, had no basis. According to them, the same is inconsistent and contrary to the very essence of a valid termination. Petitioners further posit that if the conclusion reached by the Labor Arbiter as sustained by the NLRC is not corrected, private respondent would be, in effect, rewarded rather than punished for his infractions.

We resolve to deny the petition. The sole issue in this case – whether a validly dismissed employee like herein private respondent is entitled to an award of separation pay --- has already been squarely settled as early as 1988 in the leading case of *Philippine Long Distance Telephone Co. vs. NLRC*[9], wherein the Supreme Court cogently pronounced, viz.:

“Strictly speaking, however, it is not correct to say that there is no express justification for the grant of separation pay to lawfully dismissed employees other than the abstract consideration of equity. The reason is that our Constitution is replete with positive commands for the promotion of social justice, and particularly the protection of the rights of the workers. The enhancement of their welfare is one of the primary concerns of the present charter. In fact, instead of confining itself to the general commitment to the cause of labor in Article II on the Declaration of Principles of State Policies, the new Constitution contains a separate article devoted to the promotion of social justice and human rights with a separate sub- topic for labor. Article XIII expressly recognizes the vital role of labor, hand in hand with management, in the advancement of the national economy and the welfare of the people in general. The categorical mandates in the Constitution for the improvement of the lot of the workers are more than sufficient basis to justify the award of separation pay in proper cases even if the dismissal be for cause.

x x x

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

Very clear from the foregoing that notwithstanding a valid dismissal, an employee’s lack of moral depravity could evoke compassion and thereby compel an award of separation pay. In such case, the grant stands as a "measure of social justice".

Separation pay therefore, depends on the cause of dismissal, and may be accordingly awarded provided that the dismissal does not fall under either of two circumstances: (1) there was serious misconduct, or (2) the dismissal reflected on the employee's moral character.[10]

In this case, private respondent was found by the Labor Arbiter and the NLRC to have been validly terminated for violations of company rules and habitual neglect of duties. Not falling under the first qualification, the query now shifts to whether it was reflective of the moral character of respondent.

Petitioners contend that the act of private respondent in allowing his branch manager to take out checkbooks outside the bank's premises despite knowledge that the same is prohibited and done on several occasions, constitutes dishonesty which is an attack on his integrity as an officer worthy of the trust and confidence by his employer. The series of dishonest acts, according to petitioners, constitute moral turpitude which renders him

undeserving of the compassion and sympathy of the law.

We do not agree. Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.¹¹ After a careful review of the records, We find and so hold that private respondent did not commit an act of dishonesty as claimed by petitioners. On the contrary, the records reveal that upon inquiry, private respondent readily admitted that he allowed his branch manager to bring out the subject checkbooks. To Our mind, while his acquiescence to the marketing strategy of his branch manager constituted violation of the bank's policy, rules and regulations, there was no indication that his actions were perpetrated for his self-interest or for an unlawful purpose.

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the NLRC are hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the court.

Carandang, R.D., Chairman and Gonzales-Sison, M., JJ., concur.

[1] Rollo, pages 45 to 52

[2] Id., pages 54-55

[3] Id, pages 57-62

[4] Id, pages 37-40

[5] Id., page 79

[6] Id., page 81

[7] Id., pages 21-31

[8] ART. 282. Termination by Employer.—An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) 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 representative; and
- (e) Other causes analogous to the foregoing.

[9] G.R. No. 80609 August 23, 1988

[10] Philippine Commercial International Bank v. Abad, G.R. No. 158045, February 28, 2005, citing San Miguel Corporation v. Lao, 433 Phil. 890

[11] Japson v Civil Service Commission, April 12, 2011

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