BANK OF THE PHILIPPINE ISLANDS. PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MA. PAZ CORAZON D. LLORIN, RESPONDENTS.

Ponente: REYES, JR., J., J.

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REYES, JR., J., J.:

This is a Petition for Certiorari filed pursuant to Rule 65 of the 1997 Rules of Court assailing the November 19, 2004 Resolution (Rollo, pp. 32-38) and the April 20, 2005 Order (Rollo, pp. 29-30) of the National Labor Relations Commission (NLRC) in SUB-RAB Case No. 05-07-00306-02 (NLRC NCR CA No. 035656-03).

The undisputed facts are as follows:

Sometime in December 1996, herein private respondent Ma. Paz Corazon D. Llorin started her employment on a probationary basis with petitioner Bank of the Philippine Islands (BPI) as bank teller in the latter's Iriga City Branch. By March 1998, she became permanent employee for the same position. She was then assigned in petitioner's Naga City Branch, holding the same position as a bank teller until December 1999, where she was re-assigned as new accounts clerk.

Such re-assignment was brought about by reason of a withdrawal transaction made on September 30, 1999 at private respondent's teller cage involving an amount of Php 450,000.00 from the Gold Savings Account No. 0823-30623-42 of Sps. Edmundo and Eden Tam. Sometime in October 1999, Mr. Edmundo Tam contested the said unauthorized withdrawal stating that the signature appearing on the withdrawal slip on file with petitioner BPI is a forgery.

Petitioner BPI, thru its Bank manager, Jesus Valenciano directed private respondent to submit a written explanation on the circumstances and detailed procedure of the subject withdrawal (See: Rollo, p. 88). Private respondent, in her written explanation dated October 27, 1999 (Rollo, p. 89), declared that it was Mrs. Eden Tam who signed and personally withdrew the amount of Php 450,000.00 from their Gold Savings Account, where the bank officers themselves approved said withdrawal.

Insisting that there was indeed a forgery, Sps. Edmundo and Eden Tam instituted a civil action (See: Complaint, Rollo, pp. 97-100) before the Regional Trial Court of Naga City against petitioner BPI, praying among others, for the recovery of the unauthorized withdrawn amount. Petitioner BPI, claiming that there was positive identification made by private respondent (as contained in the latter's written explanation), filed an Answer with Counterclaim (Rollo, pp. 90-96) to the complaint of the spouses Tam insisting that there was genuine and authorized withdrawal.

Nevertheless, petitioner BPI submitted the signed withdrawal slip with the PNP Crime Laboratory for expert examination and at the same time, conducted an in-house investigation. Petitioner's Senior Manager, Clemente U. Banson, merely found procedural lapses thus, recommending that private respondent, together with its senior bank officers, Jesus Valenciano and Fe O. Ramos, should each be made to pay Php150,000.00 and a suspension of five

(5) banking days, although erasing any fraud on the part of private respondent.

Surprisingly thereafter, another bank teller, in the person of Joanna Alcarioto, claiming to have been tormented by her conscience knowing that innocent persons now suffer from her wrong doings, admits and confesses, the anomaly behind the Php450,000.00 unauthorized withdrawal. Thus, through a letter dated October 24, 2001 (Rollo, pp. 101-102), Ms. Alcarioto explained to petitioner BPI, that she was the one who manipulated the successful withdrawal of Php450,000.00 from the Gold Savings Account No. 0823-30623-42, by forging the signature of Ms. Eden Tam and personally obtaining the subject amount.

By reason of said admission, petitioner BPI decided and in fact entered into a settlement with the spouses Tams by paying a compromised amount of Php1,050,000.00. Subsequently, petitioner BPI sued criminally said Joanna Alcarioto and at the same time, issued a show cause memo (Rollo, p. 103) to private respondent to explain why no disciplinary action shall be instituted against her in falsely declaring that it was Ms. Eden Tam herself who signed and personally withdrawn the amount of P450,000.00. In her written explanation (Rollo, p. 104) dated November 6, 2001, private respondent alleged among others, that she too became a victim of manipulation of Joanna Alcarioto, hence asked apologies thereto to the officers of petitioner bank.

On this score, petitioner BPI, through its high officer verbally requested private respondent to resign from her employment otherwise the disciplinary action against her will be pursued. For fear, private respondent followed and in fact involuntarily submitted a resignation letter dated July 1, 2002 (Rollo, p. 72). Thus, starting July 2, 2002, private respondent's employment with petitioner BPI was severed.

On July 10, 2002, private respondent Llorin filed with the arbitration branch of the NLRC a complaint (Rollo, p. 42) for constructive illegal dismissal with prayer for reinstatement, backwages and damages.

On July 17, 2002, petitioner BPI, alleging that it was not satisfied with the contents of the resignation letter, refused to accept the said letter and instead issued a Notice of Termination (Rollo, p. 106). The Notice of Termination is grounded on private respondent's dishonesty when she made a false declaration and/or testimony during an investigation conducted by the bank regarding the alleged unauthorized withdrawal from the account of the spouses Tam.

In resolving the case, the Labor Arbiter, in a Decision dated (Rollo, pp. 111-123) March 31, 2003 ruled in favor of private respondent Llorin. The dispositive portion of the Labor Arbiter's decision reads as follows:

> "WHEREFORE, finding merit on the causes of action set forth by the complainant, judgment is hereby rendered declaring her termination or dismissal from employment by the respondent bank as ILLEGAL and thereby ORDERING the latter the following:
>
> - To reinstate the complainant within ten (10) days upon receipt of this Decision to her former position without loss of seniority rights and other privileges.
>
> - To pay backwages, inclusive of allowances and other benefits or his monetary equivalent, computed from the date of her dismissal on July 1, 2002 up to the time of his actual reinstatement, which as of the date of this decision amounted to P94,950.00 at the rate of P10,550.00 per month.
>
> - To pay Moral and Exemplary damages in the total amount of P200,000.00 and
>
> - To pay Attorney's Fees corresponding to 10% of the total amount of P294,950.00 due to the complainant which is equivalent to the sum of P29,495.00.
>
> Other than the above, all other claims are hereby ordered DISMISSED for lack of merit.
>
> SO ORDERED (Rollo, pp. 122-123).

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Dissatisfied with the foregoing decision, petitioner BPI filed a Memorandum of Appeal (Rollo, pp. 124-137) with public respondent NLRC. Thus, on November 19, 2004, public respondent NLRC rendered the now assailed Resolution affirming the decision of the labor arbiter and deleting the award of moral and exemplary damages for lack of basis. Thus:

> "WHEREFORE, for want of grave abuse of discretion or serious error in the findings of fact, the assailed decision of 31 March 2003 is AFFIRMED subject to modification discussed above" (Rollo, p. 37).

Petitioner BPI filed a Motion for Reconsideration (Rollo, pp. 139-146) of the foregoing resolution. Just the same, the NLRC, for lack of merit, denied the Motion in the assailed Order (Rollo, pp. 29-30) dated April 20, 2005.

Feeling aggrieved with the findings of public respondent NLRC, petitioner BPI elevated the case to this Court via Petition for Certiorari under Rule 65 of the 1997 Rules of Court, raising the following issues, to wit:

> - WHETHER OR NOT PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE FINDING OF THE LABOR ARBITER THAT HEREIN PETITIONER ILLEGALLY DISMISSED PRIVATE RESPONDENT LLORIN.
>
> - WHETHER OR NOT PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OR JURISDICTION WHEN IT UPHELD THE FINDING OF THE LABOR ARBITER THAT HEREIN PETITIONER IS LIABLE TO REINSTATE AND PAY BACKWAGES, INCLUSIVE OF ALLOWANCES AND OTHER BENEFITS TO PRIVATE RESPONDENT LLORIN (Rollo, pp. 12-13).

Herein petitioner BPI ascribed grave abuse of discretion on the part of public respondent NLRC when it affirmed the labor arbiter's finding that private respondent was illegally dismissed from employment. Petitioner BPI insisted that private respondent committed act of dishonesty when she made false testimony during an investigation conducted by the bank regarding the alleged fraudulent withdrawal of P450,000.00 from the account of the spouses Tam. To prove its assertion, petitioner BPI presented the letters made by private respondent wherein she admitted having given the said false testimony. Petitioner BPI underscored the following declarations made by private respondent in the latter's November 6, 2001 letter, thus:

> "I am very sorry for giving you such false statements in writing. X x x.
>
> X x x x x x x x x
>
> I deeply apologize for what I have done. It was never my idea to mislead or misrepresent facts. X x x (Rollo, p. 67).

After careful perusal of the records of the case, this Court found no compelling reason to overturn the findings of public respondent NLRC. The ground relied upon by petitioner BPI for the dismissal of private respondent is not enough to defeat private respondent's security of tenure.

We concur with the findings of the labor arbiter that the dismissal was not founded on clearly established facts sufficient to warrant separation from employment. As correctly held by the labor arbiter:

> "At the time when complainant declared such testimony, she was innocent about the acts of said Alcarioto and made such explanation to comply with the instruction given by her immediate superior to submit written explanation as to the circumstances and detailed procedures employed by her on the questioned withdrawal, which admittedly occurred in her teller's cage.
>
> In such a situation, We find that complainant has nothing in mind except to accept that there was indeed a

> withdrawal on her teller's cage, done by Mrs. Eden Tam, as appearing on the withdrawal slip which was duly approved beforehand by its senior officers. Besides, she claims thereafter that such explanation was made upon the proddings of her co-bank teller and turned out as real culprit, Joanna Alcarioto, whom she thought was helping her (See: Labor Arbietr's Decision, Rollo, p. 117-118).

When read in its entirety, the written statement of private respondent was based on her honest belief and information that there was a genuine withdrawal of the amount of P450,000.00 in her teller's cage. In her affidavit (Rollo, pp. 55-63), private respondent honestly admitted that she really cannot recall what transpired On September 30, 1999, the day of the fraudulent transaction. What she recalled as far as she can remember is that she referred the withdrawal transaction to her superiors who in turn authorized the same. She also stated matter of factly that they even verified the signature in the withdrawal slip from that of the specimen signature of the depositor in the latter's signature card. Thus, as far as she knows, the withdrawal transaction was not tainted with fraud or irregularity. That is why she made the written explanation on the basis of her honest belief and information as to what really transpired during that particular day. These factual circumstances clearly negated any intention on the part of private respondent to commit dishonesty to the prejudice of petitioner BPI during the investigation.

Petitioner BPI raised dishonesty, being an analogous ground (Sec. 282 (e), Labor Code) for terminating private respondent. As defined by the Supreme Court, the term dishonesty implies a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity. It also implies lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray (Philippine Amusement and Gaming Corporation vs. Rilloraza, 359 SCRA 525, 540 [2001]). Then again, to be lawful, the cause for termination (i.e. dishonesty) must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This is merely in keeping with the spirit of our Constitution and laws which lean backwards in favor of the working class, and mandate that every doubt must be resolved in their favor (Hongkong and Shanghai Banking Corp. vs. National Labor Relations Commission, 260 SCRA 43, 57 [1996]).

In the instant case, the statement of private respondent in her written explanation that it was Mrs. Eden Tam who personally withdrew the money fails to evince a propensity on her part to cheat and defraud petitioner bank. She never intended to mislead or put the bank in bad light or to prejudice its interest.

Petitioner contended that if private respondent had admitted beforehand the truth regarding the withdrawal, petitioner bank would not have proceeded to fight the civil case filed by the spouses Tam against them. It must be noted that private respondent issued her written statement merely in compliance with the directive of her superior to narrate the details of the September 30, 1999 transaction within 24 hours. Strictly complying with the said directive, private respondent narrated all the incidents on the basis of her own personal knowledge and honest belief. Private respondent indeed does not deserve the ire of petitioner who in deciding to fight it out with the Tams relied merely on private respondent's statements without making further investigations and inquiries as to the surrounding circumstances of the anomalous withdrawal.

Dismissal is the most severe penalty that an employer can impose on an employee. It goes without saying that care must be taken, and due regard given to an employee's circumstances, in the application of such punishment (Hongkong and Shanghai Banking Corp. vs. NLRC, 260 SCRA 43, 56 [1996]). In the light of the above-mentioned revelations, this Court is not convinced that dismissal was the proper sanction to be accorded private respondent. Thus, We found that the penalty of dismissal imposed by petitioner bank against private respondent as too severe, too harsh and excessive in light of private respondent's unblemished record and dedicated service to the company.

Like petitioner bank, this Court will not countenance nor tolerate any form of dishonesty. But at the same time,

we cannot permit the imposition of the maximum penalty authorized by our labor laws for JUST ANY act of dishonesty x x x. A grave injustice is committed in the name of justice when the penalty imposed is grossly disproportionate to the wrong committed (Hongkong and Shanghai Banking Corp. vs. NLRC, 260 SCRA 43, 56 [1996]). Thus:

> "The Constitution does not condone wrongdoing by the employee; nevertheless, it urges a moderation of the sanction that may be applied to him. Where a penalty less punitive would suffice, whatever missteps may have been committed by the worker ought not to be visited with a consequence so severe as dismissal from employment. Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause (Fujitsu Computer Products Corporation of the Philippines vs. Court of Appeals, 454 SCRA 737, 771-772 [2005]).

Hence for failure to establish that the dismissal was for justifiable cause, then the dismissal is tainted with illegality.

And lastly, We concur with the findings of the public respondent NLRC that the moral and exemplary damages awarded by the labor arbiter should be deleted. Moral damages are recoverable only where the dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. A dismissal may be contrary to law but by itself, it does not establish bad faith (Cosep vs. National Labor Relations Commission, 290 SCRA 704, 716 [1998].

WHEREFORE, in view of the foregoing, the Petition is DENIED and the assailed Resolution dated November 19, 2004 and the Order dated April 20, 2005 of the National Labor Relations Commission (NLRC) in SUB-RAB Case No. 05-07-00306-02 (NLRC NCR CA No. 035656-03) are hereby AFFIRMED.

SO ORDERED.

Reyes, (Chairman) and Lanzanas, JJ., concur.

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