

**MARSITO G. SUMALPONG, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, CEBU CITY; OPPORTUNITY KAUSWAGAN BANK, INC., AND/OR ANGEL L. DE LEON, JR., AND/OR RA...**

Ponente: INGLES, G. T., J.

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**INGLES, G. T., J.:**

**THE CASE**

This Petition for Certiorari under Rule 65 of the Rules of Court assails the Decision[1] dated November 29, 2012 and the Resolution[2] dated May 20, 2013 of the National Labor Relations Commission (NLRC), Seventh Division of Cebu City in NLRC Case No. VAC-09-000544-2012.

**THE ANTECEDENT**

Petitioner Marsito G. Sumalpong started as a collector of Taytay sa Kauswagan, the sister establishment of the respondent Opportunity Kauswagan Bank, Inc. (OK Bank for brevity) way back in June 2006. On June 15, 2009, he was transferred by promotion as Acting Account Management Supervisor of OK Bank-Minglanilla Branch.

As part of petitioner's function, he was entrusted with the receipt of remittances for safekeeping and to ensure the prompt collection of weekly payments. He worked from Mondays to Fridays with a compensation package of Seven Thousand Pesos (Php 7,000) per month excluding his anniversary bonus and an additional monthly representation allowance of Four Thousand and Five Hundred Pesos (Php 4,500).

On September 19, 2011, petitioner was transferred to respondent's branch in Ormoc as Acting Group Lending Supervisor. He continued to receive the same salary and allowances as his previous position, plus a relocation allowance of One Thousand Five Hundred Pesos (Php 1,500) monthly.

Then on July 22, 2012, petitioner went to San Lorenzo Center 1, Talisay City to collect the amount of Two Thousand Eight Hundred and Seventy Pesos (Php 2,870) from a certain Cindy Badayos and the rest of the other Center's members. Complainant allegedly did not issue a receipt for said amount. When Mrs. Badayos asked for a receipt covering said amount, petitioner merely told her to get the receipt from a certain Estela Orcenado, one of the loan assistants of respondent bank, yet despite demands, she was never given a receipt.

Later, Mrs. Badayos noticed that there was a discrepancy in the amount that she actually paid and the amount indicated in the records of her loan account at respondent bank.

On December 22, 2011, respondent sent a memorandum[3] to petitioner regarding the said irregularity with the attached copy of the handwritten affidavit-complaint[4] of Mrs. Badayos requiring petitioner to submit his written explanation within twenty-four (24) hours. Then, he denied the charges by submitting a written explanation[5] dated December 28, 2011.

On December 29, 2011, respondent bank then sent petitioner a Notice of Hearing[6] informing him of an

administrative hearing for him to explain his side. Later, a notice of preventive suspension[7] was issued suspending him for thirty (30) days pending investigation.

On February 24, 2012, respondent bank issued a Notice of Dismissal[8] dismissing petitioner from his employment for “non issuance of provisional receipts and withholding of collections without justifiable reasons.”

Then a complaint[9] was filed by petitioner for illegal dismissal. Both the Labor Arbiter and the NLRC ruled in favor of the respondents and against the petitioner; hence, this petition.

THE CRUX OF THE CONTROVERSY IS WHETHER OR NOT PETITIONER HAD BEEN ILLEGALLY DISMISSED.

### **RULING**

The petition lacks merit.

Dismissal have two facets: the legality of the act of dismissal, which constitutes substantive due process, and the legality of the manner of dismissal which constitutes procedural due process.[10]

As to substantive due process, We find that respondent company's loss of trust and confidence arising from petitioner's non-issuance of a corresponding receipt after collecting the amount of Two Thousand Eight Hundred Seventy (Php 2,870), compounded by his non-remittance of the said payments to respondent bank, constituted just cause for terminating his service.

To validly dismiss an employee on the ground of loss of trust and confidence under Article 282 (c) of the Labor Code of the Philippines, the employee must be occupying positions of trust and confidence or to those routinely charged with the care and custody of the employer's money or property.[11] Likewise, the following guidelines shall also be observed: “1) loss of confidence should not be simulated; 2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.[12]

It is beyond dispute that petitioner occupies a position of trust and confidence considering that he is the respondent's former Acting Account Manager Supervisor and currently the Acting Group Lending Supervisor who is routinely charged with significant amounts of money.[13] To reiterate, his acts of collecting the said amount from respondent bank's customers in the name of Mrs. Badayos and others and his failure to issue receipt and to remit the same justifies his dismissal since those acts are work-related.

Further, the act that justifies petitioner's dismissal on ground of loss of trust and confidence was based or founded on clearly established facts. Respondent company's charge against petitioner was amply proven by substantial evidence consisting of affidavits[14] of respondent bank's customers in the person of Mrs. Cindy Badayos and four others pointing directly to petitioner as the one who collected the total amount of Php 2,870.00 from them and failed to issue corresponding receipts despite their request and was compounded by not remitting the said payments to the respondent bank.

Undaunted, petitioner espoused that the self-serving and unsubstantiated affidavit executed by Cindy Badayos, standing alone and without any other supporting documents, does not constitute substantial evidence justifying the termination of petitioner on the ground of loss of trust and confidence.

We disagree. The testimonies of Mrs. Badayos and four other members during the administrative hearing[15] clearly and unequivocally pointed out petitioner's misconduct by not issuing the corresponding receipts despite

their request after he had collected the amount above-mentioned from Mrs. Badayos and her cohorts. It was aggravated then by his failure to remit the said amount to the respondent bank to the damage and prejudice of the latter. More so, the respondent court stressed in its Decision[16] that “the affidavits of these customers bear weight in establishing the specific acts constituting the charge against him. In fact, no inconsistencies among these statements were found.” Besides, there appears to be no ill-motive on the part of Mrs. Badayos and four others to falsely accuse petitioner of such a misdeed, otherwise, it exposed themselves to a possible charge of perjury by implicating petitioner in an anomaly that he did not commit.

Moreover, as between the positive testimonies of Mrs. Badayos and four others that petitioner refused to issue receipts after he had collected the amount of Php 2,870 and the negative assertions of petitioner that affidavits alone cannot justify his dismissal and that it was a certain Estela Orcenado who actually collected the same since collecting money from customers is not part of his duties, We are more inclined to give credence to the former. It is a hornbook rule that a positive testimony prevails over a negative one.

On petitioner's postulate that the affidavits executed by these customers were authored under the full direction of the respondent, fabricated, full of lies, evil, anomalous and bereft of truth, we agree to respondent court NLRC's finding that “despite such strong words, petitioner has not submitted one shred of evidence to support his conclusion and there is nothing on the records to show why respondent bank's customers would lie about the incident.”[17]

We further believe that it is unfair to require an employer to accept back an employee in whom it has lost confidence because petitioner's dishonesty has been clearly demonstrated. Thus, petitioner's espousal that the fact that it involves a very small amount and it was the first time that he committed such offense is immaterial and irrelevant because it is well-settled that “an act need not result in material damage or prejudice before his dismissal on grounds of loss of confidence may be effected. Being charged with the handling of company funds, petitioner's position, though generally described as menial, is, nonetheless, a position of trust and confidence. No company can afford to have a dishonest collector.”[18]

Anent therewith, loss of confidence is established as a valid ground for the dismissal of an employee. The law does not require proof beyond reasonable doubt of the employee's misconduct to invoke such justification. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable grounds to believe that the employee is responsible for the conduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.[19]

Insofar as the issue on procedural due process is concerned, it is jurisprudentially established that in termination cases, procedural due process simply means giving an opportunity to be heard before judgment is rendered. In the case at bench, We find that respondent bank strictly observed the procedural due process requirements before justly terminating petitioner.

Petitioner was given the opportunity to explain his side when he was informed of the charge against him by way of Notice of Hearing<sup>20</sup> dated December 29, 2011. He was given an ample opportunity to explain and controvert the charges against him as evidenced by his letter-reply<sup>[21]</sup> dated December 28, 2011 and the administrative hearing<sup>[22]</sup> that was conducted on January 6, 2012 during which he attended and confronted the witnesses against him. Then, respondent bank issued a Notice of Dismissal<sup>[23]</sup> dated February 24, 2012 informing the petitioner of its decision to dismiss him from his employment.

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute would automatically be decided in favor of labor. Management also has its own rights which are entitled to respect and enforcement in the interest of simple fair play. Justice is in

every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[24]

At any rate, we find no grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the NLRC. “For certiorari to prosper, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility”.[25] In the extant case, petitioner failed to sufficiently show that the NLRC ruled in a capricious and whimsical manner amounting to an arbitrary exercise of power. Also, factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.

All told, We find that petitioner's termination was for a just and valid cause.

IN VIEW THEREOF, the petition is hereby DISMISSED. The November 29, 2012 Decision[26] of the National Labor Relations Commission is AFFIRMED in toto.

**SO ORDERED.**

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

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[1] Annex “A”. Rollo. P. 39.

[2] Rollo. P. 56.

[3] Annex “E”. Rollo. P. 60.

[4] Annex “F”. Rollo. P. 61.

[5] Annex “G”. Rollo. P. 62.

[6] Annex “I”. Rollo. P. 64.

[7] Annex “M”. Rollo. P. 69.

[8] Annex “N”. Rollo. P. 70.

[9] Annex “L”. Rollo. P. 67.

[10] Tirazona vs. Court of Appeals. GR. No. 169712, March 14, 2008.

[11] Mabeza vs. NLRC. GR. No. 118506. April 18, 1997.

[12] Rubia vs. NLRC. GR. No. 178621. July 26, 2010.

[13] Supra at note 1.

[14] Annexes “L” & “M”. Rollo. Pp. 82 & 83.

[15] Annexes “T” & “J”. Rollo. Pp. 145 & 147.

[16] Supra at note 1.

[17] Supra at note 1.

[18] *Piedad v. Lanao del Norte Electric Cooperative, Inc.*, 153 SCRA 500.

[19] *Valladolid v. Inciong*. 121 SCRA 2053.

[20] *Supra* at note 6.

[21] *Supra* at note 5.

[22] *Supra* at note 15.

[23] *Supra* at note 8.

[24] *Sosito vs. Aguinaldo Development Corp.*, GR No. 48926. December 24, 1987.

[25] *Tacloban Far East Marketing Corp. vs. Court of Appeals*. GR. No. 182320. September 11, 2009.

[26] *Supra* at note 1.

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