

DANILO A. YAP, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND CHINA BANKING CORPORATION (CBC), RESPONDENTS.

G.R. No. 123492. August 21, 1997

Ponente: PADILLA, J.

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PADILLA, J.:

In this petition for certiorari under Rule 65, Rules of Court, petitioner Danilo A. Yap seeks to annul 1) the Decision, dated 14 June 1995, of public respondent National Labor Relations Commission (NLRC) in NLRC-NCR-CA-No. 000260 (NLRC NCR Case No. 00-04-01395-87) entitled Danilo A. Yap v. China Banking Corporation, which affirmed in toto the labor arbiter's Decision, dated 2 April 1990, dismissing therein petitioner's complaint for illegal dismissal; and 2) the Order, dated 6 September 1995, of the same public respondent, denying petitioner's motion for reconsideration of the aforesaid Decision.

The antecedent facts of this case are as follows:

Petitioner Danilo A. Yap obtained his Bachelor of Science Degree in Business Administration, magna cum laude, from the University of the East in 1973. That same year, he took and passed the Board Examination for Accountants. After his graduation, petitioner joined the accounting firm of Sycip, Gorres, Velayo and Co., initially as a member of the Junior Audit Staff, and later on, the Semi-Senior Audit Staff, Audit Division.

Sometime in 1976 he joined Nippon Paint, Phils. as Assistant Finance Manager, and Personal Assistant to the Vice President.

In January 1978, petitioner was employed by private respondent, China Banking Corporation, as Special Project Coordinator assigned to its Auditing Department. From 1978 to October 1986, he occupied various positions in the bank, to wit: from 1 January 1978 to 31 January 1979, he was Special Project Coordinator; from 1 February 1979 to 15 March 1980, Audit Supervisor; from 16 March 1980 to 15 May 1981, Official Assistant, Auditing Department; from 16 May 1981 to 29 May 1984, Senior Official Assistant; from 30 May 1984 up to 23 November 1985, Branch Accountant, Balut Branch; and from 25 November 1985 up to his dismissal on 1 October 1986, he was the Branch Accountant of respondent bank's Valenzuela Branch. Petitioner also claims to have been a member of the Editorial Board for Branches Operations Manila Project at the bank's head office (from July to August 1984); the Internal Audit representative of respondent bank to the first CBC Capital (Asian) Limited in Hongkong (in February 1982 and March 1983); the respondent bank's representative to the Presidential Task Force of the Ministry of Human Settlements, headed by Hon. Herminio Aquino (from March 8 to May 10, 1986); and, the Head of the Presidential Task Force for Bliss Development Corporation. At the time of his termination from the service, petitioner was receiving a monthly salary of P6,300.00 plus P1,100.00 as monthly allotment.

Records show that sometime in April 1981, petitioner applied for and availed of a housing loan in the amount of P117,977.73, under the bank's Financing Plan for Officers and Employees, purportedly to be used exclusively for the construction of his house in Tandang Sora Park Subdivision in Quezon City. Petitioner received the full

proceeds of the loan that same year.

Sometime in 1986, respondent bank discovered that the loan proceeds were not used for the construction of petitioner's house, in violation of the pertinent provisions of the aforesaid Plan, as follows:

"A. Types/ Purposes of Financial Assistance.

1. Real Estate – for the purchase or acquisition of a residential house and lot and/or construction, renovation or repair of a residential house to be occupied by the officer or employee of the bank.

xxx xxx xxx

I. Types/ Purposes –

A. xxx xxx

B. Conditions

xxx xxx xxx

D. No part of the loan shall be used for any purpose other than the one applied for:

II. Limitation and Terms.

xxx xxx xxx

D. Should an applicant leave, retire or be discharged from service, all outstanding obligations under this program shall become due and payable immediately and all sums of fringe benefits accruing to him/her shall also be withheld to answer for the full settlement of said obligations.

xxx

V. Penalty

Should the applicant be found to have used, partially or entirely, the proceeds of the loan for purposes other than those specified in his application, it shall constitute sufficient ground for the bank to cancel his loan which thus becomes due and repayable immediately and/or disciplinary action against the applicant. The same sanction will apply should the officer or employee be found to violate items I-A-2(e) and I-B-3 of the "Implementing Rules" of the Plan."^[1]

On 5 June 1986, respondent bank, thru Miss Nancy Dee Yang, Vice President for Branches Administration, required the petitioner to explain within ten (10) days why he did not comply with the terms and conditions of the Financing Plan.

In a letter, dated 23 June 1986, petitioner explained that he used a substantial portion of the proceeds of the loan to repay the installments advanced by his brother on the lot where he intended to build his house. He also claimed that he incurred pre-construction expenses leaving a balance of only P14,000.00, which amount was no longer enough for the construction of a house.

Apparently not satisfied with petitioner's explanation, respondent bank, thru Ms. Yang, issued another memorandum, dated 30 June 1986, directing petitioner to pay back/refund the amount of the loan within thirty (30) days, otherwise, disciplinary action will be taken against him for violation of the rules and regulations of the Financing Plan.^[2]

In a memorandum, dated 11 August 1986, addressed to Ms. Yang, petitioner reiterated his prior explanation on

the use and disposition of the loan proceeds, maintaining that he did not violate said rules and regulations.

On 26 September 1986, Ms. Yang issued a memorandum informing petitioner that for gross violation of the rules and regulations of the Financing Plan for Bank Officers and Employees, his employment would be terminated effective 1 October 1986.

On 15 April 1987, petitioner filed a complaint for illegal dismissal against respondent bank with the arbitration branch of the NLRC, National Capital Region. He prayed for reinstatement and payment of backwages, moral and exemplary damages and attorney's fees.

On 2 April 1990, labor arbiter Dominador M. Cruz rendered a decision, the dispositive part of which reads:

"Wherefore, in view of all the foregoing considerations, judgment is hereby rendered, dismissing the complaint for lack of merit. Considering however, the length of service of the complainant in the bank and for humanitarian reasons, the respondent is hereby ordered to pay complainant the amount of P25,000.00 by way of financial assistance.

So Ordered."[3]

On 28 May 1990, petitioner appealed the aforesaid decision to the NLRC. On 14 June 1995, the First Division of the NLRC rendered a decision, the dispositive part of which reads as follows:

"In view of the foregoing, the instant appeal is hereby dismissed for lack of merit and the decision of Labor Arbiter Dominador M. Cruz, dated 2 April 1990, is affirmed in toto.

So Ordered."[4]

In reaching the above decision, public respondent NLRC reasoned thus:

"The Real Estate Finance Assistance extended by the Bank to its employess was intended for the purchase or acquisition of a residential house and lot and/or construction, renovation or repair of a residential house to be occupied by the officer or employee of the Bank. One of the conditions for the grant thereof is that no part of the loan shall be used for any purpose other than the one applied for. Should the applicant be found to have used, partially or entirely, the proceeds of his loan for purposes other than those specified in his application, it shall constitute sufficient ground for the Bank to cancel his loan which thus becomes due and repayable immediately and/or disciplinary action against the applicant.

xxx xxx xxx

When he was therefore found to have used the proceeds of his loan for purposes other than those specified in his application, he knowingly, consciously and fraudulently violated said implementing rules, and the Bank was well within its rights to penalize him.

Thus, we agree with the labor arbiter as he made the following findings:

'The record clearly shows that despite full knowledge of the Implementing Rules for Financing Plans for Bank Officers/Employees (Exhibit "5" for respondent), the complainant knowingly, consciously and fraudulently violated the rules to make use of the respondent's funds for unauthorized purpose and avail of the preferential rate of interest under such plan. His gratuitous claim, that he used the amount to pay the installments advanced by his brother on the lot where he is supposed to build his house has remained unsubstantiated. Moreover, the complainant's allegation that he was prevented by the 'major peso devaluation' in 1981-1983 from building his house was unsupported by evidence. x x x'

xxx xxx xxx

The receipts he presented (Exhibit “9-1-9-9”) evidencing partial payment for architectural fees, designs, plans, drawings x x x are inadmissible for lack of proper authentication by proper government agencies x x x. What is clear is that he failed to properly account for the proceeds of the loan, and for this, he deserved to be sanctioned by the Bank.”[5]

On 24 July 1995, petitioner filed a motion for reconsideration which the NLRC, in an order, dated 6 September 1995, likewise denied for lack of merit.

Hence, this petition, where petitioner Danilo A. Yap raises the following issues:

“I

Public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it affirmed the decision of labor arbiter Dominador Cruz, that dismissed the complaint of the petitioner.

II

Public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it held that petitioner was guilty of dishonesty when he “misused” the proceeds of his loan and therefore a valid cause for his dismissal.

III

The case of Toledo v. NLRC, G.R. No. 114205, May 11, 1994, cited by public respondent is not applicable to the case at bar.”[6]

Petitioner claims that the real reason behind his dismissal from the bank was the fact that he had incurred the ire of his immediate superior, Mr. Ricardo Chua, for exposing certain anomalies involving the latter and some other bank officers and employees, such as: 1) kiting operations at the Davao Branch, of which the branch manager, one Manuel Ordon, was a part; 2) excessive loan exposures (more than P52 million) of the Quepe Group of Companies, which violated the single borrower’s limit rule of the Central Bank; 3) the putting up, by the aforementioned Mr. Ricardo Chua, of his own corporation, and the former’s actually spending of company time attending to said business; and 4) kiting operations involving Balut Branch Manager Fermin Barrozo, particularly drawing against uncollected deposits of a depositor identified as one Zepeda, in violation of Central Bank rules and regulations.

Petitioner asserts that it is due to the discovery of these irregularities and anomalies, among others, that his services were terminated; and, that his alleged violation of the terms and conditions of the housing loan was a mere pretext on the part of respondent bank to give a semblance of validity to the otherwise illegal termination of petitioner’s employment.

Petitioner maintains that he did not violate the rules and regulations of the Financing Plan. According to him, the proceeds of the loan were actually used for the purchase of the residential lot on which he intended to build his house; and, for pre-construction expenses like architectural fees for designs and the like, blue prints, and other documents. He further claims that he did not proceed with the construction of his house because the devaluation of the peso in 1981, which resulted in the escalation of prices of building materials, rendered the balance of the loan proceeds insufficient for the construction of a house. Petitioner claims that because of this, he had been trying to generate funds from other sources.

More importantly, petitioner alleges that he had paid the housing loan in full, in compliance with the directive of

Ms. Nancy Yang for him to refund the amount of the loan within thirty (30) days, or face disciplinary action. According to petitioner, respondent bank had been making deductions for the monthly amortization of the loan from his salary. Petitioner claims that he had likewise paid the balance remaining prior to the termination of his employment, to prevent the bank from foreclosing the mortgage on the loan.

It is worthy to note that the allegation of petitioner that he had repaid the loan in full is not refuted by respondent in their respective comments to the present petition for certiorari, and is therefore deemed admitted by respondents.

Furthermore, petitioner contends that the case of *Toledo v. NLRC* (supra) is not applicable to the case at bar for the following reasons:

- 1) the petitioner in the *Toledo* case applied for a loan three (3) times, making evident his dishonesty and bad faith; in this case, petitioner Yap applied for a housing loan for the first time;
- 2) in the *Toledo* case, there was evidence that the loan proceeds given were dissipated and used for another purpose; in this case, petitioner contends there was no such evidence of dissipation; and,
- 3) the amount borrowed in this case was returned in full, a fact which was not shown in the *Toledo* case.[7]

Finally, petitioner contends that the penalty of dismissal is too harsh considering his unblemished record of employment with respondent bank for eight (8) long years.

We find merit in this petition.

Granting *arguendo* that petitioner violated the terms and conditions of respondent bank's Financing Plan for Officers and Employees, nevertheless, the penalty of dismissal should not have been imposed as it is too severe considering that petitioner had worked for respondent bank for eight (8) years, with no previous derogatory record, and considering furthermore, that petitioner had returned the loaned amount in full. The penalty of dismissal imposed on petitioner Yap is unduly harsh and grossly disproportionate to the act or conduct imputed to him.

This being his first offense against the bank, the penalty of disqualification from borrowing under the Financing Plan for five (5) years or suspension, but not dismissal, should have been imposed.[8]

In the case of *Pizza Hut v. NLRC* (G.R. No. 117059, 29 January 1996, 252 SCRA 531), this court held:

“The following circumstances accentuate the harshness of private respondent's dismissal: first, this is private respondent's first offense after four and a half (4 1/2) years of unblemished employment; second, the amount which private respondent failed to deposit in the safety vault is only minimal; third, the money did not belong to petitioner but to its employees who did not even complain about the incident; and, finally, nobody suffered any loss as private respondent eventually returned the money.”

Similarly, in the case of *Philippine Commercial International Bank v. NLRC and Eduardo Maturan* (G.R. No. 114920, 23 August 1995, 247 SCRA 614), this court held:

“xxx

On the contrary, respondent Maturan was involved in a single incident or cash shortage in the amount of P10,000.00. As correctly found by the labor arbiter, respondent is not a habitual violator which undesirable category would have warranted his dismissal.”

In the case at bar, petitioner had faithfully served the bank for eight (8) years, and had not been found guilty of

any other offense against respondent bank. This fact should have been taken into consideration in determining the penalty imposed upon him.

This Court, in a long line of cases, has held that notwithstanding the existence of a valid cause for dismissal, such as breach of trust by an employee, nevertheless, dismissal should not be imposed, as it is too severe a penalty if the latter had been employed for a considerable length of time in the service of his employer,[9] and such employment is untainted by any kind of dishonesty or irregularity.

This concern of the Court for the termination of employment even on the assumption that conduct far from exemplary was indulged in was made evident in the case of *Almira v. B.F. Goodrich Philippines* (L-34974, 25 July 1974, 58 SCRA 120), where this court held:

“It would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law’s concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what have been done by them. For all this while, since private respondent considered them separate from the service, they had not been paid. From the strictly juridical standpoint, it cannot be too strongly stresses, to follow Davis in his masterly work, *Discretionary Justice*, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight.”

In the above-cited case, the dismissed employees were ordered reinstated. However, in this case, the reinstatement of petitioner would, in our view, no longer be beneficial to either party, considering the allegations against his immediate superior, as well as some co-employees. There is no doubt that the relationship of employer to employee is so strained and ruptured as to preclude a harmonious working relationship should reinstatement be decreed. Instead, petitioner should be afforded the right to separation pay so that he can be spared the agony of having to work in an atmosphere of antipathy and antagonism, and the private respondent does not have to endure the continued services of petitioner in whom it has lost confidence.[10]

WHEREFORE, the Decision, dated 14 June 1995, and ORDER, dated 6 September 1995, of public respondent NLRC dismissing petitioner’s complaint, are SET ASIDE. Private respondent, China Banking Corporation is hereby ordered to pay petitioner Danilo A. Yap, separation pay equivalent to one month’s pay for every year of service, in lieu of reinstatement, and full backwages based of his last monthly salary, to be computed from the date of his dismissal from the service up to the date of finality of this decision, without any qualifications or deductions.

SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, pp. 31-32.

[2] Rollo, p. 33.

[3] Rollo, p. 27.

[4] Rollo, p. 41.

[5] Rollo, pp. 35-36.

[6] Rollo, p. 5.

[7] Rollo, pp. 21-22.

[8] Quinones v. NLRC, G.R. No. 105763, 14 July 1995, 246 SCRA 294; Mary Johnston Hospital v. NLRC, No. L-73839, 30 August 1988, 165 SCRA 110.

[9] Meracap v. International Ceramics Manufacturing Co., Inc. et, al., No. L-48235-36, 30 July 1979, 92 SCRA 412; Itogon-Suyoc Mines Inc. v. NLRC, No. L-54280, 30 September 1982, 117 SCRA 523.

[10] Citytrust Finance Corporation v. NLRC, No. L-75740, 15 January 1988, 157 SCRA 87.

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