

**CONSOLIDATED RURAL BANK (CAGAYAN VALLEY), INC.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND
ANTONIA L. SANCHEZ, RESPONDENTS.**

G.R. No. 123810. January 20, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a special civil action for certiorari filed by Consolidated Rural Bank (Cagayan Valley), Inc. (CONSOLBANK for short),^[1] assailing the Resolution of the National Labor Relations Commission (NLRC) dated 9 November 1995 in NLRC NCR CN. II-01-00002-94, “Antonia L. Sanchez v. Consolidated Rural Bank,” which affirmed the decision of Labor Arbiter Ricardo N. Olarez that Antonia L. Sanchez was illegally dismissed as well as its Resolution of 30 January 1996 denying petitioner’s motion for reconsideration.

Private respondent Antonia L. Sanchez was Branch Manager of petitioner’s Ilagan Branch, Ilagan, Isabela, when she was terminated effective 7 August 1993 for “lack of diligence, gross negligence, insubordination, and violation of existing bank policies resulting to loss.”^[2] Her termination arose from the following incident: Sometime in May 1992 a certain Rosalinda Rodriguez presented six (6) US Treasury Warrants (USTW) for deposit with CONSOLBANK’s Ilagan Branch with a total value of \$13,966.74 or P335,201.76. As Branch Manager private respondent referred the checks to her superiors at CONSOLBANK’s Head Office in Santiago City who accepted and deposited the checks for clearing at PCIBank, CONSOLBANK’s depositary bank. On 21 July 1992 CONSOLBANK Head Office was informed by PCIBank that the checks were cleared prompting the Head Office to withdraw the amount of the checks which it used as cash assistance from CONSOLBANK Ilagan. On 31 July 1992 the Head Office credited Ilagan Branch with P1,805.97 as interest income for the cash assistance. In the meantime Rosalinda Rodriguez withdrew on different dates the total amount of P314,00.00 from her account at CONSOLBANK Ilagan. However, six (6) months after the USTWs were cleared CONSOLBANK was informed by PCIBank that the checks had been dishonored for having been altered and was consequently requested to deposit the amount it had previously withdrawn to cover the cost of the altered USTWs inclusive of interest charges amounting to P391,687.87.

The Board of Directors of CONSOLBANK, in order to determine responsibility for the loss, created a fact-finding committee “to delve on facts as it (sic) happened.”^[3] In its Report dated 27 March 1993 the Committee recommended the imposition of the penalty of 30 days’ suspension each for Head Office General Manager Ramon T. Cocson, Treasury Department Manager Ginajane Espina, and herein private respondent. Private respondent was found liable for having accepted the USTWs when she should have known that CONSOLBANK was not authorized to accept dollar checks. Her participation however was found mitigated by the fact that “she consulted Head Office first before acting and that she relied heavily on Head Office actions on said TWs.”

The Fact-Finding Committee required private respondent to comment on the charge of willful disobedience of company rules, regulations and instructions, to wit: (a) acceptance of six (6) USTWs for deposit knowing fully

well that CONSOLBANK was not authorized to accept dollar checks; (b) allowing withdrawal by depositor even before clearance of said checks; and, (c) denying that she was instructed by her superior, the then President/General Manager Ramon T. Cocson to retain the USTWs.[4]

In her comment, private respondent denied that she was ever informed of CONSOLBANK's alleged policy of not accepting dollar checks/treasury warrants. Neither did her superiors at the Head Office advise her against accepting the particular USTWs in question as in fact they even accepted the checks, deposited them with CONSOLBANK's depository bank for clearing, and used the amount as cash assistance from Ilagan Branch for which it was credited with interest income. Private respondent denied that she authorized any withdrawal on the checks before they were cleared.

In June 1993 an Executive Committee composed of the Vice-Chairman of the Board of Directors of CONSOLBANK as Chairman, and four other Members of the Board of Directors conducted further investigation on the matter. After six (6) hearings held on June 10, 11, 14, 28, July 3 and 6, 1993, the Board of Directors issued on 7 August 1993 Board Resolution No. 93-256, to wit:

WHEREAS, the findings of fact of the Fact-finding committee and the result of hearings and examination of documentary evidences made by the Executive Committee have shown that Mrs. Antonia L. Sanchez, Branch Manager of Ilagan Branch, has committed lack of diligence, gross negligence, insubordination and violation of existing bank policies resulting to loss;

WHEREFORE, premises considered, be it: RESOLVED, as it is hereby RESOLVED, that Mrs. Antonia L. Sanchez be dismissed for cause effective August 07, 1993 x x x x

On 10 January 1994 private respondent sued CONSOLBANK for illegal dismissal with prayer for reinstatement, backwages and other benefits as well as P500,000.00 in damages.

In his decision dated 22 July 1994 the Labor Arbiter ruled in favor of private respondent thus-

WHEREFORE x x x we find complainant illegally and unjustly dismissed and she should be reinstated to her former or substantially equivalent position without loss of seniority rights with full backwages and other benefits which she could have enjoyed had she not been illegally dismissed, computed as of July 30, 1994 as follows:

P69,700.00 – Basic Pay including 13th month pay (August 1992 to July 31, 1994)

P4,380.00 – COLA for one year (365 days x 12 mos)

P18,000.00 – Gasoline allowance (P1,500 x 12 mos)

P14,400.00 – Car allowance (P1,200 x 12 mos)

P12,000.00 – Additional representation allowance (P1,000.00 x 12 mos) and

P2,500.00 – Clothing allowance for one year

P120,980.00 – Total

Respondent is likewise ordered to pay complainant P500,000.00 as moral damages plus ten percent attorney's fees of the total monetary award.

In case reinstatement is no longer feasible, complainant is given the option to be paid separation pay in the total amount of P148,830.00 (P6,765.00 x 22) for her twenty years of service in addition to her backwages or a

total amount of P269,810.00, in lieu of reinstatement x x x x

The Labor Arbiter found that private respondent could not be considered guilty of lack of diligence, gross negligence or of having violated bank policies because she merely referred the USTWs to her superiors at the Head Office who were the ones who accepted the checks and deposited them. The alleged warning not to accept the checks given by the Head Office's General Manager Ramon T. Cocson to private respondent was not given credence because his subsequent actions revealed his knowledge of the acceptance and deposit of the USTWs by the Treasury Department of the Head Office itself. In addition to finding private respondent's dismissal as tainted with bad faith because she was deliberately made a sacrificial lamb or scapegoat of the Head Office's General manager and Treasurer who were meted relatively light penalties, the Labor Arbiter ruled that private respondent was denied due process as she was neither informed of petitioner's intention to dismiss her nor given the opportunity to defend herself.

CONSOLBANK appealed to the NLRC which affirmed the conclusions of the Labor Arbiter that no valid cause existed for private respondent's dismissal and that she was denied due process.[5] A subsequent motion for reconsideration by CONSOLBANK was similarly denied in the second questioned resolution dated 30 January 1996;[6] hence, this petition.

Petitioner assails the questioned resolutions of the NLRC on both procedural and substantive grounds. On procedural grounds, petitioner contends that public respondent committed grave abuse of discretion in affirming the Labor Arbiter's decision which was rendered with indecent haste without giving petitioner further opportunity to present its evidence. Petitioner takes particular exception to the fact that the Labor Arbiter rendered his decision only two (2) days after the hearing of 19 July 1994 wherein only private respondent was present. He brands that hearing as a "give-away" to private respondent and therefore asks that this case be remanded to the Labor Arbiter for further reception of evidence.

Petitioner's avowal of denial of procedural due process must fail, and so with its prayer for a remand. The fact that counsel for petitioner was not present during the clarificatory hearing on 19 July 1994, hence, unable to rebut the testimony given by private respondent could hardly be attributed to anybody else's fault but its own. Records show that notice was given to the parties with warning that failure to attend would be construed as a waiver of the opportunity to be heard.[7] However, while counsel for private respondent filed his Manifestation begging off from the hearing on ground of a prior engagement, counsel for petitioner on the other hand simply chose not to appear on the assumption that the hearing would be postponed on account of opposing counsel's absence thus negligently and completely overlooking the assurance in the very same Manifestation that private respondent would nevertheless appear on her own. Hence, the fact that the Labor Arbiter proceeded with the hearing as scheduled could not be branded as an arbitrary act depriving petitioner of its right to present evidence. Petitioner lost this additional opportunity entirely through its own fault and negligence.

Similarly, the decision of the Labor Arbiter not to schedule the case for another hearing could not be considered as a grave abuse of discretion. First of all, it is well-settled that the holding of a hearing is discretionary with the Labor Arbiter and is something which the parties cannot demand as a matter of right.[8] It is entirely within the bounds of the Labor Arbiter's authority to decide a case based on mere position papers and supporting documents without a formal trial or hearing as is sanctioned by the The New Rules of Procedure of the National Labor Relations Commission.[9] Thus we have consistently held that the requirements of due process are satisfied when the parties are given the opportunity to submit position papers[10] wherein they are supposed to attach all the documents that would prove their claim in case it be decided that no hearing should be conducted or was necessary.[11] Secondly, we note that petitioner and private respondent themselves agreed during the hearing of 3 March 1994 to forego with a formal trial and opted instead to file only their respective replies to each other's

position paper.[12] Given these circumstances, petitioner certainly cannot now be heard to have been deprived of due process.

On the merits, petitioner assails public respondents' conclusion that private respondent was denied due process and that there was no valid cause for her dismissal. The NLRC and the Labor Arbiter concluded that private respondent was deprived due process because she was not informed of petitioner's intention to dismiss her. As regards this point, we agree with petitioner that the minimum requirements of due process have been substantially complied with when private respondent, with the assistance of counsel, was duly investigated by petitioner's Executive Committee and given opportunities to answer the charges levelled against her.[13] However, we are unable to agree with petitioner's proposition that valid cause exists for private respondent's dismissal.

Private respondent was dismissed for "lack of diligence, gross negligence, insubordination, and violation of existing bank policies resulting to loss." [14] However, we find no grave abuse of discretion on the part of public respondents in concluding that these charges were not substantially proved. As they have correctly observed, private respondent could not fairly be considered lacking in diligence or grossly negligent in her actuations with respect to the six (6) USTWs. Petitioner itself does not deny that private respondent merely referred the checks to the Head Office.[15] That she may have been previously warned by the Manager of Metrobank not to accept such checks as alleged by petitioner does not erase the fact that it was still the Head Office which ultimately decided on accepting and depositing the USTWs for clearing.

On the charge of violating bank policies, while private respondent was accused of having violated CONSOLBANK's alleged policy of not accepting dollar checks for deposit, it was nonetheless established during the investigation that CONSOLBANK had in fact no such written policy and accepting dollar checks was actually a tolerated practice among its branches.[16]

The charge of insubordination to the alleged instruction of General Manager Ramon T. Cocson to private respondent not to accept the checks was correctly disregarded considering Cocson's actuations inescapably demonstrating his knowledge of the acceptance of the USTWs, the most notable of which was his signing of the Inter-Office Memo No. 7030 crediting Ilagan Branch with P1,805.97 as interest income for the value of the USTWs which the head Office used as cash assistance from CONSOLBANK Ilagan.[17]

The other charges against private respondent, i. e., allowing Rosalinda Rodriguez to withdraw from her dollar account before the USTWs were cleared and granting a commercial loan to Rodriguez secured by the uncleared USTWs, were not substantiated as in fact they were not even included in the findings of fact of petitioner's Fact-Finding Committee, hence, they may not now be invoked to justify private respondent's dismissal.

However, in addition to back wages, the NLRC sustained the Labor Arbiter's awards of reinstatement or payment of separation pay in lieu thereof, P500,000.00 moral damages and attorney's fees equivalent to 10% of the total monetary award.

Petitioner objects to the inclusion of gasoline, car and representation allowances in the computation of back wages on the ground that these are but operating expenses to the company. However, while these may be operating expenses to petitioner they are, on the other hand, still allowances/benefits to private respondent and hence included in the computation of her back wages under Art. 279 of the Labor Code, to wit:

x x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement x x x and to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement (underscoring ours).

On the matter of payment of separation pay in lieu of reinstatement, we adopt public respondents' factual finding

that private respondent was employed by petitioner for twenty-two (22) years or from October 1971 until her termination on 7 August 1983 for failure of petitioner to prove its affirmative allegation that it was incorporated only in June 1983.

With respect to the award of moral damages we ascribe no grave abuse of discretion on the part of the NLRC and the Labor Arbiter who found private respondent entitled thereto for having been made the sacrificial lamb or scapegoat of the Head Office's General Manager and Treasurer who got away with light penalties. In addition, the arbitrary manner by which petitioner dismissed private respondent, i.e., notifying her on 25 August 1993 of her dismissal which took effect some eighteen (18) days earlier or on 7 August 1993 as well as petitioner's persistent failure despite repeated requests from private respondent's counsel and assurances by CONSOLBANK's President himself to furnish private respondent with the Executive Committee decision made the basis of her dismissal, constitutes further justification for the award of moral damages. It is well-settled that moral damages are recoverable where the dismissal was attended by bad faith or constituted an act contrary to labor, or was done in a manner contrary to morals, good customs or public policy.[18]

Lastly, petitioner objects to the award of attorney's fees on the ground that it was not claimed by private respondent in her complaint for illegal dismissal. However, it is settled that in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect her rights and interests, even if not so claimed, an award of attorney's fees equivalent to ten percent (10%) of the total award is legally and morally justifiable.[19]

WHEREFORE, finding no grave abuse of discretion on the part of public respondent National Labor Relations Commission, the instant petition is **DISMISSED** and the questioned Resolutions of 9 November 1995 and 30 January 1996 are **AFFIRMED** with the clarification that the award of damages should be reckoned not from August 1992 but from 7 August 1993, the date of private respondent's actual termination from the service as found by the Labor Arbiter[20] and the NLRC[21] and supported by the evidence.

SO ORDERED.

Puno, Mendoza, Quisumbing, and Buena, JJ., concur.

[1] The petition was filed on 3 April 1996, or before our decision in *St. Martin Funeral Home v. National Labor Relations Commission*, G. R. No. 130866, was promulgated on 16 September 1998, which directed that all petitions for certiorari from decisions and final orders of the National Labor Relations Commission shall "henceforth be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts x x x x"

[2] Board Resolution No. 93-256; Rollo, p. 65.

[3] Committee Report dated 15 March 1993; id., p. 55.

[4] Charge Sheet Based on findings of Fact-finding Committee; id., p. 61.

[5] Rollo, pp. 97-111.

[6] Id., pp. 112-113.

[7] Records, p. 81.

[8] *Vinta Maritime Co., Inc. v. National Labor Relations Commission*, G. R. No. 113911, 23 January 1998; *Salonga v. National Labor Relations Commission*, G. R. No. 118120, 23 February 1996, 254 SCRA 111, 114-115;

Shoemart, Inc. v. National Labor Relations Commission, G. R. Nos. 90795-96, 13 August 1993, 225 SCRA 311, 319; Pacific Timber Export Corporation v. National Labor Relations Commission, G. R. 106170, 30 July 1993, 224 SCRA 860, 862-863; Commando Security Agency v. National Labor Relations Commission, G. R. No. 95844, 20 July 1992, 211 SCRA 645, 650.

[9] Secs. 3, 4 and 5, Rule V.

[10] See Note 8.10

[11] Pacific Timber Export Corporation v. National Labor Relations Commission, G. R. No. 106170, 30 July 1993, 224 SCRA 860, 863.

[12] Records, p. 58.

[13] Manila Electric Company v. National Labor Relations Commission, G. R. No. 114129, 24 October 1996, 263 SCRA 531, 543; Firestone Tire and Rubber Company of the Philippines v. Lariosa, G. R. No. 70479, 27 February 1987, 148 SCRA 187, 191-192.

[14] See Note. 2.

[15] Petition, p. 4; id., p. 12.

[16] Minutes of Consolbank's Board Meeting of 7 August 1993 as quoted in the NLRC Resolution dated 9 November 1995, pp. 11-12; id., pp. 107-108.

[17] Rollo, p. 71.

[18] Ford v. Court of Appeals, G. R. No. 99039, 3 February 1997, 267 SCRA 320, 329-330; Primero v. Intermediate Appellate Court, G. R. No. 72644, 14 December 1987, 156 SCRA 435, 443-44.

[19] Quijano v. Mercury Drug Corporation, G. R. No. 126561, 8 July 1998; Philippine National Construction Corporation v. National Labor Relations Commission, G. R. No. 107307, 11 August 1997, 277 SCRA 91, 105; Building Care Corporation v. National Labor Relations Commission, G. R. No. 94237, 26 February 1997, 268 SCRA 666, 676.

[20] Decision of Labor Arbiter Ricardo N. Olarez dated 22 July 1994, p. 3; Rollo, p. 90.

[21] NLRC Resolution dated 9 November 1995, p. 5; id., p. 101.

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