

CARMELITA V. SANTOS, PETITIONER, VS. SAN MIGUEL CORPORATION, RESPONDENT.

G.R. No. 149416. March 14, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This petition for review on certiorari[1] filed by Carmelita V. Santos challenges the Decision of the Court of Appeals in CA-G.R. SP 64223 dated July 4, 2001 and its Resolution dated August 9, 2002.[2]

The factual milieu is as follows:

On September 15, 1987, respondent San Miguel Corporation (SMC) appointed petitioner Carmelita V. Santos as Finance Director of its Beer Division for Luzon Operations.

On September 6, 1989, respondent's Cash Department issued a Memorandum prohibiting the encashment of personal checks at respondent's Plants and Sales Offices.[3] The Memorandum reads:

“TO : ALL DIVISION FINANCE OFFICERS

FROM : E. E. NOEL

SUBJECT: CHECK ENCASHMENTS AT PLANTS/SALES OFFICES

“This is to reiterate our policy with regard to check encashment at SMC Plants and Sales Offices. The following are the only items accepted for such accommodation:

SMC checks payable to SMC employees;

RDBP checks payable to SMC employees;

Uncrossed dividend checks.

“Encashments must be made by the payees themselves. The check must be endorsed by the payee by affixing his/her signature at the back of the same.

“Other items such as SMCESALA, SSS, personal checks are not accepted. x x x” (emphasis ours)

On January 10, 1991, respondent SMC, through its Cash Management Department, noticed that petitioner encashed her three (3) personal checks in various Metro Manila Sales Offices, thus:

- On December 17, 1990, petitioner Carmelita Santos encashed at respondent's Makati Sales Office her personal check (UCPB Check No. 036716 dated December 15, 1990) payable to respondent in the amount of P150,000.00. The check was returned by the bank because it was drawn against insufficient funds. Three days later, or on December 20, 1990, petitioner paid respondent in cash for the dishonored check.

- On January 2, 1991, petitioner encashed at respondent's Pasig Sales Office another personal check (UCPB Check No. 036718 dated December 20, 1990) payable to cash in the amount of P140,045.00. When presented

for payment, the check was dishonored by the drawee bank due to insufficient funds. Petitioner redeemed the check only on January 19, 1991.

- On January 19, 1991, petitioner encashed at respondent's Diliman Sales Office another personal check (UCPB Check No. 036737 dated January 19, 1990) in the amount of P150,000.00. This check was accepted for payment.

On January 24, 1991, respondent commenced an audit investigation of the personal checks encashed by petitioner at its sales offices. Pending the audit investigation, petitioner agreed to take a fifteen-day vacation leave from January 25 to February 14, 1991.

On January 29, 1991, petitioner received from respondent an inter-office memorandum requiring her to explain in writing why no disciplinary action should be taken against her in view of her unauthorized encashment of her three personal checks at respondent's sales offices.[4]

In a reply-memorandum dated January 31, 1991, petitioner admitted that she encashed three personal checks at respondent's sales offices but claimed that such act was not irregular since all personnel in respondent's Beer Division were allowed to encash their personal checks at any sales office upon clearance from the region management concerned. She stated that her encashment of personal checks had prior clearance. She further clarified that only two of the three checks she encashed were dishonored for insufficiency of funds, but she promptly funded the checks upon receipt of notice of such dishonor, thereby causing no damage to respondent.[5]

Meanwhile, respondent obtained a copy of the audit results and learned that aside from petitioner's reported encashment of three personal checks, she had previously encashed fifty (50) personal checks from June 13, 1989 to January 19, 1991 in varying amounts, from P1,500.00 to P20,000.00, which were not endorsed by the Sales Operations Manager or the Region Finance Officer. Additionally, petitioner encashed two other personal checks in the amounts of P150,000.00 on December 12, 1990, and P100,000.00 on December 27, 1990.[6]

After receiving such report, respondent SMC formed an Investigating Panel to conduct a full-blown investigation of petitioner's encashment of personal checks and to determine: (1) whether the region management gave prior consent to the transactions; (2) whether the person or persons who accepted or encashed the personal checks were in fact authorized to do so; (3) if there is any policy, procedure and/or accommodation for the encashment of personal checks and the extent/amount and frequency of such; and (4) the loss or damage accruing to respondent, if any.[7] The Investigating Panel was composed of Ernesto S. Escalante, SMC Director of Human Resources and Administration, as Chairman, and Jesus Domingo and Jo Christie Punsalang, as members.

In the meantime, on or February 15, 1991, petitioner returned from her vacation leave and reported for work. To her surprise, she found that she had been transferred from her room on the 16th Floor of the Pacific Star Building to a cubicle on the 19th Floor of the same building. There, she shared a space with the secretary of respondent's Quality Service Manager and spent each day doing nothing for no assignment was given to her.

Subsequently, petitioner received two inter-office memoranda[8] informing her of the commencement of an administrative investigation pertaining to her encashment of her personal checks and that she was relieved of her present assignment/position until the conclusion of the investigation.[9]

At the first investigative hearing on February 27, 1991, petitioner appeared but requested a postponement of five days to enable her to submit a supplemental letter to the Investigating Panel.

On March 5, 1991, petitioner submitted a letter-explanation accusing respondent of prejudging her case. She claimed to have been unceremoniously relieved of her duties and forced to go on vacation leave effective January 25, 1991. She demanded that she be re-assigned to her former position as Finance Director within three (3) days

from notice.[10]

At the next scheduled hearing on March 6, 1991, petitioner appeared without her counsel. Considering her desire to be assisted by counsel during the investigation, the hearing was reset to March 15, 1991.

On March 15, 1991, petitioner called the Investigating Panel by phone, expressing her doubts on its impartiality. Despite notice, she refused to attend subsequent hearings. The Investigating Panel considered her refusal as a waiver of her right to be heard and thus continued the investigation in her absence.

On March 21, 1991, the Investigating Panel reported its findings as follows:

“xxx the Investigating Panel finds the encashment by Ms. Santos of her personal checks with the region/sales offices as highly irregular transactions to the detriment of the Company.

“The audit made on the personal check encashments by Ms. Santos at the Makati, Cubao and Diliman Sales Offices show that she has been encashing personal checks as early as June 1989 which were not endorsed by the sales operations manager or the region finance officer. Four (4) of these checks were dishonored for having been drawn against insufficient funds but all were subsequently paid by Ms. Santos in cash. Further, in addition to the December 15, 1990 and December 20, 1990 bouncing checks of Ms. Santos, she encashed on December 12, 1990 a personal check for P150,000.00, on December 27, 1990, for P100,000.00, and on January 19, 1991, yet another personal check for P150,000.00. In all, her personal check encashments for that short period from December 12, 1990 to January 19, 1991 totalled P670,045.00.

“These encashments from December 12, 1990 to January 19, 1991 not only violated the policy reiterated in the Cash Management Department Memo dated September 6, 1989, but even the alleged practice permitting Payroll 2 personnel to encash their personal checks. The Investigating Panel does not think that the approval of the region finance officer and the sales operations manager, who respectively allowed the encashments of the December 15, 1990 and December 20, 1990 bouncing checks, would cure the irregularity of said encashments. These managerial personnel are not only lower in rank in relation to Ms. Santos in her capacity as Finance Director, but their authority is limited by the alleged practice itself: they cannot permit Ms. Santos’ check encashments beyond her monthly salary.

“At the worst, the council of the Investigating Panel finds the facts to sustain prima facie that the personal check encashments by Ms. Santos constitute estafa through misappropriation or with abuse of confidence under Article 315, Paragraph 1(b) of the Revised Penal Code.

“xxx the Investigating Panel finds that Ms. Santos abused her position thereby giving ground for the Company’s loss of trust and confidence upon her and her dismissal from the Company. Ms. Santos is a managerial employee. As Finance Director, Ms. Santos holds a position of trust and confidence. She is entrusted with the custody, handling, care and protection of Company funds. She is the highest ranking managerial employee for the finance function of the Luzon Beer Operations – third level from the Division Manager. She has functional control over all the plant and region finance officers, including cashiers within Luzon operations. As Finance Director, prudence should have dictated upon Ms. Santos caution and circumspection particularly as she performs the delicate and sensitive task of handling the finances of the Company. But this she did not do.

“Except for the two instances where the region finance manager and sales operations manager separately allowed the encashment by Ms. Santos of her personal checks, all the other checks were encashed by Ms. Santos without permission from the region management. In the two instances where clearance was given, the regional finance manager said that Ms. Santos is her superior that he just complied with her request, while the manager for sales operations said that he trusted Ms. Santos, she being a Finance Director. Even then, these managers acted beyond their authority in giving the permission to Ms. Santos in view of the amounts involved.”[11]

The Investigating Panel recommended that petitioner Santos be terminated from employment. The Panel further advised the management to reprimand the regional finance officer and sales operations manager who permitted the encashment of petitioner's personal checks.

In a memorandum dated April 5, 1991, respondent adopted the findings of the Investigating Panel and informed petitioner of her termination from employment for abuse of position as Finance Director, engaging in highly irregular transactions to the detriment of the company and employer's loss of trust and confidence. [12]

Five days before the end of the administrative investigation, or on March 15, 1991, petitioner filed with the Labor Arbiter a complaint for constructive dismissal against respondent SMC and Ernesto S. Escalante, Chairman of the Investigating Panel. The complaint was later amended to illegal dismissal.[13]

On April 24, 1996, Labor Arbiter Dominador M. Cruz rendered judgment dismissing the complaint for lack of merit,[14] thus:

“WHEREFORE, judgment is hereby rendered, dismissing the instant case for lack of merit.

“However, for humanitarian considerations, respondent is directed to give complainant financial assistance equivalent to one month pay.

“SO ORDERED.”[15]

On June 10, 1996, petitioner interposed an appeal to the National Labor Relations Commission (NLRC).[16] Respondent, for its part, filed a partial appeal.

On June 30, 1999, the NLRC promulgated a decision reversing that of the Labor Arbiter.[17] The NLRC held that respondent SMC was estopped from questioning petitioner's encashment of personal checks, having allowed such practice for several years prior to the present case. Further, respondent deprived petitioner of due process by belatedly including her prior encashments in the administrative complaint, upgrading the charge to abuse of position. This effectively deprived her of her right to be notified of a clear statement of the cause for termination and prevented her from refuting a more serious charge. The NLRC likewise doubted the impartiality of the Investigating Panel considering that it was formed after she had been constructively dismissed by demotion. The NLRC disposed of the case in this manner:

“WHEREFORE, in the light of the foregoing, the Decision of the Labor Arbiter dated 24 April 1996 is hereby REVERSED and in view hereof, another judgment is entered:

- Ordering respondents to pay complainant's severance pay of one (1) month per year of service, computed from date of hire on 1 January 1985 until finality of this Decision;
- Ordering respondents to pay complainant's full backwages based on her last basic monthly salary of P34,000.00 per month, including allowances and other benefits of their monetary equivalent from date of her constructive dismissal on 24 January 1991 until finality of this Decision;
- Ordering respondents to pay moral damages of P500,000.00 and exemplary damages of P500,000.00 and attorney's fees of 10% of the total monetary award;
- Dismissing respondents' appeal for utter lack of merit.

“The Research and Examination Division of this Commission is required to compute the foregoing for purposes of execution.

“SO ORDERED.”[18]

On September 8, 1999, respondent SMC filed with the NLRC a motion for reconsideration[19] but it was denied in a resolution dated December 29, 2000.[20]

On April 6, 2001, respondent filed with the Court of Appeals a petition for certiorari under Rule 65 of the Revised Rules of Court, with prayer for a temporary restraining order and/or preliminary injunction, docketed as CA-G.R. SP No. 64223.[21]

On July 4, 2001, the Court of Appeals rendered its Decision annulling and setting aside that of the NLRC,[22] thus:

“WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for, accordingly GRANTED. The Decision dated June 30, 1999 and Resolution dated December 29, 2000 of public respondent National Labor Relations Commission in NLRC NCR CA Case No. 010929-96 (NLRC Case No. 00-03-01688-91) are hereby both ANNULLED and SET ASIDE and a new one is hereby entered DISMISSING the Complaint for utter lack of merit.”

Petitioner filed with the Court of Appeals a motion for reconsideration,[23] but the same was denied on August 9, 2001.[24]

Hence, this recourse.

Petitioner basically raises the issue that respondent SMC dismissed her from employment without just cause and violated her right to due process.

The petition is bereft of merit.

Under the Labor Code, a valid dismissal from employment requires that: (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code and (2) the employee must be given an opportunity to be heard and to defend himself.[25] Article 282(c) of the same Code provides that "willful breach by the employee of the trust reposed in him by his employer" is a cause for the termination of employment by an employer.[26] This ground should be duly established.[27] Substantial evidence is sufficient as long as such loss of confidence is well-founded or if the employer has reasonable ground to believe that the employee concerned is responsible for the misconduct and her act rendered her unworthy of the trust and confidence demanded of her position.[28] It must be shown, though, that the employee concerned holds a position of trust.[29] The betrayal of this trust is the essence of the offense for which an employee is penalized.[30]

Petitioner argues that her position as Finance Director of respondent's Beer Division is not one of trust but one that is merely functional and advisory in nature. She possesses no administrative control over the plants and region finance officers, including cashiers. She reports to two superiors.

Petitioner's argument is misplaced. As Finance Director, she is in charge of the custody, handling, care and protection of respondent's funds. The encashment of her personal checks and her private use of such funds, albeit for short periods of time, are contrary to the fiduciary nature of her duties.

Moreover, petitioner has functional control over all the plant and region finance officers, including cashiers, within the Luzon Operations Area. In fact, she is the highest ranking managerial employee for the finance section of the Luzon Beer Division Operations. Obviously, her position is a factor in abetting the encashment of her personal checks.

Indeed, we find substantial ground for respondent's loss of confidence in petitioner. She does not deny encashing

her personal checks at respondent's sales offices and diverting for her own private use the latter's resources. The audit investigation accounted for all the checks she encashed, some of which were dishonored for insufficiency of funds. The Investigating Panel concluded that petitioner not only encashed her personal checks at respondent's sales offices, but also used company funds to temporarily satisfy her insufficient accounts. This Court has held that misappropriation of company funds, although the shortages had been fully restituted, is a valid ground to terminate the services of an employee of the company for loss of trust and confidence.[31]

Petitioner contends that she was "singled out in this case" for refusing to accede to the sexual advances of her superior, Francisco Gomez de Liano. She also cites the prolonged practice of other payroll personnel, including persons in managerial levels, who encashed personal checks but remained unpunished by respondent. She asserts that her administrative superiors even encouraged her to encash her checks at the nearest sales office since her appearance at the bank for encashment would entail undue digression from her daily work routine.

Prolonged practice of encashing personal checks among respondent's payroll personnel does not excuse or justify petitioner's misdeeds. Her willful and deliberate acts were in gross violation of respondent's policy against encashment of personal checks of its personnel, embodied in its Cash Department Memorandum dated September 6, 1989. She cannot feign ignorance of such memorandum as she is duty-bound to keep abreast of company policies related to financial matters within the corporation. Equally unmeritorious are her claims that the acts complained of are regular, being with the knowledge and consent of her superiors, Francisco Gomez de Liano and Ben Jarmalala, and that she is being charged because she resisted the sexual advances of her superior. Suffice it to state that she could have proved these matters during the investigation had she attended the proceedings.

On petitioner's contention that she was denied due process - To be sure, an employee cannot be dismissed from employment without according to him the constitutional right to due process whether he be a rank and file or a managerial employee.[32] Failure to comply with the procedural requirements for terminating one's employment taints the dismissal with illegality. This procedure is mandatory and any judgment reached by management without that compliance can be considered void and inexistent.[33]

In this case, petitioner was required to explain in writing why no disciplinary action should be taken against her. She was also notified that a full-blown administrative investigation will be conducted and was advised that she should be represented by counsel. She submitted to the Investigating Panel a letter-explanation and a supplemental response to the administrative complaint against her. At her request, the investigation was postponed twice to enable her to procure the services of counsel. Yet, she vehemently refused to participate in the administrative investigation. She cannot now claim denial of due process considering that she was afforded the opportunity to be present (with counsel) during the investigation and to present her evidence. The essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[34]

The Labor Code provides the following procedure to be observed in terminating the services of an employee based on just causes as defined in Article 282 of the Code:

(a)

A written notice must be served on the employee specifying the ground or grounds for termination and giving him reasonable opportunity within which to explain his side;

(b)

A hearing or conference shall be conducted during which the employee concerned, with the assistance of counsel if he so desires, is given an opportunity to respond to the charge, present his evidence or rebut the

evidence presented against him; and

(c)

A written notice of termination must be served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

Procedural due process requires the employer to give the employee two notices. First is the notice apprising him of the particular acts or omissions for which his dismissal is sought. Second is the subsequent notice informing him of the employer's decision to dismiss him.[35]

Records show that the petitioner received the required twin notices. The first notice states:

“TO: MS. CARMELITA V. SANTOS

DATE: 01 Feb 1991

FROM: A.O. VILLA-ABRILLE, JR.

SUBJECT: LETTER/MEMO – Jan. 31, 1991

xxx xxx xxx

“What can be readily seen and as accepted by you is the fact that your personal checks were encashed in the region/sales office which were returned by the bank concerned to SAN MIGUEL CORPORATION due to “DAIF”.

“Since all other circumstances mitigating or aggravating are not yet established and there are conflicting statements as to “authorized or unauthorized encashments”, I have requested for a formal investigation to be undertaken so as due process is allowed.

xxx xxx xxx”[36]

The above notice was followed by a more detailed supplemental notice, thus:

“TO: MS. CARMELITA V. SANTOS

DATE: Feb. 22, 1991

FROM: E. S. Escalante

SUBJECT:

“Further to the memo dated February 1, 1991 of Mr. Alberto O. Villa-Abrille, Jr., please be informed that an administrative investigation will be conducted on February 27, 2:00 p.m. at the Workshop Room I, 5[th] Floor, Hanston Building.

“As discussed, we hereby confirm our agreement that while the administrative investigation is pending, you will be holding office at the 19th Floor, PSB (SMQMS staff unit).

“You will be investigated for ‘abuse of position by engaging in highly irregular transactions to the detriment of the company tantamount to loss of trust and confidence’. In view of the nature of the offense, we agreed that you shall be given duties and assignments as circumstances warrant.

xxx xxx xxx”[37]

The second notice, given after the conclusion of the administrative investigation, enumerates the administrative offenses committed by petitioner and informs her that her employment is terminated “for just and valid cause,” thus:

“TO: MS. CARMELITA V. SANTOS

DATE: APR. 5, 1991

FROM: A.O. VILLA-ABRILLE, JR.

SUBJECT:

“Please be informed that based on its investigation, the Investigating Panel found that you abused your position as Finance Director by engaging in highly irregular transactions to the detriment of the Company, giving ground for the Company to lose its trust and confidence in you, which constitutes just cause for your dismissal pursuant to our Policies and Procedures on Employee Conduct in relation to Article 282 of the Labor Code, as follows:

- You encashed, without prior approval from proper Management authority, your following personal checks:

Check No. Date of Encashment Amount

UCPB #036708 December 12, 1990 P150,000.00

UCPB #036726 December 27, 1990 100,000.00

UCPB #036737 January 19, 1991 150,000.00

xxx xxx xxx

“Your personal check encashments are in clear violation of Company policy as reiterated in the Cash Management Memorandum dated September 6, 1989 which prohibits such encashments.

“The investigating panel, therefore, found that your check encashments are highly irregular transactions to the detriment of the Company and which you perpetrated in grave abuse of your position as Finance Director. It is the recommendation of the Investigating Panel that you should be dismissed from the service or terminated for just and valid cause, with forfeiture of any and all benefits, including, but not limited to, separation benefits.

“Conformably with the foregoing findings and recommendations of the Investigating Panel, please be informed that you are hereby terminated for just and valid cause effective immediately, with forfeiture of any and all benefits, including, but not limited to, separation benefits, without prejudice to our right of filing criminal charges against you.

(Sgd.)

A. O. VILLA-ABRILLE, JR.”[38]

In sum, in dismissing petitioner, respondent SMC did not deprive her of her right to due process. Her dismissal is with just cause. Her encashment of her three personal checks at respondent’s sales offices violated respondent’s trust and confidence reposed in her, even without considering her other fifty personal checks she encashed at respondent’s sales offices. An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer.[39] A company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel occupying positions of responsibility. [40]

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals in CA-G.R. SP 64223 dated July 4, 2001 and its Resolution dated August 9, 2002 are AFFIRMED.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona and Carpio-Morales, JJ., concur.

[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Petition, Rollo at 3-28.

[3] Record at 115.

[4] Id. at 176.

[5] Id. at 177-179.

[6] Id. at 95-99.

[7] Id. at 103.

[8] Dated February 1, 1991 and February 22, 1991.

[9] Record at 104-105.

[10] Id. at 106-107.

[11] Id. at 108-114.

[12] Id. at 116-117.

[13] Docketed as NLRC NCR Case No. 00-03-01688-91.

[14] Rollo at 30-42.

[15] Id. at 42.

[16] Id. at 43-61.

[17] Penned by Presiding Commissioner Rogelio I. Rayala, and concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo, id. at 63-83.

[18] Rollo at 82-83.

[19] Id. at 84-109.

[20] Id. at 121-122.

[21] Id. at 124-167.

[22] Decision penned by Associate Justice Martin S. Villarama, Jr., concurred in by Associate Justices Conrado M. Vasquez, Jr. and Sergio L. Pestaño, id. at 192-205.

[23] Id. at 206.

[24] Id. at 210.

[25] *Arboleda vs. NLRC*, 303 SCRA 38, 45 (1999); *Mapalo vs. NLRC*, 233 SCRA 266, 270 (1994).

[26] *Equitable Banking Corporation vs. NLRC*, 273 SCRA 352, 376 (1997).

[27] *Vergara vs. NLRC*, 282 SCRA 486, 497 (1997).

- [28] Auxilio, Jr. vs. NLRC, 188 SCRA 263, 267 (1990).
- [29] Villanueva vs. NLRC, 293 SCRA 258, 262 (1998); National Sugar Refineries Corporation, Inc. vs. NLRC, 286 SCRA 478, 485 (1998).
- [30] Central Pangasinan Electric Cooperative, Inc. vs. Macaraeg, G.R. No. 145800, January 22, 2003.
- [31] San Miguel Corporation vs. Deputy Minister of Labor and Employment, 145 SCRA 196, 203-204 (1986).
- [32] Midas Touch Food Corporation vs. NLRC, 259 SCRA 652, 658 (1996).
- [33] Equitable Banking Corporation vs. NLRC, 273 SCRA 352, 378 (1997).
- [34] Cañete vs. NLRC, 315 SCRA 660, 668 (1999); Manila Electric Company vs. NLRC, 263 SCRA 531, 542 (1996).
- [35] Manuel vs. NC Construction, 282 SCRA 326, 335 (1997); Wallem Maritime Services, Inc. vs. NLRC, 263 SCRA 174, 186 (1996) citing Jones vs. NLRC, 250 SCRA 668, 674 (1995).
- [36] Record at 104.
- [37] Id. at 105.
- [38] Id. at 116-117.
- [39] Better Buildings, Inc. vs. NLRC, 283 SCRA 242, 250 (1997).
- [40] MGG Marine Services, Inc. vs. NLRC, 259 SCRA 664, 676 (1996).

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