

**ROMEO C. CADIZ, CARLITO BONGKINGKI AND PRISCO GLORIA IV,
PETITIONERS, VS. COURT OF APPEALS, AND PHILIPPINE
COMMERCIAL INTERNATIONAL BANK (NOW EQUITABLE PCIBANK),
RESPONDENTS.**

G.R. NO. 153784. October 25, 2005

Ponente: TINGA, J.

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TINGA, J.:

Employees who abuse their position for fiduciary gain cannot be shielded from the consequences of their wrongdoing even on account of the bank's operational laxities that may have provided the gateway for their shenanigans. Their misconduct provides the bank with cause for the termination of their employment.

The facts follow.

Petitioners Romeo Cadiz ("Cadiz"), Carlito Bongkingki ("Bongkingki") and Prisco Gloria IV ("Gloria") were employed as signature verifier, bookkeeper, and foreign currency denomination clerk/bookkeeper-reliever, respectively, in the main office branch (MOB) of Philippine Commercial International Bank (respondent bank).

The anomalies in question arose when Rosalina B. Alqueza (Alqueza) filed a complaint with PCIB for the alleged non-receipt of a Six Hundred Dollar (\$600.00) demand draft drawn against it which was purchased by her husband from Hongkong and Shanghai Banking Corporation. Upon verification, it was uncovered that the demand draft was deposited on 10 June 1988 with FCDU Savings Account (S/A) No. 1083-4, an account under the name of Sonia Alfiscar (Alfiscar). Further investigation revealed that the demand draft, together with four (4) other checks, was made to appear as only one deposit covered by HSBC Check No. 979120 for One Thousand Two Hundred Thirty-two Dollars (US\$1,232.00).

The Branch Manager, Ismael R. Sandig, then presided over a series of meetings, wherein Cadiz, Bongkingki and Gloria allegedly verbally admitted their participation in a scheme to divert funds intended for other accounts using the Savings Account of Alfiscar. Subsequently, Cadiz allegedly paid Alqueza P12,690.00, the peso equivalent of US\$600, but insisted that the corresponding receipt be issued in Alfiscar's name instead.

On account of these allegations, a special audit examination was conducted by the bank. On 31 January 1989, the internal auditors of the bank, headed by Lizza G. Baylon, submitted their findings in an official report. The auditors determined that as early as July 1987, petitioner Cadiz had reserved the savings account in the name of Sonia Alfiscar. The account was opened on 27 November 1987 and closed on 23 June 1988. Twenty-five (25) deposit slips involving the account were posted by Bongkingki while sixteen (16) deposit slips were posted by Gloria. A verification of the deposit slips yielded findings of miscoded checks, forged signatures, non-validation of deposit slips by the tellers, wrongful deposit of second-endorsed checks into foreign currency deposit accounts, the deposit slips which do not bear the required approval of bank officers, and withdrawals made either on the day of deposit or the following banking day.[1] In view of such findings, show-cause memoranda[2] were served on

petitioners, requiring them to explain within seventy-two (72) hours why no disciplinary action should be taken against them in connection with the results of the special audit examination. On 22 March 1989, petitioners submitted their written explanations.[3] Not satisfied with their explanations, respondent bank in memoranda[4] all dated 22 June 1989 dismissed petitioners from employment for violation of Article III Section 1 B-2 and Article III Section 1-C of the Code of Discipline.

Petitioners lodged a complaint before the labor arbiter for illegal dismissal on 18 September 1989. Labor Arbiter Ernesto S. Dinopol adjudged that petitioners were illegally dismissed and ordered their reinstatement and payment of backwages. This conclusion was based on the notices of dismissal, which, to the mind of the labor arbiter, was couched in general terms and without explaining how the rules were violated. The labor arbiter also attributed petitioners' acts in fraudulently coding several deposit slips as "1511" (immediately withdrawable) as mere procedural inadequacies, with the fault attributable to respondent bank for its laxity.[5]

The labor arbiter's Decision was reversed on appeal before the Second Division of the National Labor Relations Commission (NLRC), which, in a Decision[6] dated 30 June 1994, ordered the dismissal of the petition. In doing so, the NLRC departed from the labor arbiter's finding of facts and concluded that petitioners were dismissed for just cause. Dismissing petitioners' appeal, the Court of Appeals Ninth Division similarly determined on the basis of substantial evidence that petitioners were validly terminated in its own Decision[7] dated 13 July 2001.

After the appellate court denied petitioner's motion for reconsideration, the matter was brought before this Court in a Petition for Review on Certiorari.[8]

The issues to be resolved are whether the Court of Appeals erred in not sustaining the findings of the labor arbiter and upholding those of the NLRC and whether the Court of Appeals erred in dismissing the petition by ignoring petitioners' claims that they were dismissed without just cause and due process.[9]

In its Comment,[10] respondent bank seeks to have the petition dismissed inasmuch as all the issues raised herein involve questions of fact. We note that as a general rule, only questions of law may be brought upon this Court in a petition for review on certiorari under Rule 45 of the Rules of Court. This Court is not a trier of facts, and as such is tasked to calibrate and assess the probative weight of evidence adduced by the parties during trial all over again.[11]

However, if there are competing factual findings by the different triers of fact, such as those made in this case by the labor arbiter on one hand, and those of the NLRC and Court of Appeals on the other hand, this Court is compelled to go over the records of the case, as well as the submissions of the parties, and resolve the factual issues.[12] With this in mind, we shall now proceed to examine the decisions under review.

The general thesis as laid down by the NLRC and Court of Appeals is that petitioners had surreptitiously diverted funds deposited by depositors to S/A No. 1083-4 which was under their control and disposition. On the other hand, a perusal of the labor arbiter's Decision reveals a different perspective from which the case was approached. While the labor arbiter conceded that petitioners Bongkingki and Gloria had miscoded several deposit slips, rendering them immediately withdrawable, he characterized the errors as "mere procedural inadequacies" which were preventable had management exercised greater control over its employees.[13]

Far from petitioners' thrust, the miscoding of deposit slips cannot be downplayed as "mere procedural inadequacies." After all, it is such miscoding that precipitated the fraudulent withdrawals in the first place. The act operated as the first indispensable step towards the commission of fraud on the bank.

More disturbing though is the labor arbiter's willingness to acquit petitioners of culpability on account of the purported negligence of the bank. It is similar to concluding that the bank guards, and not the burglars, bear

primary culpability for a bank robbery. Whatever liability or responsibility was expected of the bank stands as an issue separate from the liability of the recreant bank employees. Even assuming that the bank observed less-than-ideal controls over the security of its operations, such laxity does not serve as the *carte blanche* signal for the bank employees to take advantage of safeguard control lapses and perpetrate chicanery on their employer.

The labor arbiter also evaluated the bank's claim that Cadiz had reimbursed the amount of \$600 to the aggrieved depositor Alqueza while making it appear that it was Alfiscar who had actually made the refund. In disbelieving this claim, the Labor Arbiter concluded that "it is unthinkable for a lowly bank employee to impose his will upon his high and mighty employer."^[14] This pronouncement is revelatory of absurd logic. The notion that a lowly employee will never countermand the will or interests of the employer is sufficiently rebutted by any labor law casebook, any omnibus of our labor jurisprudence, and the evolution of the human experience that disquiets persons from unhesitatingly acceding to the presumptive good faith of others. It is an accepted premise of life and jurisprudence that persons are capable, upon impure motivations, of taking advantage of others, whether their social lessers, equals, or betters. The necessity of punishment arises from this flaw of human nature. This philosophic stance of the labor arbiter actually obviates the nature of sin.

Obviously, we are hard-pressed to accord high regard to the labor arbiter's discernment as a trier of facts. Nonetheless, his claim that there were procedural flaws attending the dismissal of petitioners warrants some deliberation.

The labor arbiter ruled that the notices of dismissal served on petitioners was insufficient as it failed to specifically delineate how petitioners had violated the internal rules of the bank. However, the notices do cite the rules which petitioners had violated and refer to the fact that such violations occurred relating to S/A No. 1083-4 account of Sonia Alfiscar and/or Rosalinda Alqueza.

There is no demand that the notices of dismissal themselves be couched in the form and language of judicial or quasi-judicial decisions. What is required is that the employer conduct a formal investigation process, with notices duly served on the employees informing them of the fact of investigation, and subsequently, if warranted, a separate notice of dismissal.^[15] Through the formal investigatory process, the employee must be accorded the right to present his/her side, which must be considered and weighed by the employer. The employee must be sufficiently apprised of the nature of the charge against him/her, so as to be able to intelligently defend against the charges.

In the instant case, records show that respondent bank complied with the two-notice rule prescribed in Article 277(b) of the Labor Code.^[16] Petitioners were given all avenues to present their side and disprove the allegations of respondent bank. An informal meeting was held between the branch manager of MOB, the three petitioners and Mr. Gener, the Vice-President of the PCIB Employees Union. As per report, petitioners admitted having used Alfiscar's account to divert funds intended for other accounts. A special audit investigation was conducted to determine the extent of the fraudulent transactions. Based on the results of the investigation, respondent bank sent show-cause memoranda to petitioners, asking them to explain their lapses, under pain of disciplinary action. The memoranda, which constitute the first notice, specified the various questionable acts committed by petitioners.

Afterwards, petitioners submitted their respective replies to the memoranda. This very well complies with the requirement for hearing, by which petitioners were afforded the opportunity to defend themselves. The second notice came in the form of the termination memoranda, informing petitioners of their dismissal from service. From the foregoing, it is clear that the required procedural due process for their termination was strictly complied with.

All told, we hold that the factual appreciation and conclusions rendered by the labor arbiter are not worthy of

adoption by this Court. In contrast, from the factual determinations made by the NLRC and the Court of Appeals, we accept the following facts as proven:

- Petitioner Cadiz reserved S/A No. 1083-4 in July 1987 as reflected on respondent bank's "new account register."
- Foreign denominated checks payable to other payees were diverted into the said account.
- The various deposit slips, covering the said checks, did not bear the machine validation of any of the tellers-in-charge.
- The signatures of the MOB officers appearing on the said deposit slips were in fact forged.
- The posting of said bank transactions bore the initials of petitioners Bongkingki or Gloria.
- The deposit slips were coded as "1511" or "on-us check."
- Petitioner Cadiz agreed to pay Alqueza the equivalent amount of \$600.00 but it was made to appear that Alfiscar paid the said amount.
- In view of these findings, petitioners were served with show-cause memoranda asking them to explain the lapses.
- Finding their explanations unsatisfactory, petitioners were terminated from employment.

It is from these established facts that we consider the arguments now presented by petitioners. In light of these facts, petitioners' arguments hardly detract from the conclusion that their behavior in the course of the discharge of their duties is clearly malfeasant, and constitutes ground for their termination on account of just cause.

First, petitioners insist that the show-cause memoranda served on them did not impute any fraudulent behavior, but merely lapses. We disagree.

The show-cause memoranda were occasioned by the confidential report prepared by Sandig, as well as the findings of the special audit examination. The confidential report prepared by Sandig addressed to the Vice-President of respondent bank pertains to the discovery of fraudulent transactions on S/A No.1083-4 involving three employees of respondent bank. The report detailed how the events transpired, including the admissions of petitioners. From there, a special audit examination was conducted to make a thorough investigation of the questioned account. The examination yielded conspicuous findings that anomalous transactions had taken place involving petitioners.

Moreover, the show-cause memoranda respectively served on petitioners clearly indicate that they were being made to answer questions pertaining to possible anomalous behavior on their part. For example, petitioners were asked to explain why they had posted the questioned deposits on the ledger, although there were no teller validations or teller stamps, and also on what basis they considered such transactions to be valid.[17] On the other hand, the show-cause memorandum to Cadiz directly asks him to provide the personal details of Sonia Alfiscar, why he went out of his way to make a special arrangement for the mysterious Alfiscar, and other questions pertaining to the Alfiscar accounts.

We thus cannot give credence to the averments of petitioners that the memoranda pertain to "lapses", and not fraudulent transactions. The bank could not have been expected to conclude outright that petitioners were guilty of fraud, despite all the indicia that they indeed were. Certainly, the purpose of the show-cause memoranda was to afford petitioners the opportunity to acquit themselves of culpable responsibility. It would have been quite irresponsible for the bank to have premised the queries therein on irretractable conclusions that petitioners had

been guilty of anomalous transactions.

Second, petitioners contend that they should be relieved of any liability considering that respondent bank did not suffer a pecuniary loss. This claim must obviously fail.

There is jurisprudential support, as noted by the Court of Appeals in citing *University of the East v. NLRC*[18] that lack of material or pecuniary damages would not in any way mitigate a person's liability nor obliterate the loss of trust and confidence. In the case of *Etcuban v. Sulpicio Lines*,[19] this Court definitively ruled that:

. . . Whether or not the respondent bank was financially prejudiced is immaterial. Also, what matters is not the amount involved, be it paltry or gargantuan; rather the fraudulent scheme in which the petitioner was involved, which constitutes a clear betrayal of trust and confidence. . . .

Moreover, it cannot be discounted that as bank employees, the responsibilities of petitioners are impressed with a high degree of public interest. Private persons entrust their fortunes to banks, and it would cause a breakdown of the financial order if the judicial system were to leave unsanctioned bank employees who treat depositor's accounts as their own private kitty.

Still, petitioners insist that respondent bank never lost trust and confidence in them as it did not place them under preventive suspension, and more tellingly, it even promoted them after the labor arbiter had ordered their reinstatement. Preventive suspension, which is never obligatory on the part of the employer, may be resorted to only when the continued employment of the employee poses "a serious and imminent threat to the life or property of the employer or of his co-workers." [20] The bank points out that the Alfiscar account, through which the anomalous transactions were coursed, was no longer active at the time the fraud was discovered.[21] Clearly, the bank had reason to conclude that the imminence of the threat posed by the employees was not as vital as it would have been had the dubious account still been open.

As to the alleged promotions, the original employer, PCIB, admits that petitioners had been reinstated by reason of the Decision, but such act was by no means voluntary. PCIB however does not rebut the allegations that Bongkingki and Cadiz were assigned to sensitive positions within the bank after their compulsory reinstatement. This may be so, but the fact that PCIB lost no time in removing the employees from the plantilla after the NLRC reversed the labor arbiter's Decision hardly evinces any continuing trust and confidence on the part of the bank, as maintained by petitioners. Moreover, considering that these reinstated employees were, for the meantime, regular employees of the bank, it is within the discretion of PCIB to reassign them as it sees fit, taking into account the circumstances.

Moreover, it would simply be temerarious for the Court to sanction the reinstatement of bank employees who have clearly engaged in anomalous banking practices. The particular fiduciary responsibilities reposed on banks and its employees cannot be emphasized enough. The fiduciary nature of banking[22] is enshrined in Republic Act No. 8791 or the General Banking Law of 2000. Section 2 of the law specifically says that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." [23] The bank must not only exercise "high standards of integrity and performance," it must also ensure that its employees do likewise because this is the only way to ensure that the bank will comply with its fiduciary duty.[24]

All given, we affirm the conclusion that petitioners were dismissed for just cause. Loss of trust and confidence is one of the just causes for termination by employer under Article 282 of the Labor Code. The breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse.[25] Ideally, loss of confidence applies only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property.[26] Utmost trust and confidence are deemed to have been reposed on petitioners by virtue of the

nature of their work.

The facts as established, as well as the need to assert the public interest in safeguarding against bank fraud, militate against the present petition.

WHEREFORE, the Petition is hereby DENIED and the assailed Decision of the Court of Appeals AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.

Chico-Nazario, J., on leave.

[1] Rollo, pp. 8-9.

[2] Id. at 68-73.

[3] Id. at 75-79.

[4] Id. at 80-81.

[5] Id. at 115-123.

[6] Id. at 124-140. Penned by Commissioner Rogelio I. Rayala and concurred in by Presiding Commissioner Edna Bonto-Perez. Commissioner Victoriano R. Calaycay did not take part.

[7] Id. at 191-204. Penned by Associate Justice Delilah Vidallon-Magtolis, concurred in by Associate Justices Teodoro P. Regino and Josefina Guevara-Salonga.

[8] Id. at p. 3.

[9] Id. at 25-26.

[10] Id. at 343-425.

[11] Union Motor Corporation v. National Labor Relations Commission, G.R. No. 159738, 9 December 2004, 445 SCRA 683, citing Superlines Transportation Company, Inc. and Manolet Lavides v. ICC Leasing and Financing Corporation, G.R. No. 150673, 28 February 2003, 398 SCRA 508.

[12] Fujitsu Computer Products Corporation v. Court of Appeals, G.R. No. 158232, 31 March 2005, 454 SCRA 737, citing Globe Telecom, Inc. v. Florendo-Flores, G.R. No. 150092, 27 September 2002, 390 SCRA 201; Caingat v. National Labor Relations Commission, G.R. No. 154308, 10 March 2005.

[13] Rollo, p. 120.

[14] Id. at 121.

[15] See Article 277, Labor Code.

[16] ART. 277. Miscellaneous provisions. -

...

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for just and authorized cause and without prejudice to the requirement of notice under Article

283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and defend himself with the assistance of his representative if he so desire in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may certify the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

[17] Rollo, pp. 458, 461.

[18] G.R. No. 71065, 22 November 1985, 140 SCRA 296.

[19] G.R. No. 148410, 17 January 2005, 448 SCRA 516.

[20] See Section 3, Rule XIV, Book IV, Omnibus Rules Implementing the Labor Code.

[21] Rollo, p. 417.

[22] Solidbank Corporation v. Arrieta, G.R. No. 152720, 17 February 2005, 451 SCRA 711, citing Bank of the Philippine Islands v. Casa Montessori Internationale, G.R. No. 149454, 28 May 2004, 430 SCRA 261.

[23] Associated Bank v. Tan, G.R. No. 156940, 14 December 2004, 446 SCRRAR 282.

[24] The Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No. 138569, 11 September 2003, 410 SCRA 562.

[25] PNCC v. Matias, G.R. No. 156283, 6 May 2005, citing Gonzales v. National Labor Relations Commission, 26 March 2001, 355 SCRA 195; P.J. Lhuillier Inc. v. National Labor Relations Commission, G.R. No. 158758, 29 April 2005, citing Tiu v. National Labor Relations Commission, G.R. No. 83433, 12 November 1992, 215 SCRA 540; Felix v. NLRC, G.R. No. 148256, 17 November 2004, 442 SCRA 465, citing De la Cruz v. NLRC, 268 SCRA 458 (1997).

[26] Supra note 16; Mabeza v. NLRC and Hotel Supreme, 338 Phil. 386 (1997).

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