

METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. LUIS B. BARRIENTOS, RESPONDENT.

G.R. NO. 157028. January 31, 2006

Ponente: TINGA, J.

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TINGA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the 24 September 2002 Decision of the Court of Appeals in CA-G.R. SP No. 66167 which dismissed the petition for certiorari filed by petitioner, and the 20 January 2003 Resolution denying petitioner's motion for reconsideration thereof.

Respondent Luis B. Barrientos was employed as a management trainee by petitioner Metropolitan Bank and Trust Company (Metrobank) sometime in September 1987. Respondent's diligence and loyalty resulted in a series of promotions until he finally became the Branch Manager of Metrobank's Ramos branch in Cebu City on 1 October 1997.

On 16 January 1998, respondent received a memorandum informing him that he had committed the following acts:

- Allowing the opening of fictitious accounts in your branch under the name John B.K. Chua under account No. CA 7-041-8887-3 knowing fully well that the depositor is Wy[n]ster Y. Chua.
- Allowing your own personal account in Cebu Downtown Center to be a conduit for the transactions of John A.J. Jazal, a fictitious account of Wynster Y. Chua which the latter uses in his private lending activities.
- Soliciting/recommending investors for the lending business of Wy[n]ster Y. Chua particularly the Sps. Borromeo account.[1]

Respondent was required to explain in writing why he should not be dismissed for cause for the above acts which, according to the memorandum, constituted serious misconduct.

Respondent submitted his written explanation on 19 January 1998. Despite this, he was terminated from the service through an Interoffice Letter dated 12 February 1998.[2]

Respondent then filed a complaint for illegal dismissal, non-payment of salaries, incentive leave pay, allowances, claims for damages, and attorney's fees before the Labor Arbiter.

For its part, Metrobank contended that sometime in November 1995, unbeknownst to it, a group of its employees headed by Wynster Y. Chua, Branch Manager of the Cebu North Road branch, organized a credit union known as Cebu North Road Investment (CNRI) with its main office inside the bank premises of the Cebu North Road branch. Metrobank declared that it disallows the operation of CNRI and similar organizations since they use company time and facilities and compete with the bank's business of offering loans. Metrobank learned of the existence of CNRI when the Branch Accountant of the Cebu North Road branch reported it to the Head Office. Metrobank conducted a special audit pursuant to the report and found that respondent was involved in the CNRI's

illegal operations by means of the aforementioned acts. Metrobank then required respondent to explain his actions. After receiving his written explanation, Metrobank arranged a conference on 10 February 1998 attended by respondent and other employees involved in the creation and operation of CNRI. After considering his written and verbal explanations, Metrobank however found respondent guilty of serious misconduct and thus terminated his services on 12 February 1998.

On 23 February 1999, Labor Arbiter Ernesto F. Carreon rendered judgment in favor of complainant, now respondent.[3] The Labor Arbiter found that Metrobank had failed to establish the just causes for respondent's dismissal. Respondent could not be held liable for opening the alleged fictitious account under the name John B.K. Chua because when the account was opened in 1994, respondent was merely a cashier who had no approving authority. The alleged fictitious account had also passed several auditing procedures by the bank such that Wynster Chua was able to obtain a bill of purchase using the same account. On the charge that respondent allowed his personal account to be used as a conduit for the transactions of Wynster Chua under the name John A. J. Jazal, the Labor Arbiter also held him not responsible. It was found that respondent allowed Wynster Chua to make interbranch deposits into his (respondent's) account for the convenience of Chua's wife under the arrangement that the latter would get from respondent the money deposited by Chua in another branch. The Labor Arbiter noted that there were also other interbranch deposits into respondent's account made by other employees of Metrobank. The Labor Arbiter also declared that there was no proof that respondent solicited or recommended investors to the CNRI. In particular, Metrobank failed to show that respondent convinced Metrobank depositor Emilia Laño Borromeo to withdraw her money with the bank and invest it in the CNRI. Respondent should also not be held responsible for failing to report the alleged illegal lending activities of Wynster Chua and CNRI since respondent had never been assigned to the North Road branch where the principal office of CNRI is located. It was also noted that similar investment organizations or cooperatives also existed in other Metrobank branches but these were tolerated by the bank.

In addition, the Labor Arbiter also found Metrobank to have failed to comply with the due process requirement in effecting respondent's dismissal since after requiring respondent to explain the charges against him, no hearing was conducted. Instead, respondent and a few other employees were called to a conference regarding the charges. The Labor Arbiter ruled that the conference could not substitute the actual holding of a hearing.

Respondent was found to have been illegally dismissed and Metrobank was ordered to pay him separation pay in lieu of reinstatement because of strained relations between the parties, as well as backwages, moral, exemplary, and nominal damages, and attorney's fees, totaling P1,193,096.00.

The parties filed their separate appeals with the National Labor Relations Commission (NLRC). Respondent did not contest the finding of illegal dismissal but questioned the omission in the decision of "other benefits" he prayed for in his complaint. Petitioner, on the other hand, alleged grave abuse of discretion on the part of the Labor Arbiter and added that there were errors in the findings of facts and application of laws detrimental to it.

In a Decision promulgated on 2 June 2000, the NLRC adopted the findings of facts of the Labor Arbiter, affirmed the finding of illegal dismissal but modified the awards for backwages and separation pay, deleted the awards for moral, exemplary and nominal damages, and granted the claimed "other benefits" of salary increase, bonuses/profit sharing, conversion of unused leave credits and medical allowance.[4] Metrobank moved for reconsideration of the Decision but the motion was denied in the Resolution of 14 June 2001.[5]

On 16 August 2001, petitioner filed a petition for certiorari with the Court of Appeals assailing the aforementioned Decision and Resolution of the NLRC. On 29 August 2001, petitioner filed a motion for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction. On 24 September 2001, the

Court of Appeals issued the TRO temporarily enjoining the NLRC from issuing a writ of execution until further orders.[6]

On 24 September 2002, the Court of Appeals promulgated the herein assailed Decision dismissing the petition and affirming in toto the NLRC's Decision and Resolution.[7] In dismissing the petition, the appellate court noted that Metrobank sought a factual review of the NLRC's decision since its petition for certiorari contained a discussion of the alleged errors committed by the NLRC and alleged that the NLRC's decision and resolution are contrary to the evidence presented in the case. The Court of Appeals, however, ruled that factual issues are not a proper subject for certiorari, and additionally held that the factual findings of the NLRC, when they coincide with those of the Labor Arbiter, will not be disturbed so long as such are supported by substantial evidence. In this case, the appellate court agreed with the findings of both the NLRC and the Labor Arbiter as these were supported by substantial evidence.

Petitioner filed a motion for reconsideration but the Court of Appeals denied the same in the Resolution of 20 January 2003.[8]

Petitioner elevated the case to this Court via this petition for review on certiorari on 19 February 2003. Petitioner raises the following errors allegedly committed by the Court of Appeals:

I

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN DISMISSING THE INSTANT PETITION.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT SERIOUSLY ERRED WITH IT FAILED TO CONSIDER THAT PETITIONER HAD JUST CAUSES TO DISMISS PRIVATE RESPONDENT.

-a-

PRIVATE RESPONDENT IS GUILTY OF SERIOUS MISCONDUCT.

-b-

PRIVATE RESPONDENT'S ACTIONS ALSO CONSTITUTE WILLFUL DISOBEDIENCE TO THE LAWFUL ORDERS OF HIS EMPLOYER OR REPRESENTATIVE IN CONNECTION WITH HIS WORK.

-c-

PRIVATE RESPONDENT IS ALSO GUILTY OF GROSS AND HABITUAL NEGLECT OF HIS DUTIES.

-d-

PRIVATE RESPONDENT IS GUILTY OF FRAUD OR WILLFUL BREACH OF THE TRUST AND CONFIDENCE REPOSED IN HIM BY PETITIONER.

III

CONSEQUENTLY, IT WAS SIMPLY A GRAVE AND SERIOUS ERROR ON THE PART OF THE COURT OF APPEALS, TO HAVE SUSTAINED THE AWARD TO PRIVATE RESPONDENT OF SEPARATION PAY, BACKWAGES, OTHER BENEFITS IN THE FORM OF SALARY INCREASE OF P300.00 PER MONTH AND 10% ATTORNEY'S FEES.

IV

WITH ALL DUE RESPECT, THERE IS A NECESSITY TO ISSUE A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION SO THAT THE INSTANT PETITION WILL NOT BE RENDERED NUGATORY BY WRIT OF EXECUTION, WHICH MIGHT BE ISSUED BY THE LABOR ARBITER A QUO.[9]

The petition is denied.

The principal issue in this case is whether or not respondent was illegally terminated from his employment. Petitioner's main contention is that the Court of Appeals erred in failing to consider that respondent's actions of allowing the opening of fictitious accounts, facilitating the anomalous transactions of Wynster Chua, participating in the unauthorized lending activities of Wynster Chua, convincing bank clients to invest in the CNRI, and failing to report and stop such activities constituted serious misconduct, willful disobedience to the lawful orders of the employer in connection with his work, and gross and habitual neglect of his duties. Since the acts of respondent, according to petitioner, already constitute just causes for dismissal, petitioner asserts that respondent was legally dismissed and therefore not entitled to the monetary award in the assailed decision.

It should be noted that respondent's alleged infractions are the same acts which had been declared by the Labor Arbiter—and affirmed by the NLRC and the Court of Appeals—as not constitutive of just cause for dismissal. According to the forums below, their uniform verdict of illegal dismissal is supported by substantial evidence.

More specifically, it was established that respondent did not allow the opening of a fictitious account since the account name John B.K. Chua was the Chinese name of Wynster Chua. The account was opened before respondent became the Branch Manager but was merely a cashier and in his capacity then he had no authority to approve new accounts. There was no proof that the account was used for any illegal purpose, the same having been used for payments of PLDT, electric and water bills of Wynster Chua. The account had also passed several auditing procedures by petitioner itself. Wynster Chua was even able to obtain an accommodation for bills purchase using said account. There was likewise no evidence that the interbranch transactions made by Wynster Chua to respondent's account was for an illegal purpose or for Wynster Chua's unauthorized lending activities. It was pointed out that the use by Wynster Chua of the name "John A.J. Jazal" in making such interbranch deposits does not translate to respondent's facilitating alleged anomalous transactions. Respondent had no way of knowing that Wynster Chua used a different name in making interbranch deposits unless he was informed beforehand. In any case, no proof was presented that respondent knew that the deposits came from one John A.J. Jazal.

As to the charge that respondent actively participated in soliciting investors for the CNRI, in particular convincing Emilia Laño Borromeo to withdraw her money with petitioner bank and invest it in CNRI, this was belied by the Affidavit[[10]]executed by Borromeo stating that she voluntarily withdrew her money with petitioner bank since it offered very low interest rates. Petitioner alleges that Borromeo had written a letter dated 16 June 2000 addressed to the bank demanding from the latter the payment or return of her deposit in the total sum of P4,100,000.00 which she placed with the CNRI as investment. However, the letter had not been admitted in evidence before the Labor Arbiter but was merely attached to petitioner's Motion for Reconsideration of the Labor Arbiter's Decision.[11] Said letter cannot prevail over the sworn statement, especially when the letter did not form part of the records of the case.

Petitioner could also not be held liable for failing to disclose and stop the lending activities of Wynster Chua and CNRI. CNRI had its principal office and operations at the Cebu North Road branch, while respondent was Branch Manager of the Ramos branch. The CNRI was outside respondent's area of responsibility. It was also established that other credit union cooperatives existed and operated in other branches of the bank but the officers and

employees responsible were not disciplined.

The petition seeks a reversal of the findings of facts of the forums below and raises issues the resolution of which involves a review of the evidence presented by both parties. The Court has repeatedly ruled that the findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on the Supreme Court, unless patently erroneous. It is not the function of this Court to analyze or weigh all over again the evidence already considered in the proceedings below.[12] The jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by the evidence on record or the impugned judgment is based on a misapprehension of facts.[13] Both exceptions are not present in the case at bar.

The Labor Arbiter had found that petitioner failed to observe due process in terminating respondent's employment and on that basis awarded moral, exemplary, and nominal damages in addition to separation pay and backwages. On appeal, the NLRC in its Decision affirmed the Labor Arbiter's findings that there was no just cause to dismiss respondent, extensively quoted with approval passages in the Labor Arbiter's Decision concerning its finding about the absence of just cause. The NLRC no longer discussed whether due process had been observed by petitioner and instead proceeded to its determination of awards for other benefits prayed for by petitioner. However, the dispositive portion of the NLRC Decision deleted the awards for moral, exemplary, and nominal damages. The Court of Appeals, for its part, affirmed the finding that there was no compliance with the due process requirements in terminating respondent. The appellate court cited *San Antonio v. NLRC*[14] as basis in saying that consultations and conferences, like the one conducted in this case, may not be valid substitutes for actual observance of notice and hearing.

This Court must disagree, however, with the determination that there was no due process in effecting respondent's dismissal. In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the worker with two written notices before termination of employment can be legally effected: (a) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (b) a subsequent notice informing the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held.[15]

In the case at bar, petitioner appears to have complied with these requirements. Petitioner furnished respondent with a memorandum dated 16 January 1998 informing him that he had been found to have committed acts constituting serious misconduct and requiring him to explain why he should not be dismissed for cause for such acts. Respondent submitted his written explanation and later, petitioner set up a conference attended by respondent and other employees connected with the creation and operation of CNRI to give them further opportunity to be heard on the charges against them. Despite the explanations, petitioner still decided to dismiss respondent from the service and subsequently informed him of its decision through the Interoffice Letter dated 12 February 1998.

San Antonio v. NLRC may not be applied to the case at bar since it is not on all fours with the facts of the case. In *San Antonio*, after petitioner therein, in compliance with the company's directive, had explained why he should not be disciplinarily dealt with, he received forthwith the company's decision to dismiss him from employment. No hearing or a semblance thereof was conducted, unlike in the case at bar, where respondent's written explanation was followed by a conference before petitioner's final decision to terminate his employment.

Finding that petitioner had observed due process in terminating respondent's employment, the award of moral, exemplary, and nominal damages has no basis and was correctly deleted in the decision of the NLRC as affirmed

by the Court of Appeals.

We affirm the award of "other benefits" in the assailed Decision, since such benefits were included in the prayer in petitioner's complaint as "bonuses and other benefits," reiterated in his position paper as "all his lawful claims," and in his other pleadings as "such other reliefs," and respondent's entitlement thereto had been duly proven.

WHEREFORE, the petition for review is DENIED and the Decision dated 24 September 2002 and Resolution dated 20 January 2003 of the Court of Appeals are AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairman), Carpio, and Carpio-Morales, JJ., concur

[1] CA rollo, p. 140.

[2] Id. at 146.

[3] Rollo, pp. 228-238.

[4]Id. at 163-171. Decision penned by Presiding Commissioner Irene E. Ceniza with Commissioners Bernabe S. Batuhan and Vicente S.E. Veloso concurring, all of the Fourth Division of the NLRC-Cebu City.

[5] CA rollo, pp. 112-116.

[6]Id. at 265.

[7][] Rollo, pp. 48-62. Decision penned by Justice Josefina Guevara-Salonga and concurred in by Justices Rodrigo V. Cosico and Edgardo F. Sundiam of the Seventeenth Division.

[8] Id. at 112.

[9] Id. at 15-16.

[10]CA rollo, p. 144.

[11] Rollo, p. 21.

[12] German Machineries Corporation v. Endaya, G.R. No. 156810, 25 November 2004, 444 SCRA 329, 340, citing Metro Transit Organization, Inc. v. Court of Appeals, 329 SCRA 229, 239 (2002).

[13] Id., citing Bolinao Security and Investigation Service, Inc. v. Arsenio M. Toston, G.R. No. 139135, 29 January 2004, 421 SCRA 406.

[14]G.R. No. 100829, 28 November 1995, 250 SCRA 359, 368.

[15] Paguio Transport Corporation v. NLRC, 356 Phil. 158, 170 (1998); Conti v. National Labor Relations Commission, 337 Phil. 560, 565-566 (1997) citing Roces v. Aportadera, Admin. Case No. 2936, 31 March 1995, 243 SCRA 108 and Pamantasan ng Lungsod ng Maynila v. CSC, G.R. NO. 107590, 21 February 1995, 241 SCRA 506.

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