

CARLOS G. AZUL, PETITIONER, VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK, RESPONDENT.

G.R. NO. 172401. October 30, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court assails the August 23, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 79099, declaring petitioner's dismissal as lawful and setting aside the National Labor Relations Commission (NLRC) (1) Decision[2] dated December 27, 2002 in NLRC NCR CA No. 030660-02, which affirmed the August 16, 2001 Decision[3] of Labor Arbiter Jesus Orlando M. Quiñones in Sub-RAB 05-11-00385-00 finding respondent bank guilty of illegal dismissal and (2) Order[4] dated May 7, 2003 denying respondent bank's motion for reconsideration for being one day late. Also assailed is the March 28, 2006 Resolution[5] denying petitioner's motion for reconsideration.

The following facts are undisputed:

Petitioner Carlos G. Azul was the branch accountant of respondent Banco Filipino Savings & Mortgage Bank-Iriga branch. Upon audit, the bank found that petitioner was involved in "kiting" operations by treating check deposits as "cash" and allowing withdrawals from uncollected check deposits. The audit reported a total loss of P4,469,500.00.

An Ad Hoc Committee conducted a formal investigation, during which petitioner did not deny his participation in the operations but insisted that he was merely following the instructions of Danilo Disuanco, the branch manager. The latter allegedly instructed petitioner to use his password and ID to release the float days, or the number of days for checks to be cleared for withdrawal. Petitioner denied that he profited from the prohibited transactions. After the investigation, the bank terminated petitioner's services and forfeited his benefits pursuant to Section IX of the bank's Employee Guidelines.

Petitioner filed with the NLRC Sub-Regional Arbitration Branch No. V at Naga City a complaint for illegal dismissal with prayer for reinstatement, payment of backwages and other benefits, actual and moral damages and attorney's fees. On August 16, 2001, the Labor Arbiter rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding respondent BANCO FILIPINO guilty of illegal dismissal, and is hereby ordered to actually reinstate complainant to his former position without loss of seniority rights and other privileges, or at the option of the respondent, payroll reinstatement; and to pay complainant's full backwages, which amounts to Php824,125.00, and ten percent (10%) of said award representing attorney's fees for Php82,412.50.

All other claims and charges are DISMISSED for lack of merit.

SO ORDERED.[6]

On appeal, the NLRC affirmed the Labor Arbiter. It also denied the bank's motion for reconsideration for being

one day late. The Labor Arbiter later issued a writ of execution and directed the Sheriff to collect P901,984.81 representing the bank's appeal cash bond to answer for petitioner's monetary award.

The bank filed a petition for certiorari[7] with the Court of Appeals which was granted. In its assailed decision dated August 23, 2004, the Court of Appeals reversed the NLRC and declared petitioner's dismissal to be lawful. Petitioner's motion for reconsideration was denied, hence this petition raising the following issues:

- 1) THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN GIVING DUE COURSE TO RESPONDENT'S PETITION FOR CERTIORARI UNDER RULE 65 NOTWITHSTANDING THE FINALITY AND THE SUBSEQUENT ENTRY OF JUDGMENT OF THE DECISION OF THE NLRC.
- 2) EVEN ASSUMING THAT THE COURT OF APPEALS DID NOT ERR IN GIVING DUE COURSE TO THE SAID PETITION, IT NEVERTHELESS GRAVELY ABUSED ITS DISCRETION IN FINDING GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC.
- 3) AGAIN ASSUMING THAT THE COURT OF APPEALS DID NOT ERR IN GIVING DUE COURSE TO THE SAID PETITION, IT NEVERTHELESS GRAVELY ABUSED ITS DISCRETION IN REVIEWING THE PERCEIVED ERRORS OF JUDGMENT OF THE NLRC IN CONTRAVENTION WITH THE RULES AND ESTABLISHED JURISPRUDENCE.[8]

The issues for resolution are (1) whether the Court of Appeals correctly disregarded the bank's failure to file on time its motion for reconsideration with the NLRC; and (2) whether petitioner was illegally dismissed.

Petitioner argues that the decision of the NLRC had become final and executory because of the bank's failure to seasonably file its motion for reconsideration; that there was no legal justification for the reopening thereof; that the NLRC did not commit grave abuse of discretion in holding that petitioner did not willfully and knowingly connive with Disuanco because it was the latter who, by himself, engineered the "kiting" operations using his managerial powers, discretion and strong personality; that the Court of Appeals supplanted the findings of the Labor Arbiter and the NLRC, which is outside the province of a petition for certiorari under Rule 65; and that while admitting that it was not departing from the NLRC's findings of fact because it was not proper to review the probative value of the parties' evidence, the Court of Appeals nevertheless reversed the said factual findings when it ruled that there was just cause for petitioner's termination, thus ruling that he could be dismissed for loss of trust and confidence.

On the other hand, the bank asserts that law and equity as well as a desire to render a just and equitable judgment not bound by a strict and rigid application of technical rules justified the Court of Appeals' action in giving due course to the petition for certiorari; that the delay in filing its motion for reconsideration with the NLRC was justifiable because its messenger, while on his way to file the motion, was called upon to locate his missing 3-year old son; that the NLRC's outright dismissal of the motion for reconsideration, especially because it raised substantial and meritorious issues, was uncalled for because there was no intent on the part of the bank to delay the administration of justice; that the Court of Appeals did not alter the established facts found by the NLRC but simply applied the law based on these facts; and that the Court of Appeals correctly ruled that the NLRC gravely abused its discretion in not finding just cause for petitioner's dismissal based on his own Affidavit stating that he was aware of the bank's policy prohibiting drawings against uncollected deposits but that he did nothing to prevent or report the same to the Head Office.

The petition lacks merit.

The seriousness of petitioner's infraction demanded the setting aside of strict rules of procedure as to allow the determination on the merits of whether he was lawfully dismissed. As held by this Court, the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases,

because they must be decided according to justice and equity and the substantial merits of the controversy.[9]

There is substantial evidence showing that there was valid cause for the bank to dismiss petitioner's employment for loss of trust and confidence. Petitioner was a bank accountant, which is a position of trust and confidence. The amount involved is significant, almost P4.5 million.

Petitioner admitted that he allowed his ID and password to be used in the "kiting" operations. This admission is evidence of the highest order and does not require further proof. It binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[10] Thus, as correctly found by the Court of Appeals, the following admissions in petitioner's affidavit showed the indispensability of his participation in the prohibited transactions, to wit:

6) x x x The check presented by the favored client-depositor is validated as "check deposit"; The branch manager or any of the bank officers will "release" or waive the "float days" of the check (the "float days" refer to the period of days within which a check is cleared for withdrawal by the drawee bank through the Central bank clearing house - for Manila checks, the "float days" is seven days, while Naga or local checks it is three days. The act of "releasing" the float days is by encoding into the computer the password, and the float days would be reduced into "0" day instead of reflecting the actual number of days for clearing. The encoding may only be done by two bank officers by inputting "over-ride 1" and "over-ride 2". Once the release of float days is done, the amount of the check deposited is ready for withdrawal by the process mentioned in letter (g) of the preceding paragraph.

9) Thus, after Mr. Mateum went on leave, I was ordered to perform the functions left by him, particularly the release of the float days of check deposits. Although I was aware that what we were doing was against bank policy, I could not disobey Mr. Disuanco. Knowing his character and his violent reactions whenever his objectives were not met, it would be impossible for me to resist or disobey him. x x x

10) Mr. Disuanco had a list prepared of favored clients whose check deposits were to be accommodated. He was the only one who prepared this and gave the tellers copies of the list. When a check deposit came in from a favored client whose name appears in the list, I was then instructed to encode my password into the computer as I was the other branch officer to do either of the "over-ride." I was, however, very apprehensive already but Mr. Disuanco kept assuring me that nothing will go wrong and that he knew well the bank clients concerned and that it was necessary for us to be able to keep them as clients of the bank. I was also ordered by him to instruct the tellers to do what was necessary in order to accommodate the checks. However, I told the tellers firmly that I was not sold out to the idea of Mr. Disuanco but I was just following his orders.[11] (Emphasis added)

Petitioner's excuse that he was helpless given Disuanco's loud, brash and aggressive management style is unacceptable. As correctly held by the Court of Appeals:

In his affidavit, private respondent admitted that he was aware of Memorandum No. BR-97030 addressed to all branch managers reminding them of the bank's policy on drawings against uncollected deposits. He also admitted that the orders made by Disuanco were contrary to bank policy. In his letter dated October 24, 1997 addressed to the Senior Vice-President, private respondent stated:5. I am aware that check accommodations are strictly prohibited except upon the approval of the Manager who "calls the shot", I, being helpless being new as an officer of the bank;

6. I finally realized my mistakes and did nothing to prevent nor report to Head Office and humbly regrets and ask for absolution; x x x

As borne out by the record, private respondent's act of encoding his I.D. and password into the computer in order to facilitate the prohibited transactions was done of his own free will and volition without undue pressure or threat

exerted by a third person and with full knowledge of its consequences. By releasing the float days of uncleared checks, he was well aware that the same would not only put the bank to undue risk but also constitutes a blatant violation of banking procedure. Thus, his act constituted willful breach of the trust reposed on him as a bank officer. We might have reached a contrary conclusion favorable to private respondent had he committed the infraction by inadvertence or through simple negligence. However, such was not the case here.

In various instances before the Labor Arbiter, private respondent pointed out that he was merely forced or compelled to obey the demands of Disuanco. However, no proof as to the extent and degree of compulsion, force or threat was adduced other than private respondent's bare assertion that he was a weakling and that Disuanco had a strong personality with whom he was afraid to cross swords. In short, these assertions were just private respondent's lame justification for his irregular acts.[12] (Emphasis supplied)

Based on the foregoing, we find that loss of trust and confidence, as a valid ground for termination, has been clearly established. Petitioner's alleged good faith or the fact that he did not profit from the illegal transactions, would not justify his infraction. In *Etcuban, Jr. v. Sulpicio Lines, Inc.*,^[13] we upheld the employee's dismissal despite lack of proof of actual participation in anomalous activities because his actuations had sown in his employer "the seed of mistrust and loss of confidence," thus:

While, indeed, it was not proved that he was the one who made the irregular entries on the tickets, the fact that he did not lift a finger at all to determine who it was is a sad reflection of his job. In fact, even if the petitioner had no actual and direct participation in the alleged anomalies, his failure to detect any anomaly in the passage tickets amounts to gross negligence and incompetence, which are, likewise, justifiable grounds for his dismissal. Be that as it may, to our mind, it is no longer necessary to prove the petitioner's direct participation in the irregularity, for what is material is that his actuations were more than sufficient to sow in his employer the seed of mistrust and loss of confidence.^[14]

The aforesaid ruling applies with greater force against petitioner because of his unequivocal declaration that he participated in the kiting operations by typing his password to complete the "over-ride." His participation was indispensable in the perpetration of the prohibited transactions.

WHEREFORE, the petition is DENIED. The August 23, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 79099, declaring petitioner's dismissal as lawful and setting aside the National Labor Relations Commission (1) Decision dated December 27, 2002, which affirmed the August 16, 2001 Decision of the Labor Arbiter finding respondent bank guilty of illegal dismissal, and (2) Order dated May 7, 2003 denying respondent bank's motion for reconsideration; and the March 28, 2006 Resolution denying petitioner's motion for reconsideration, are AFFIRMED.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.
Panganiban, C.J., (Chairperson), no part, former counsel of a party.

[1] Rollo, pp. 32-45. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Edgardo P. Cruz and Mariano C. Del Castillo.

[2] CA rollo, pp. 56-72. Penned by Commissioner Vicente S.E. Veloso and concurred in by Presiding Commissioner Roy V. Señeres.

[3] Id. at 73-89.

[4] Id. at 39-40.

[5] Rollo, pp. 54-57.

[6] CA rollo, p. 89.

[7] Id. at 2-38.

[8] Rollo, p. 14.

[9] *Garcia v. Philippine Airlines, Inc.*, G.R. No. 160798, June 8, 2005, 459 SCRA 768, 782.

[10] *Heirs of Miguel Franco v. Court of Appeals*, G.R. No. 123924, December 11, 2003, 418 SCRA 60, 67.

[11] Rollo, pp. 37-38.

[12] Id. at 40-41.

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

[14] Id. at 530-531.

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