ROWENA DE LEON CRUZ, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

G.R. No. 173357. February 13, 2013

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari[1] of the Court of Appeals' Decision[2] dated April 27, 2006 in CA-G.R. SP No. 92202, and its Resolution dated July 13, 2006, denying petitioner's motion for reconsideration.

The Court of Appeals affirmed the Decision of the National Labor Relations Commission (NLRC), dated January 31, 2005, which reversed and set aside the Decision of the Labor Arbiter finding the dismissal of petitioner Rowena de Leon Cruz to be illegal. The NLRC dismissed petitioner's Complaint for lack of merit.

The facts are as follows:

Petitioner was hired by Far East Bank and Trust Company (FEBTC) in 1989. Upon the merger of FEBTC with respondent Bank of the Philippine Islands (BPI) in April 2000, petitioner automatically became an employee of respondent. Petitioner held the position of Assistant Branch Manager of the BPI Ayala Avenue Branch in Makati City, and she was in charge of the Trading Section.

On July 12, 2002, after 13 years of continuous service, respondent terminated petitioner on grounds of gross negligence and breach of trust. Petitioner's dismissal was brought about by the fraud perpetrated against three depositors, namely, Geoffrey L. Uymatiao, Maybel Caluag and Evelyn G. Avila, in respondent's Ayala Avenue Branch.

The fraud committed against Uymatiao, Caluag and Avila was narrated by the NLRC and the Court of Appeals as follows:

On June 2, 1997, Geoffrey Uymatiao deposited US$29,592.30 under a U.S. Dollar Certificate of Deposit (USD CD) with respondent's Ayala Avenue Branch. As shown on the USD CD, it was supposed to mature a month after its issuance or on July 2, 1997. Since the USD CD was not presented by Uymatiao for redemption on July 2, 1997, it was automatically rolled over on a monthly basis by the bank with a new USD CD being issued for each rolled-over USD CD, and the rolled-over USD CD was kept by the bank.

On June 21, 2000, Uymatiao's USD CD, with due date on June 27, 2000, was pre-terminated and the proceeds thereof, amounting to US$34,358.03, was credited to an account opened in the name of Uymatiao by means of an Instruction Sheet. However, it was not Uymatiao who pre-terminated the last USD CD, as the prior USD CD was still in his possession. When Uymatiao discovered the fraud, he immediately wrote respondent a letter complaining that he was not the one who pre-terminated the account. Upon investigation, it turned out that Uymatiao's signature was forged and intercalated in the records of BPI Ayala Avenue Branch. Moreover, it was petitioner who approved the pre-termination of Uymatiao's USD CD and the withdrawal of the proceeds thereof.

Uymatiao also had a U.S. Dollar Savings Account. For a time, his savings account was dormant. However, on June 23, 2003, the account was reactivated, without Uymatiao's consent, through an alleged Instruction Sheet bearing the forged signature of Uymatiao and a spurious passbook. On the same date that it was reactivated, the amount of US$15,000.00 was withdrawn. On July 7, 2002, the amount of US$3,500.00 was again withdrawn from Uymatiao's account.

Uymatiao complained about the illegal withdrawal. An investigation revealed that the Letter of Instruction, which was used to reactivate the account, was a forgery. Moreover, it was found that petitioner was the one who approved the reactivation and withdrawal of money from Uymatiao's account.

The second defrauded depositor, Maybel Caluag, deposited US$5,848.30 under a USD CD, which was supposed to mature on February 11, 2000. The automatic roll-over of Caluag's USD CD would have continued, but on July 24, 2000, the same was pre-terminated and the proceeds thereof, amounting to US$6,006.58, was credited to an account opened in the name of Caluag by means of an Instruction Sheet. The amount was subsequently withdrawn.

On July 28, 2000, Caluag discovered the fraud and complained that she did not pre-terminate her USD CD. She said that she was in Japan on July 24, 2000 and she did not authorize anyone to pre-terminate her account. She presented the original certificate of deposit issued to her to prove that she did not have her account pre-terminated. Upon investigation, it was found that petitioner was the one who approved the pre-termination of Caluag's account.

The third defrauded depositor, Evelyn Avila, had a balance of US$20,575.12 in her U.S. Dollar Savings Account as of March 31, 2000. On July 27, 2000, it was made to appear that Avila withdrew the balance from her account. On February 28, 2001, Avila discovered the illegal withdrawal and complained to respondent about it. She said that she was in Australia on July 27, 2000 when the withdrawal from her account was made. An investigation later showed that it was petitioner who approved the withdrawal from Avila's account.

On April 19, 2002, BPI Vice-President Edwin S. Ragos issued a memorandum[3] directing petitioner to explain within 24 hours the aforementioned unauthorized pre-terminations/withdrawals of US dollar deposits at the BPI Ayala Avenue Branch.

In petitioner's reply,[4] she asserted that she followed the bank procedure/policy on pre-termination of accounts, opening of transitory accounts and reactivation of dormant accounts. She explained that upon verifying the authenticity of the signatures of the depositors involved, she approved the withdrawals from certain accounts of these clients. With regard to the pre-termination of Uymatiao's USD CD, petitioner claimed that the Trader presented to her what she believed was an original and genuine client copy of the certificate of deposit, the surrender of which caused the issuance of a new USD CD.

Moreover, petitioner stated that at the time the alleged fraudulent transactions took place, she was not yet an Assistant Manager, but only a Cash II Officer of the branch, still operating under the FEBTC set-up. As such, she was in charge of overseeing and supervising all the transactions in the Trading Section, among other departments. Hence, her responsibilities required her only to bring out signature card files from the vault to the Trading Section and to ensure that these files were returned to the vault at the close of banking hours.

On May 22, 2002, an administrative hearing was held to give petitioner an opportunity to explain her side of the controversy.

On July 10, 2002, a notice of termination[5] was issued informing petitioner of her dismissal effective July 12, 2002 on grounds of gross negligence and breach of trust for the following acts: (1) allowing the issuance of USD

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CDs under the bank's safekeeping to an impostor without valid consideration; (2) allowing USD CD pre-terminations based on such irregularly released certificates; and (3) allowing withdrawals by third parties from clients' accounts, which resulted in prejudice to the bank.

Petitioner filed an appeal before BPI President Xavier Loinaz, but her appeal was denied.

The aforementioned incidents of fraud resulted in the dismissal of three officers, including petitioner, one trader; the suspension of two officers and one trader, and the reprimand of one teller.[6]

Thereafter, petitioner filed a Complaint for illegal dismissal against respondent and its officers with the Arbitral Office of the NLRC.

In her Position Paper, petitioner alleged that her employment record as an officer and staff had always been beyond par and was not tainted with any fraud or anomaly. When the incidents took place, she was barely two months as Service Officer of the Ayala Avenue Branch's Trading Section, and she was hardly familiar with any bank client, not to mention the enormous volume of transactions handled by the said BPI branch. Being new in her position, she had yet to adjust to the system in place. Nonetheless, she followed the policies and procedural control prior to affixing her initials as approving authority; hence, petitioner asserted that her dismissal was grossly disproportionate as a penalty.

In respondent's Position Paper, respondent asserted that petitioner's dismissal is legal; hence, petitioner has no cause of action against it. Respondent stated that there is no question that the fraudulent incidents, which affected its three depositors, namely, Uymatiao, Caluag and Avila, happened in its Ayala Avenue Branch, and that the fraudulent transactions were approved by petitioner as borne out by her signature on the documents allowing the pre-termination of certificates of dollar deposits and allowing the withdrawal of dollar deposits from the respective savings account of the affected depositors. Respondent stated that in giving the aforementioned unauthorized pre-termination and withdrawal transactions her seal of approval, petitioner neglected to perform one, if not the most, basic banking requirement integral to these transactions, which is to see to it that the persons who effected the pre-termination and cancellation of the USD CDs and who made the withdrawals from the U.S. dollar savings deposits and received the proceeds thereof were really the depositors themselves, namely, Uymatiao, Caluag and Avila. According to respondent, as it happened, respondent never exerted any effort to require such persons to produce satisfactory identification, which was the reason the aforementioned incidents of fraud were successfully carried out. If it had been her own money that was involved, petitioner would have asked for more than what was expected of her in this case, which was simply to ask for satisfactory identification from the respective person effecting the pre-termination of the certificate of deposit and making the withdrawal. Hence, respondent submitted that petitioner's dismissal on grounds of gross negligence and breach of trust, resulting in the substantial monetary loss to respondent in the sum of US$81,492.39, which it reimbursed to the affected depositors, is legal and valid.

In a Decision[7] dated April 1, 2004, the Labor Arbiter held that the dismissal of petitioner was illegal. The dispositive portion of the decision reads:

> WHEREFORE, decision is hereby rendered declaring the dismissal of complainant Rowena Cruz illegal such that respondent Bank of the Philippine Islands is hereby ordered to reinstate her to her former or substantially equivalent position without loss of seniority rights and other privileges and to pay her backwages and attorney's fees in the amount of SIX HUNDRED THIRTY-NINE THOUSAND ONE HUNDRED EIGHTY-SIX PESOS AND 16/100 (P639,186.16).[8]

The Labor Arbiter held that petitioner cannot be considered a managerial employee, and that her dismissal on grounds of gross negligence and breach of trust was unjustified.

On appeal, the NLRC reversed and set aside the Decision of the Labor Arbiter, and it entered a new decision dismissing petitioner's Complaint for lack of merit.[9]

The NLRC stated that the evidence showed that the pre-termination of the accounts of the depositors involved and the withdrawal of money from such accounts were with the approval of petitioner. A stamp of approval given by a bank officer, especially in sensitive transactions like pre- termination of accounts and withdrawal of money, means that the corresponding documents are in order and the validity of such documents had been verified. Otherwise, there would be no integrity in the approval of these transactions, considering that approval is the last act that would give effect to the transactions involved. According to the NLRC, the banking industry is such a sensitive one that the trust given by a bank's depositors must be protected at all times even by the lowest-ranking employee. As petitioner's signature appeared in the documents showing her approval of the pre-termination of the accounts of the depositors involved and the withdrawal of money from their accounts, the NLRC reversed the decision of the Labor Arbiter and ruled that petitioner's dismissal was for a valid cause.

Petitioner filed a petition for certiorari with the Court of Appeals, alleging that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction for the following: (1) Failing to consider with great respect and finality the factual findings of the Labor Arbiter that petitioner followed all the policies and procedures in place and, hence, is not remiss in her duties; (2) concluding that mere approval of the transactions by petitioner in itself was a valid cause for dismissal; (3) concluding that petitioner could not be exculpated from liability by claiming that it is not incumbent upon her to call the depositors to personally appear before her and confirm their signatures when such is not required of petitioner; (4) not holding that the petitioner could not have committed gross negligence at the time the questioned transactions occurred, as she was not an Assistant Manager and her duties were that of a Cash II Officer; (5) not holding that there was insufficient factual and legal basis to terminate petitioner's employment; (6) ignoring the fundamental rule that all doubts must be resolved in favor of labor; (7) not affirming the award of backwages; and (8) not affirming the award of attorney's fees.[10]

On April 27, 2006, the Court of Appeals rendered a Decision,[11] the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is hereby DENIED and is accordingly DISMISSED. No costs.[12]

The Court of Appeals disagreed with petitioner's submission, in gist, that her termination was grossly disproportionate to the omission she committed. It stressed that petitioner was holding a highly confidential position, as Assistant Branch Manager, in the banking industry, which required extraordinary diligence among its employees. If petitioner was still unfamiliar with the terrain of her position, she should not have accepted it.

The Court of Appeals stated that petitioner is a managerial employee whose continuous employment is dependent on the trust and confidence reposed on her by respondent. After the incident wherein respondent lost thousands of U.S. dollars, it could not be expected that the trust and confidence petitioner was previously enjoying could still be extended by respondent. Hence, the Court of Appeals held that petitioner's dismissal based on the ground of loss of trust and confidence was a valid exercise of management prerogative.

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution[13] dated July 13, 2006.

Petitioner filed this petition, and raised in her Memorandum the following issues:

> I
> WHETHER OR NOT THE FINDINGS OF FACT OF LABOR ARBITER LEDA ARE TO BE GIVEN MORE WEIGHT AND RESPECT GIVEN THE DOCTRINE LAID DOWN THAT THOSE FINDINGS OF

FACT OF THE LABOR ARBITER, IN THE ABSENCE OF ANY FINDING OF ABUSE OF DISCRETION, ARE NOT TO BE DISTURBED ON APPEAL.

II
WHETHER OR NOT THE EVIDENCE SUBMITTED BY RESPONDENT BANK IS SUBSTANTIAL IN CHARACTER TO WARRANT THE DISMISSAL OF THE PETITIONER, GIVEN THE ELEMENTARY RULES IN LABOR THAT DOUBTS ARE TO BE RESOLVED IN FAVOR OF LABOR AND THE BURDEN OF PROOF THAT DISMISSAL IS FOR JUST CAUSE RESTS UPON THE EMPLOYER AND NOT ON THE WEAKNESS OF THE EVIDENCE FOR THE EMPLOYEE.

III
WHETHER OR NOT THE PENALTY OF DISMISSAL IS DISPROPORTIONATE TO OR IS IT COMMENSURATE TO THE ACTS ATTRIBUTED TO THE [PETITIONER] IN THE PERFORMANCE OF HER DUTIES.[14]

Petitioner contends that the factual finding of the Labor Arbiter is to be respected and given credence on appeal in the absence of abuse of discretion.

As the decision of the Labor Arbiter has been appealed to the NLRC, the NLRC has the power to review the factual finding and resolution of the Labor Arbiter. It is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on certiorari of the decisions of the Court of Appeals.[15] However, an exception to this rule is when the findings of the NLRC, as affirmed by the Court of Appeals, contradict those of the Labor Arbiter.[16] In this case, the Labor Arbiter found that petitioner was illegally dismissed, while the NLRC reversed the finding of the Labor Arbiter, which reversal was affirmed by the Court of Appeals. In view of the discordance between the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, there is a need for the Court, in the exercise of its equity jurisdiction, to review the factual findings and the conclusions based on the said findings.[17]

After a review of the records of the case, the Court agrees with the findings of the Court of Appeals and the NLRC that petitioner's dismissal was for a valid cause.

Respondent dismissed petitioner from her employment on grounds of gross negligence and breach of trust reposed on her by respondent under Article 282 (b) and (c) of the Labor Code.

Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care.[18] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[19] On the other hand, the basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence.[20] It is the breach of this trust that results in the employer's loss of confidence in the employee.[21]

In this case, respondent avers that petitioner held the position of Assistant Manager in its Ayala Avenue Branch. However, petitioner contends that her position was only Cash II Officer.

The test of “supervisory” or “managerial status” depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment.[22]

In respondent's Position Paper[23] before the NLRC and its Memorandum,[24] respondent stated that the responsibility of petitioner, among others, were as follows: (1) to maintain the integrity of the signature card files of certificates of deposits and/or detect spurious signature cards in the same files; (2) to ensure that releases of original CDS are done only against valid considerations and made only to the legitimate depositors or their duly

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authorized representatives; (3) to approve payments or withdrawals of deposits by clients to ensure that such withdrawals are valid transactions of the bank; and (4) to supervise the performance of certain rank-and-file employees of the branch.

Petitioner holds a managerial status since she is tasked to act in the interest of her employer as she exercises independent judgment when she approves pre-termination of USD CDs or the withdrawal of deposits. In fact, petitioner admitted the exercise of independent judgment when she explained that as regards the pre-termination of the USD CDs of Uymatiao and Caluag, the transactions were approved on the basis of her independent judgment that the signatures in all the documents presented to her by the traders matched, as shown in her reply[25] dated April 23, 2002 to respondent's memorandum asking her to explain the unauthorized preterminations/withdrawals of U.S. dollar deposits in the BPI Ayala Avenue Branch.

Petitioner contends that respondent failed to submit substantial evidence to warrant a conclusion that she committed acts amounting to willful breach of trust and gross negligence. Petitioner submits that although she approved the fraudulent pre-termination of the accounts involved as well as the withdrawal of money from the accounts, before she affixed her signature on the questioned transactions, she followed office procedures by requiring the presentation of the original certificate on file with the branch bearing the client's signatures as proof that he holds the original in his possession, withdrawal slips, which when matched by her (petitioner) with the signature card on file with the branch, were found to be all the same.

Hence, all required signatures matched before she (petitioner) gave her approval. According to petitioner, per respondent's policy, the signature card on file is the most exacting requirement in branch operations; hence, even when an identification card is required from the bank's client, the basis of approval would still be the signature card on file with the branch. Moreover, petitioner reasons that she was barely two months with the BPI Ayala Avenue Branch when the questioned transactions occurred. She asserts that she had no participation in the insertion of spurious signature cards which was done prior to her designation as Cash II Officer of the Ayala Avenue Branch.

Respondent counters that investigation disclosed that in approving the respective pre-termination transactions of Uymatiao and Caluag, no sincere effort was made by petitioner to properly identify the person or persons presenting the certificates of deposit for pre-termination. In other words, petitioner did not see to it that it was really Uymatiao or Caluag who was pre-terminating his/her USD CD. Neither did petitioner require that the original certificates of time deposit, which were supposed to be in the possession of Uymatiao and Caluag, be surrendered in exchange for the rolled-over certificates which were pre-terminated.

The Court notes that petitioner admitted that she did not call the depositors to appear before her, although she performed other procedures to determine whether the subject transactions were with the depositors' authorization.[26] Petitioner did not determine if it was really Uymatiao and Caluag who were pre-terminating their respective USD CD, as she based the identification of the said clients from their matching signatures on the original certificate on file with the branch, withdrawal slips and signature cards. Moreover, as stated by respondent, petitioner did not require that the original certificates of time deposit in the possession of Uymatiao and Caluag be surrendered to the bank when the rolled-over certificates were pre-terminated. If petitioner took the precaution to identify that it was really Uymatiao and Caluag who were pre-terminating their respective USD CD, and required that Uymatiao and Calaug surrender their respective original certificates of time deposit in their possession upon pre-termination of the rolled-over certificates, the fraud could have been averted.

In that regard, petitioner was remiss in the performance of her duty to approve the pre-termination of certificates of deposits by legitimate depositors or their duly-authorized representatives, resulting in prejudice to the bank,

which reimbursed the monetary loss suffered by the affected clients. Hence, respondent was justified in dismissing petitioner on the ground of breach of trust. As long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed.[27]

Bristol Myers Squibb (Phils), Inc. v. Baban[28] reiterated:

> X X X [A]s a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus. when an employee has been guilty of breach of trust or his employer has ample reason to distrust him. a labor tribunal cannot deny the employer the authority to dismiss him.[29]

In fine, the dismissal of petitioner on the ground of breach of trust or loss of trust and confidence is upheld.

WHEREFORE, the petition is DENIED. The Court of Appeals' Decision dated April 2 2006 in CA-G.R. SP No. 92202, and its Resolution dated July 13, 2006 are hereby AFFIRMED.

No costs.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Leonen, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Andres B. Reyes, Jr. of the Special Tenth Division with Associate Justices Rosmarie D. Carandang and Japar B. Dimaampao, concurring; rollo. pp. 7-17.

[3] CA rollo, pp. 57-58.

[4] Letter dated April 23, 2002, id. at 59-63.

[5] Id. at 64.

[6] Respondent's Memorandum, rollo, p. 124.

[7] Rollo, pp. 61-76.

[8] Id. at 76.

[9] Decision of the NLRC dated January 31, 2005, id. at 51-58.

[10] Rollo, pp. 12-14.

[11] Id. at 7-17.

[12] Id. at 16. (Emphasis in the original)

[13] Id. at 50.

[14] Id. at 156. (Emphasis ours).

[15] Lima Land, Inc. v. Cuevas, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 41.

[16] Id.; Baron v. National Labor Relations Commission, G.R. No. 182299, February 22, 2010, 613 SCRA 351, 359.

[17] Baron v. National Labor Relations Commission, supra, at 360.

[18] Jumuad v. Hi-Flyer Food, Inc., G.R. No. 187887, September 7, 2011, 657 SCRA 288, 300.

[19] Id.

[20] Id. at 301.

[21] Id.

[22] Clientlogic Philippines, Inc. v. Castro, G.R. 186070, April 11, 2011, 647 SCRA 524, 532.

[23] CA rollo, pp. 69-118.

[24] Rollo, pp. 121-142.

[25] Annex A, CA rollo, pp. 59-63.

[26] Petition for Certiorari, rollo, p. 2.

[27] Jumuad v. Hi-Flyer Food, Inc., supra note 18, at 302,-303, citing Lima Land, Inc. v. Cueva, supra note 15, at 47.

[28] G.R. No. 167449, December 17, 2008, 574 SCRA 198.

[29] Id. at 208-209, citing Atlas Fertilizer Corporation v. National Labor relations Commission, G.R. No. 120030, June 17, 1997, 273 SCRA 551.

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