

PHILIPPINE NATIONAL BANK, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND BERNARDO REBANO, RESPONDENTS.

G.R. No. 70140. July 24, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, filed by the Philippine National Bank (PNB, for short) questioning the decision* of the Intermediate Appellate Court, now Court of Appeals, in AC-G.R. No. Sp.-03784 entitled "Bernardo Rebano vs. PNB, et al." promulgated on 7 January 1985, reconsideration of which was denied in the resolution of 19 February 1985.

Private respondent Bernardo Rebano, senior bookkeeper of the PNB Buendia Branch since 6 April 1976, was charged by the PNB Regional Investigating Committee on 3 April 1979 with serious violations of Bank Rules & Regulations, committed as follows:

"1. That you allowed withdrawals against uncollected deposits in violation of the following Bank regulation -

'No withdrawal against uncollected deposits shall be allowed.'

"2. That on various dates indicated in the attached list, you posted withdrawals without approval of the authorized branch officials. x x x." [1]

Rebano's culpability stemmed from the discovery of check-kiting operations at the PNB Buendia Branch sometime in 1978 and committed as follows:

"That Mr. Monahar B. Hira of Indian nationality opened current account number 265-811280-8 with Buendia Branch on February 28, 1978; that the initial deposit to the account was a check for P500.00 drawn against the Rizal Commercial Banking Corporation (RCBC); that after about four months from the opening of CA No. 265-811280-8, it was uncovered that Mr. Hira perpetrated a kiting operation involving the Branch and two other commercial banks, namely: (1) the Rizal Commercial Banking Corporation and (2) the Metropolitan Bank and Trust Company; that withdrawals against uncollected deposits allowed by Buendia Branch during the entire period of the kiting operation amounted to P3,554,658.36 out of the total check deposits of P3,863,500.00; that expected loss due to returned checks amounts to P568,934.40 exclusive of interest and other incidental charges." [2]

On 23 March 1981, the PNB Board of Directors issued Board Resolution No. 506 dismissing private respondent from the service with forfeiture of all benefits and with prejudice to reinstatement. On appeal to the Merit Systems Board of the Civil Service Commission, the PNB Board's decision was affirmed, on the ground that:

"x x x negligence of respondent was made manifest when despite his being fully aware of the Memorandum dated March 22, 1978, issued by Buendia Bank Manager Antonio Acyatan that 'checks of P1,000.00 and above which are drawn against uncollected deposits may only be taken up in the books upon due approval by the branch cashier or any of the branch officers,' he disregarded the same by posting ninety-two (92) check withdrawals covering the period from April 4 to June 21, 1978 without approval of any bank officers." [3]

Private respondent filed a petition for review with the Intermediate Appellate Court which, while affirming Rebano's guilt and participation in the anomalous transactions violative of Central Bank and PNB rules against kiting, nevertheless ordered Rebano's reinstatement and reduced the penalty from dismissal to suspension without pay for six (6) months, with reimbursement of one half (1/2) of back salaries. The appellate court considered as a mitigating circumstance respondent's good faith in believing that he was implicitly authorized to allow drawings against uncollected deposits by his manager, Mr. Miranda (who was given a lighter penalty by PNB). The appellate court, however, disregarded private respondent's contention that the manager allowed kiting, holding that an irregular practice cannot prevail over duly established and promulgated bank rules. [4]

In denying PNB's motion for reconsideration, the Court of Appeals decried the bank's failure to sufficiently explain why there was great disparity between the penalty imposed on respondent and the penalties imposed on other persons involved and investigated in the kiting anomaly. The Court of Appeals, accordingly, insisted in applying leniency to Rebano.[5]

Hence, PNB has availed of the present recourse.

From the beginning, private respondent had consistently claimed that during his entire stay with the bank, he was not informed/briefed of any clear or specific rule that posting on the ledger card of checks drawn against uncollected deposits can be done only after such checks have been duly approved for encashment by authorized bank officers pursuant to the guidelines set forth in the Manual of Signing Authority. He further contended that the PNB Buendia Branch did not suffer pecuniary loss. Besides, according to respondent, writing or stamping the word POSTED on the check was not approval for encashment thereof, the responsibility for verifying whether or not the posted check bears the approval of the authorized officer devolved upon the paying teller.

There is no question as to petitioner's guilt. The findings of fact of the Civil Service Commission and the Court of Appeals cannot be disturbed as they are based on substantial evidence, but given the attendant circumstances, the issue boils down to what is the correct and proper penalty.

We believe that private respondent's dismissal from the service is proper. Based on respondent's own allegation, there is no indication that the culpability of the other implicated officers and employees (Branch Manager, Assistant Manager or Cashier who have approving authority over checks) was as grave as that of respondent whose act of posting ninety two (92) checks drawn against uncollected deposits, without authorization, facilitated their encashment. Resolution No. 84-093 of the Civil Service Commission clearly stated:

"It should be noted that the check withdrawals of Hira were made against uncollected deposits and therefore, under the Bank Rules, prior approval of the proper officers is necessary before the respondent can post it in the withdrawal entry of the ledger card and mark the checks 'posted'. Thus, respondent's claim that his postings were never technically approvals nor authorizations allowing outright encashments of checks drawn against uncollected deposits is untenable considering that once a check is marked 'POSTED', it means that the check is good, it is sufficiently funded and the signature of the drawer is genuine, so that the 'POSTED' check can now be encashed or paid by the teller. This postulate renders false also respondent's claim that his postings on the ledger card is (sic) not the operative act which constitutes approval of check withdrawals against uncollected deposits. x x x"[6]

Private respondent was found by the PNB Board of Directors, the Civil Service Commission and the Court of Appeals guilty of gross misconduct. Under Sec. 695 of the Revised Administrative Code of 1917, a civil service subordinate officer or employee may, for neglect of duty or violation of reasonable office regulations xxx be removed from the service. Memorandum Circular No. 8, Series of 1970 of the Civil Service Commission (Guidelines in the Application of Penalties) prescribes the following penalties for grave offenses:

- "1. Transfer or demotion in rank or salary from two to three grades or suspension for one year in its minimum period;
2. Forced resignation without prejudice to reinstatement to forced resignation with prejudice to reinstatement in its medium period;
3. Dismissal in its maximum period."

Considered as mitigating circumstances are:

- "1. Physical illness
2. Good faith
3. Length of service in the government
4. Analogous circumstances"

The Court of Appeals reduced the penalty from dismissal to suspension for six (6) months without pay by reason of mitigating circumstances - good faith and disparity between the penalties imposed on the respondent and on other implicated offenders. While it may indeed be questionable that other persons were not as severely punished, (unfortunately they are beyond the court's reach), petitioner's repeated violations (92 times), standing alone, merit dismissal. In *Policarpio vs. Fajardo*,^[7] gross misconduct in office by a sheriff was punished by dismissal from the service with forfeiture of all benefits. This was reiterated in *Abdulwahid vs. Reyes*,^[8] where a deputy sheriff found guilty of serious misconduct in office was likewise dismissed. Good faith cannot be appreciated in favor of private respondent considering the repeated violations.

ACCORDINGLY, the decision appealed from is SET ASIDE. The decision of the Civil Service Commission ordering dismissal of private respondent from the service is REINSTATED.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Paras, J., no part.

* Justice Edgardo Paras, ponente; concurred in by Justices Vicente V. Mendoza and Luis A. Javellana.

[1] Rollo at 32

[2] Ibid, 31

[3] Ibid., 33

[4] Ibid., 27

[5] Ibid., 30

[6] Ibid. at 35

[7] Adm. Matter No. P-312, Aug. 3, 1977, 78 SCRA 210

[8] Adm. Matter No. P-902 & 926, Jan. 31, 1978; *Antonio v. Diaz*, Adm. Matter No. P-1568, 28 Dec. 1979, 94 SCRA 890

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