

**NENITA L. LEANO, PETITIONER, VS. HON. EUFEMIO C. DOMINGO,
CHAIRMAN, COMMISSION ON AUDIT, HON. BARTOLOME C.
FERNANDEZ, JR., COMMISSIONER ON AUDIT, HON. ALFREDO P.
CRUZ, COMMISSIO...**

G.R. No. 84378. July 04, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking the annulment of the decision* of the Commission on Audit (COA) denying the request for relief from accountability for the loss, thru alleged robbery, of the amount of P12,500.00; and the letter-reply of May 11, 1988 of COA denying the request for reconsideration.

Herein petitioner Nenita L. Leano, in a Special Order No. 12 dated December 23, 1983 (Rollo, p. 14), was designated Acting Cashier I of the Bureau of Quarantine, effective January 1, 1984 and for the duration of the absence of the regular cashier, Mrs. Adelaida Sanchez, who was then accused of Malversation of Public Funds before the Tanodbayan and is still at large. Pursuant thereto, she assumed and performed the duties of the said position.

The Cashier's Office, between 7:00 P.M. of December 17, 1984 to 8:45 A.M. of December 18, 1984, was allegedly robbed of its cash amounting to P12,500.00 representing the year-end bonus of several employees who failed to get them during office hours of December 17, 1984 (Ibid., p.7; Petition, p. 2). The incident was reported by Luisito Diaz, Payroll Clerk, to the Western Police District at 10:00 A.M. of December 18, 1984, and the subsequent ocular investigation conducted by the WPD police officers resulted in the following findings: (1) the unknown suspects got inside the Cashier's Office thru the teller's window and opened the steel cabinet, possibly with the use of the original key which was left inside a small wooden box near the steel cabinet or with the use of false key or other similar instrument since no sign of force on the cabinet was traced; and (2) the cash amounting to P12,500.00 was taken by the suspects in the pay envelopes, leaving several envelopes with cash (Ibid., p. 19). Upon receipt of the report of the incident and request of petitioner Leano, a cash count was conducted by the resident auditor on December 18, 1984, yielding the following findings and recommendations:

"1. The Acting Cashier Ms. Nenita Leano incurred a shortage in her accountabilities for account 8-70-500 in the amount of P12,500.00 and overage for account 8-70400 in the amount of P16,910.00 (collection from Cagayan de Oro).

Recommendation:

The agency should immediately relieve the defaulting officer from her duties as accountable officer due to negligence.

2. The Acting Cashier did not use the safe in keeping the collections and other cash items, but utilized instead a steel cabinet. Change of safe combination was recommended several times.

Recommendation:

The Cashier should utilize the safe in keeping the collections and other cash items. Likewise, a new safe combination should be installed, the use of which should be limited to the cashier.

3. Some subsidiary ledger entries were found erroneous and not kept up to date.

Recommendation:

Subsidiary ledger entries found erroneous should be immediately adjusted and kept up to date." (Rollo, p. 15; p. 2, COA Decision)

On December 26, 1984, petitioner filed with COA a request for relief from accountability of the P12,500.00 lost in the robbery (Ibid., p. 16).

The COA, in a 6th Indorsement dated September 7, 1987 (Ibid., pp. 19 and 15), denied petitioner's request on the finding that-

"x x x Ms. Nenita Leano was negligent in the handling of her cash accountability. She failed to use the safe for keeping her accountabilities as recommended by the auditor. Instead she used a steel cabinet leaving the key inside a small box placed near said steel cabinet. Also, she allowed other persons to have access to the cash box with pay envelopes and releasing the same.

Section 105 (2) of P.D. 1445 provides that:

"x x x Every person accountable for government funds shall be liable for all losses resulting from the unlawful or improper deposit, use or application thereof and for all loss attributable to negligence in keeping of the same." (Ibid., p. 15).

Petitioner requested for a reconsideration (Ibid., pp. 20-21), but the same was denied (Ibid., p. 22). Hence, the instant petition.

This Court, after the respondents filed their comment which was considered as answer to the petition, resolved to give due course to the petition and calendar the case for deliberation (Ibid., p. 57).

The instant petition is devoid of merit.

The sole issue in this case is whether or not COA acted with grave abuse of discretion in denying petitioner's request for relief from accountability of the P12,500.00 lost in the robbery (Rollo, p. 9; p. 4, Petition).

It is the contention of petitioner that the decision of the COA has no basis in fact. She argues that since the combination of the one and only safe previously used by the former cashier was not entrusted to her, she had no other recourse but to use the official steel cabinet which she considered under the prevailing circumstances as the safest repository of her cash accounts. She further argues that the use of said steel cabinet by other cashiering personnel with accountabilities was a practice during the former cashier's (Mrs. Sanchez) incumbency (Ibid., p. 7). She denied that the Auditor made any recommendation or suggested the use of the safe before the robbery incident (Ibid., p. 11). With regard to the access to the cash box with pay envelopes and the release of the same by other persons, she re-stated her argument in her request for reconsideration, that -

"Allowing one or two employees of the Cashier's Office to give out pay envelopes and handle minor cash disbursements is a very general practice in all cashiering offices in the government service - national, provincial, city or municipal. It is anchored on eventualities, such as, when the Cashier is indisposed or not available for several hours and there is immediate or emergency needs to give the pay envelopes, disbursed (sic) funds and/or cash checks. This is a safety measure intended to satisfy a need or requirement that may arise

at any inopportune (sic) time. It is not questioned by office superiors as in fact, it is being tolerated due to emergent necessities." (Ibid., p. 20; Petition, p. 6).

and added that, with the multi-faceted official activities of a Cashier, she is not expected to "alone and exclusively handle payments and releases of personnel salaries/bonuses, etc." (Ibid., p. 12).

Petitioner's contention is untenable.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do. The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman Law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The Law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that. (Layugan v. Intermediate Appellate Court, 167 SCRA 363, 372-373 [1988]).

Applying the stated test to the facts of this case, it is evident that petitioner fell short of the demands inherent in her position. As aptly argued by the Solicitor General, an exercise of proper diligence expected of her position would have compelled petitioner to request an immediate change of the combination of the safe. However, the record is bare of any showing that petitioner had, at least, exerted any effort to have the combination changed, content with the fact that, according to her, the former cashier also used the steel cabinet as depository of the funds.

In addition, it was found that the use of the steel cabinet was not a wise and prudent decision. The steel cabinet, even when locked, at times could be pulled open, thus it can be surmised that even without the use of a key, the robbery could be committed once the culprits succeed in entering the room (Progress Report of the Police dated February 28, 1985). Moreover, the original key of the steel cabinet was left inside a small wooden box placed near the steel cabinet; it is therefore highly possible that the said steel cabinet was opened with the use of its original key (Police Alarm Report).

Finally, it should be stated that the factual findings of administrative tribunal must be respected as long as they are supported by substantial evidence, even if not overwhelming or preponderant (Assistant Executive Secretary for Legal Affairs of the Office of the President v. Court of Appeals, 169 SCRA 27 [1989]; and Relucio III v. Macaraig, Jr., 173 SCRA 635[1989])s. In the instant case, the decision of COA is amply and substantially supported not only by its internal records and findings, but by the Police Report as well.

PREMISES CONSIDERED, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Gutierrez, Jr., J., in the result.

Gancayco, J., on leave.

* Embodied in a 6th Indorsement dated September 7, 1987.

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