

MANUEL MELGAR DE LA CRUZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND BOSTON BANK OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 96745. July 02, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This petition for review seeks the nullification of the resolution of the National Labor Relations Commission (NLRC) reversing and setting aside the decision of the labor arbiter which declared the dismissal of Manuel Melgar Dela Cruz illegal and awarded him backwages and other monetary benefits.

Dela Cruz was, since 1984, the branch manager of the Boston Bank of the Philippines (BBOP for brevity), formerly known as the Commercial Bank of Manila. He was assigned to the Arroceros Branch and was earning a basic salary of P13,000 a month.

On October 14, 1985, Dela Cruz, accompanied by a member of his staff, picked up a cash deposit of P200,000 from Attorney Bernardita Santos at the Manila City Hall. Contrary to bank policy, he did not make physical count of the money, alleging that, for security reasons, it was not practicable. The teller to whom the deposit was turned over, without actual count and relying on the figure appearing on the deposit slip, validated the deposit slip for P200,000. However, later in the day, the teller discovered that the picked-up deposit of Attorney Santos amounted to only P195,000. The teller informed the cashier about the shortage. She was told by the latter to validate the deposit slip for the amount actually received, i.e., P195,000 only. The deposit slip was thus re-validated by the teller for P195,000 and the bookkeeper accordingly adjusted her posting from P200,000 to P195,000 in the savings account ledger of Attorney Santos. No shortage was thus booked or recognized by the branch.

Attorney Santos became aware of the adjustments in her savings account ledger when she was informed by a messenger of the branch that her savings account was not sufficient to cover a check which she issued on October 18, 1985. Three (3) days later, she wrote a letter-complaint to the branch, demanding that it correct the entries posted on her savings account, as she was absolutely sure that she gave Dela Cruz P200,000. She stressed in her letter that, despite her request for him on October 14, 1985, to count her cash deposit, he, for no apparent reason, refused to do so.

Under the respondent bank's Operation Circular No. 002-85, shortages are shouldered by the person found to be responsible for the same, if there is no fraud involved in incurring them. In addition, shortages shall be initially investigated by the branch committee to determine (1) whether or not there is evidentiary or moral basis to believe that fraud may be involved, or (2) whether there is justification to allow the person responsible to pay the shortage. The decision is to be rendered by the Division Head if the amount of shortage is less than P5,000, and by the Committee on Fraud and Shortages if the shortage is more than P5,000. In any event, the shortage shall be referred to the Committee on Fraud and Shortages if fraud is involved.

Without reporting the P5,000 cash shortage to the Head Office and without prior authorization or clearance from

his Division Head, Dela Cruz directed his staff to credit the savings account of Attorney Santos with the sum of P5,000, representing the shortage in her picked-up deposit. He advised his staff that he would duly inform his Division Head, Oscar Cajipe, about the treatment of the shortage. He validated their action by personally signing the credit ticket authorizing the transfer of said amount to Santos' savings account. He also instructed his staff to offset that amount (P5,000) against a long-outstanding accounts payable of P9,697.17 belonging to a Mr. Aranza (a treasury bills depositor), and to consequently overstate the Branch Income Trading Gain, to balance the accounting entries, thus violating Combank Operation Circular No. 002-85.

In January, 1986, there was a P10,000 item dated January 14, 1985, in the Arroceros Branch's "Due From Head Office" account representing the maturity value of Mr. Aranza's treasury bills placement which was not responded to by the head office. Allowing the debit float to remain would cause a discrepancy in the books of the branch, since it would expose the fraudulent act of covering up the P5,000 shortage in the picked-up deposit of Attorney Santos. To eliminate the P10,000 debit float item, the bank credited its "Due From Head Office" account with P10,000 and to balance its entries, the branch overstated its Branch Income Trading Gain by P10,000. Dela Cruz authorized the elimination of the P10,000 debit float by affixing his signatures to the credit ticket. Therefore, although the branch actually earned a Trading Gain of P11,507.35 on January 15, 1986, the branch only recorded a Trading Gain of P1,507.35.

The bank's Internal Audit Division was tipped of the shortage and attempted cover-up through an anonymous letter, pursuant to which, Rodolfo Valencia, Head of the Internal Audit Division, formed a Special Audit Team to investigate the same.

On October 22, 1986, Valencia issued a Memorandum to Dela Cruz, requiring him to explain the questionable accounting entries posted by the branch, which resulted in an inaccurate statement of the Branch Income Trading Gain.

On October 24, 1986, Dela Cruz answered the Memorandum admitting, among others, that there was indeed a shortage of P5,000 from the picked-up deposit of Attorney Santos, adding that he authorized personally the credit of the same amount to her savings account through the reversal of a long-outstanding Accounts Payable belonging to another client and the subsequent overstatement of the Branch Income Trading Gain.

The Committee on Fraud and Shortages, composed of Messrs. Rolando Valencia, Alfonso Cruz, Ernesto Pinpin and Attorney Gregorio Batiller, was convened by the Head Office to investigate the P5,000-cash shortage and the attempted cover-up by the Arroceros Branch. On November 11, 1986, the committee resolved to initially relieve Dela Cruz as branch Manager and to transfer him to the Head Office, as a precautionary measure against records-tampering and/or harassment of the branch staff, pending a more in-depth investigation of the case after finding that there was clear malicious intent on the part of Dela Cruz to conceal the shortage, particularly as it took him almost one (1) year to report the same.

On November 27, 1986, Dela Cruz submitted his Reply to the Committee's findings.

The Audit Report of the Special Audit Team confirmed the allegations in the anonymous letter and further discovered that Dela Cruz had altered the maturity dates of several Time Deposit Certificates of clients who were either his relatives or friends, in order for them to take advantage of higher interest rates.

On March 18, 1987, the Committee on Fraud and Shortages recommended to management that petitioner:

"be asked to resign or be terminated from the Bank for having suggested/instructed the savings account of Atty. Santos be credited for P5,000 chargeable to Trading Gain without prior clearance with his Division Head. Also considered by the Committee were the alteration on due dates or same time deposits he authorized/knew,

including those of his relatives." (p. 72, Rollo.)

Other personnel who participated in the cover-up were either reprimanded or meted lighter sanctions.

On May 26, 1987, after delays caused by repeated requests for review, the bank finally sent Dela Cruz a letter informing him of the company's decision to terminate his services for loss of trust and confidence.

On May 28, 1987, Dela Cruz filed NLRC-NCR Case No. 05-10897-87 for illegal dismissal.

On March 30, 1990, a decision was rendered by the labor arbiter (Eduardo G. Magno), the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered declaring the dismissal of the complainant as illegal. Respondent Boston Bank (formerly Combank) is hereby ordered to pay complainant his backwages including all the benefits he should have received from June 1, 1987 up to finality of decision but not to exceed three years. In lieu of reinstatement, respondent Boston Bank (formerly Combank) is ordered to pay his separation pay equivalent to one month pay for every year of service computed from his date of employment up to finality of decision and his other monetary benefits totaling P50,000 plus attorney's fees equivalent to 10% of the total amount awarded to complainant.

"The computation of his award is as follows:

(1) Backwages

6-1-87 – 3-30-90 = 34 mos.

P13,000 x 34 mos. = P442,000

(2) 13th month pay

P442,000.00 = P36,833.33

12

(3) Service Incentive Leave Pay

6-1-87 – 3-30-90 = 3 years

P13,000 – 26 days = P500.00

P500.00 x 15 days = P7,500.00

(4) Monetary benefits withheld by respondent

= P50,000.00

(5) Separation Pay

2-27-84 – 3-30-90 = 6 years

P13,000 x 6 yrs. = P 78,000.00

P614,333.33

(6) 10% Attorney's fees

= P 61,433.33

P675,766.33

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(pp. 91-92, Rollo.)

The respondents appealed to the NLRC alleging that the labor arbiter erred:

- "1. in concluding that appellant BBOP failed to sufficiently prove the loss of its trust and confidence in appellee;
- "2. in concluding that appellee was denied of his right to procedural due process;
- "3. in disregarding the probative value of the evidence presented by appellant BBOP in connection with appellee's unauthorized alteration of certificates of time deposit; and
- "4. in granting appellee a monetary award amounting to P675,766.66." (pp. 69-70, Rollo.)

On November 29, 1990, the NLRC rendered a Resolution setting aside the appealed decision and dismissing De la Cruz's complaint. However, the bank was ordered to pay the withheld benefits due him in the amount of Fifty Thousand Pesos (P50,000.00).

Dela Cruz filed this petition for review alleging that the NLRC acted with grave abuse of discretion amounting to lack of jurisdiction:

1. in not sustaining the findings of the labor arbiter that the petitioner's termination by the private respondent bank was without valid ground;
2. in not finding that the bank miserably failed to prove the legality of the termination for loss of trust and confidence;
3. in not strictly observing the twin requirements of notice and hearing for dismissal from employment; and
4. in not counting backwages from the date of the effectivity of the illegal dismissal up to the employee's actual reinstatement.

The petitioner argues that even if there was misjudgment on his part in not counting Attorney Santos' deposit in front of said depositor, and in subsequently covering up the shortage with income from the Trading Gain, his dismissal was not only cruel but also too drastic a punishment especially considering that:

1. it was an isolated act of mismanagement;
2. the success of the Arroceros Branch was due to his efforts, efficiency and capability;
3. he has no previous derogatory work record as branch manager; and
4. not only his position but also his means of livelihood are at stake.

The petition is devoid of merit.

The records disclose that the petitioner was given full and unhampered opportunity to present his side, submit evidence, and be heard. He not only submitted his written admissions on October 24 and November 27, 1986, but his subsequent requests for review by the Committee of the bank and by the labor tribunal were not unheeded. What is repugnant to due process is absolute lack of opportunity to be heard, or, as applied in administrative proceedings, an opportunity to explain one's side (*People vs. Aquino*, 199 SCRA 610; *Brig. Gen. Commendador vs. Gen. De Villa*, 200 SCRA 80; *Jaculina vs. NAPOLCOM*, 200 SCRA 489, citing *Var-Orient Shipping Co., Inc. vs. Achacoso*, 161 SCRA 732).

The petitioner's maneuvers to conceal and gloss over the bank's shortage and his fraudulent alteration of the due

dates of several time deposit certificates in the branch are serious acts of dishonesty and mismanagement violative of banking rules and regulations.

There can be no doubt that petitioner's continuance in the extremely sensitive fiduciary position of bank branch manager would be patently inimical to the bank's interest. It would be oppressive and unjust to order the bank to take him back for the law, in protecting the rights of the employee, authorizes neither oppression nor self-destruction of the employer (*Pacific Mills, Inc. vs. Alonzo*, 199 SCRA 617; *San Miguel Corporation vs. NLRC*, 115 SCRA 329).

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit. The decision of the National Labor Relations Commission is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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