

THIRD DIVISION

[G.R. No. 208321, July 30, 2014]

**WESLEYAN UNIVERSITY-PHILIPPINES, PETITIONER, VS.
NOWELLA REYES, RESPONDENT.**

DECISION

VELASCO JR., J.:

Nature of the Case

The issue in this petition boils down to the legality of respondent Nowella Reyes' termination as University Treasurer of petitioner Wesleyan University – Philippines (WUP) on the ground of loss of trust and confidence. Petitioner prays in this recourse that We reverse the February 28, 2013 Decision of the Court of Appeals (CA) in CA-G.R. SP No. 122536 which declared respondent's termination illegal.

The Facts

On March 16, 2004, respondent Nowella Reyes was appointed as WUP's University Treasurer on probationary basis. A little over a year after, she was appointed as full time University Treasurer.

On April 27, 2009, a new WUP Board of Trustees was constituted. Among its first acts was to engage the services of Nepomuceno Suner & Associates Accounting Firm (External Auditor) to investigate circulating rumors on alleged anomalies in the contracts entered into by petitioner and in its finances.

Discovered following an audit were irregularities in the handling of petitioner's finances, mainly, the encashment by its Treasury Department of checks issued to WUP personnel, a practice purportedly in violation of the imprest system of cash management, and the encashment of various crossed checks payable to the University Treasurer by Chinabank despite management's intention to merely have the funds covered thereby transferred from one of petitioner's bank accounts to another. The External Auditor's report embodied the following findings and recommendations:^[1]

Treasury Department (Cash Management):

Findings:

1. It was noted that checks consisting of various checks payable to teachers, staffs and other third parties had been the subject of encashment directly with the Treasury Department under the stewardship of Mrs. Nowella A. Reyes, the University Treasurer. This practice is a clear violation of imprest system of cash

management, hence, resulting to unsound accounting practice. This laxity in cash management of those checks were paid as intended for them.

Recommendations:

For internal control reasons, the treasury should not accept any check encashment from its daily collections. Checks are being issued for encashment with our depository bank for security reasons. The mere acceptance of checks from the collections is tantamount to cash disbursement out of collections.

Findings:

2. It was also noted that various checks payable to the Treasurer of WUP x x x had been negotiated for encashment directly to China Bank – Cabanatuan Branch, while the intention of the management for these checks were merely for fund transfer with the other account maintained at China Bank. This practice is a violation not only in the practice of accounting/cash custodianship but had been mingled with spurious elements. Unfortunately, check vouchers relating to this exception are nowhere to be found or not on file.

Findings:

3. A crossed check payable to the Treasurer – [WUP] x x x had been negotiated for encashment to China Bank – Cabanatuan Branch despite of the restriction indicated in the face of the check. Unfortunately, the used check was no longer found on file.

As a result of said audit, petitioner served respondent a Show Cause Order and placed her under preventive suspension.^[2] The said Show Cause Order required her to explain the following matters found by the External Auditors:

- (a) your encashment of Php300,000.00 of a crossed check you issued payable to yourself (Chinabank Check No. 000873613 dated 26 November 2008) x x x;
- (b) the encashment of various checks without any supporting vouchers x x x;
- (c) unliquidated cash advances in the aggregate amount of Php9.7 million x x x.^[3]

On June 18, 2009, respondent submitted her Explanation. Following which, WUP's Human Resources Development Office (HRDO) conducted an investigation. Finding respondent's Explanation unsatisfactory, the HRDO, on July 2, 2009, submitted an Investigation Report^[4] to the University President containing its findings and recommending respondent's dismissal as University Treasurer.

Upon receipt of her notice of termination on July 9, 2009, respondent post-haste filed a complaint for illegal dismissal with the Arbitration Branch of the National Labor Relations Commission. She contended that her dismissal was illegal, void and

unjust, for the following reasons:

First, her 60-day preventive suspension violated the Labor Code provisions prohibiting such suspensions to last for more than thirty (30) days. Thus, the fact that she was not reinstated to her former position before the lapse of thirty (30) days, amounted to constructive dismissal;^[5]

Second, there was a violation of her right to substantive and procedural due process, as evidenced by petitioner's failure to apply the pertinent due process provisions under its Administrative and Personnel Policy Manual;^[6] and

Finally, the charges against her were based on mere suspicion and speculations and unsupported by evidence.^[7]

Petitioner, for its part, predicated its defense on the contention that respondent was a highly confidential employee who handled significant amounts of money as University Treasurer and that the irregularities attributed to her in the performance of her duties justify her dismissal on the basis of loss of trust and confidence.^[8]

Petitioner also averred that the 60-day preventive suspension thus imposed does not necessarily make such suspension void, inasmuch as the law merely requires that after a 30-day preventive suspension, the affected employee shall automatically be reinstated. But in the case of respondent, there was no need for her automatic reinstatement inasmuch as she was duly terminated within the 30-day period of her preventive suspension.^[9] Moreover, respondent was duly afforded her right to due process since WUP substantially complied with the twin-notice rule.

Ruling of the Labor Arbiter

On December 15, 2010, Labor Arbiter Reynaldo V. Abdon rendered a Decision finding for respondent. The dispositive portion of the Labor Arbiter Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, DECLARING that complainant Nowella Reyes x x x [was] illegally dismissed by respondent Wesleyan University Philippines.

Accordingly, respondent Wesleyan University Philippines through its President is hereby DIRECTED to:

- (1) Reinstatement complainant Nowella Reyes to her former or equivalent position without loss of seniority right;
(1.1) Since reinstatement is immediately executory, to render a Report of Compliance to this Office within ten (10) days from receipt of this Decision.
- (2) Pay complainant Reyes her backwages, from the time of her dismissal until reinstatement, the present sum of which is P429,000.00;
- (3) Pay complainant Reyes, her 13th month pay in the sum of P52,000; her shared (sic) in related learning experience fee, P12,000.00; clothing allowance, P6,000.00; Honorarium as member of standing committees,

- P4,000.00; and her vacation leave credits in the sum of P17,862.59;
- (4) Pay complainant Reyes, moral damages in the sum of P150,000.00, exemplary damages in the amount of P100,000.00, and 10% attorney's fees in the sum of P77,086.25;

x x x x

SO ORDERED.^[10]

The Labor Arbiter noted, as respondent has insisted, that the charges against the latter were based on mere rumors and speculations. As observed too by the Labor Arbiter, petitioner itself was in the wrong because it had no proper policies on its accounting and financial procedures and that the encashment and accommodation of checks to personnel, especially after banking hours, had been the practice of its previous and present administrations. Thus, it was unfair to put all the blame on respondent without any evidence that her actions were highly irregular, unfair or unjustified.^[11]

As regards petitioner's findings on the alterations in the Check Disbursement Voucher (CDV), unliquidated cash advances and duplicate checks, the Labor Arbiter found and wrote:

Anent the alleged finding of the university that there was material alteration on the documents as regards the Check Disbursement Voucher (CDV), for allegedly there was an absence of Board Resolution entry in the CDV filed in the Accounting while the copy submitted by the Treasurer has a Board Resolution entry as well as the word ATM on the payee portion on the photocopy as crossed out while in the original it was not crossed out, respondent cannot summarily state that complainant was at fault. The Human Resource should have conducted an in-depth investigation on this matter. Unfortunately, respondent just followed the twin-notice rule, and did not conduct a thorough administrative investigation in accordance with their own internal rules and policies in the Manual. Consequently, this Office has serious doubt that such matter was the fault of the complainant for the blame may fall on the accounting personnel who is handling the CDV.

With respect to the unliquidated cash advances, it is not likewise the fault of the complainant. She pointed out that follow ups of the liquidation is [sic] being handled by the auditor, while respondent claims that she was previously handling the same before it was transferred to Accounting Office in August 2008. We see no evidence to prove that the liquidation is being handled by the complainant prior to August 2008. Moreover, it is common practice that the Treasurer disburses the funds such as cash advances but the liquidation must be done by the beneficiary of the fund, and the responsible people who should follow up the liquidation is the accounting office.

With respect to the duplicate checks, the same were done by a syndicate or individuals not connected with the University. The bank has already admitted responsibility in the encashment of these checks and had returned the amounts to the respondent University, thus complainant has no fault about this incident.^[12]

Ruling of the NLRC

Petitioner filed an appeal with the National Labor Relations Commission (NLRC) which was granted in the tribunal's Decision dated July 11, 2011, declaring that respondent was legally dismissed. However, petitioner was ordered to pay respondent her proportionate 13th month pay, the monetary value of her vacation leave, and attorney's fees.

Adopting a stance entirely opposite to that of the Labor Arbiter, the NLRC held that respondent failed to controvert and disprove the established charges of petitioner (as appellant-respondent) and instead conveniently put the blame on other departments for her inculpatory acts. The NLRC opined that her termination was not motivated by the change of petitioner's officers but by the University's goal to promote the economy and efficiency of its Treasury Department.^[13]

In net effect, the NLRC found petitioner's contention of loss of trust and confidence in respondent with sufficient basis. While respondent, so the NLRC notes, may not have been guilty of **willful** breach of trust, the fact that she held a highly confidential position, and considering that anomalous transactions transpired under her command responsibility, provided petitioner with ample ground to distrust and dismiss her.^[14] The NLRC explained:

In this case, complainant-appellee [herein respondent] may not have been guilty of willful breach of trust. But as Treasurer of [WUP] who handles and supervises all monetary transactions in the University and being a highly confidential employee at that, holding trust and confidence and after considering the series of irregular and anomalous transactions that transpired under complainant-appellee's command responsibility, respondent has basis or ample reason to distrust complainant-appellee. Thus, we cannot justly deny [WUP] the authority to dismiss complainant-appellee.

The principle of respondent (sic) superior or command responsibility may be cited as basis for the termination of employment of managerial employees based on loss of trust and confidence.

In the Etcuban case (Ibid) the Supreme Court in upholding the validity of petitioner-employee's dismissal on the ground of loss of trust and confidence, ruled that even if the employee x x x had no actual and direct participation in the alleged anomalies, his failure to detect any anomaly that would normally fall within the scope of his work reflects his ineffectiveness and amounts to gross negligence and incompetence which are likewise justifiable grounds for his irregularity, for what is material is that his actuations were more than sufficient to sow in his employer the