

FIRST DIVISION

[G.R. No. 179801, June 18, 2010]

**BANK OF THE PHILIPPINE ISLANDS AND BPI FAMILY BANK,
PETITIONERS, VS. HONORABLE NATIONAL LABOR RELATIONS
COMMISSION (FIRST DIVISION) AND MA. ROSARIO N.
ARAMBULO, RESPONDENTS.**

DECISION

PEREZ, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the Decision^[1] of the Court of Appeals dated 3 July 2007, as well as its Resolution^[2] dated 20 September 2007 affirming the ruling of the National Labor Relations Commission (NLRC)^[3] directing the payment of separation pay to respondent Ma. Rosario N. Arambulo.

Records show that respondent was initially employed as Clerk in 1972 at Citytrust Banking Corporation, which eventually merged with the Bank of Philippine Islands (BPI). She later became Lead Teller, then as Sales Manager, and subsequently, as Bank Manager in BPI-San Pablo, Laguna Branch in 1996.

On 4 October 2001, respondent was reprimanded for the improper handling and retention of a client's account.^[4] She was transferred to BPI Family Bank in Los Baños, Laguna on 21 November 2001.

On 26 April 2002, a client of BPI-San Pablo, Laguna Branch requested for a certification of her savings account. Her balance reflected an amount less than the actual amount deposited. Hence, BPI conducted an investigation and discovered that its bank teller, Teotima Helen Azucena (Azucena) was making unauthorized withdrawals. A show cause memorandum was served to Azucena asking her to explain the unauthorized withdrawals. In her written response, Azucena implicated respondent, in that the latter, on many occasions, would make temporary cash borrowings and would return the money at the end of the day through withdrawals from her own or other clients' accounts. There were times when respondent would fail to return the money withdrawn resulting in shortages on the part of Azucena. When respondent was transferred to Los Baños, Laguna, Azucena added that the same practice was continued by her son, Artie Arambulo.^[5]

BPI conducted a thorough investigation and discovered that respondent had approved several withdrawals from various accounts of clients whose signatures were forged.^[6]

Azucena, in a letter dated 2 July 2002, again implicated respondent stating that the latter instructed her to make unauthorized withdrawals.^[7]

Ma. Concepcion Millares, the Assistant Manager of BPI San-Pablo, Laguna Branch, was also directed to explain why no disciplinary action should be taken against her. Millares submitted a memorandum attributing the accommodation of unusual transactions to respondent.^[8]

On 22 August 2002, a show-cause memorandum was issued to respondent informing her of the audit findings relating to temporary borrowings she made from the initial cash requisitions of Azucena, which support the finding of the claims that fraudulent withdrawals were used to cover the shortages/non-payment of temporary borrowings. The report states:

ON TEMPORARY BORROWINGS

Teller T.H. Azucena disclosed during the Audit investigation and in her reply to the "Show Cause Memo" from Branch Management that during your tenure as Branch Head of San Pablo-Regidor, you ordered her to request considerable amount of money from the branch cashier in the morning. You would then borrow from her cash ranging from P500K to P1.0M without any supporting document(s).

The "temporarily borrowed" fund/s was/were replaced either in cash or through withdrawal from your savings account or from other clients' accounts during the day.

In instances when the amount borrowed from teller Azucena in the morning was not returned in full in the afternoon, you would then instruct teller Azucena to withdraw the difference from the accounts of other depositors with sufficient balances.

Ms. T.H. Azucena had disclosed that you have made the "temporary borrowings" to accommodate Mr. Vicente Amante (formerly city mayor) whom you had allowed to fund his NSF honored checks after disposition of referred items or after banking hours. The unfunded checks were covered through withdrawals or check/encashment from other depositors' account, namely: Mr. Emeterio Dikitan, Ms. Penny Penaloza, Mr. Cheung Tin Chee, Mr. Anderson Ong, Mr. Edmund Dee, among others.

Audit report dated 09/12/01 covering the audit of BPI San Pablo-Regidor with audit cut-off date June 22, 2001 further show the following:

Two (2) withdrawal slips on 06/27/01 on the account of Mr. Amante totaling P700K were validated but were not signed by said client at the time of validation. Per audit report, you personally accomplished the withdrawal slip for P700K. Immediately thereafter, said amount was deposited to the account of Mr. E. Dikitan. The two (2) (validated but unsigned) withdrawal slips held by you were signed by Mr. Liezl Amante Avanzado (co-depositor of V. Amante) only in the evening of 6/27/01-8:00PM.

The unfunded checks of Mr. V Amante being deposited to other

depositor's accounts with the branch were also covered by transfers of fund (thru the use of withdrawal/deposit slip) in the afternoon from the same account where the unfunded check was deposited. Amount of withdrawal/transfer is the same as the unfunded check to be covered. Amount of withdrawals ranged from P100K to 400K which were validated from 5:03PM to 6:26PM.

Audit findings further show that you personally accomplished the withdrawal slips of E. Dikitan for P100K dated 6/21/01 and for P400K dated 6/20/01.^[9]

Respondent admitted that she prepared the unsigned withdrawal slips on the account of Mr. Vicente Amante (Mr. Amante) totaling P700,000.00 upon request of the latter. Respondent also explained that she processed the withdrawal slips of Mr. Emeterio Dikitan, with the latter signing later on, to expedite his transaction with the bank. Respondent denied any knowledge with regard to the unfunded checks of Mr. Amante that were supposedly deposited to other depositor's account. She argued that the posting is done by the teller and only amounts over P150,000.00 pass through her.^[10]

A hearing was conducted on 2 September 2002 to give respondent opportunity to present additional explanation.

On 16 January 2003, respondent was served with the notice of termination on the ground of loss of trust and confidence, for gross violation of policies and procedures as follows:

a) Temporary Borrowings/Lapping - During your tenure as branch head of San Pablo-Regidor, and in connivance with Teller Teotima H. Azucena, you would order the latter to request considerable amounts of money from the branch cashier in the morning. You would then borrow from her the said cash requisitioned and engage in private lending to accommodate a third person. The "temporary borrowed" funds were returned/replaced either in cash or through withdrawal from your savings account or from other clients' accounts during the day. In instances when the amount borrowed from teller Teotima H. Azucena in the morning was not returned in full in the afternoon, you would then instruct teller Teotima H. Azucena to withdraw the difference from the accounts of other depositors with sufficient balances.

Bank Internal Audit had verified 928 transactions in your and Ms. Azucena's temporary borrowings/lapping activities which continued even after you were transferred to another branch in November 2001 and the net unaccounted amount of PHP 7,140,000.00 (of which 2,665,000.00 was reimbursed by Ms. Azucena) unauthorized withdrawals from various branch clients' accounts.

b) Two (2) withdrawals slips on June 27, 2001 on the Maxi-one account number 3413-0819-46 totaling PHP 700K were validated but unsigned by the said client at the time of validation. Per internal audit report, you

personally accomplished the withdrawal slips for PHP 700K. Immediately thereafter, said amount was deposited to the account of 3413-0851-43. The two (2) (validated but unsigned) withdrawal slips in your possession were signed by the co-depositor of account number 3413-0819-46 beyond banking hours of June 27, 2001.

c) You approved the deposit of unfunded checks of Maxi-one account 3413-0819-46 to other depositor's account which were covered by transfers of funds thru the use of withdrawal/deposit slips ranging from PHP 100K to PHP 400K in the afternoon from where the unfunded check was deposited. The withdrawal slips were validated beyond banking hours.^[11]

On 14 March 2003, respondent filed a complaint for illegal dismissal with the labor arbiter^[12] praying for payment of separation pay, backwages and attorney's fees.

Respondent argued that the allegations of Azucena, founded on mere speculations, presumptions and conclusions, do not establish a case for loss of trust and confidence.

The labor arbiter found respondent's dismissal for cause in accordance with the law. It was established that respondent had approved withdrawals which were later proven to be forged.^[13]

On appeal, the NLRC sustained the dismissal but ordered the payment of separation pay.

WHEREFORE, premises considered, and in the interest of justice and equity, judgment is hereby rendered PARTIALLY GRANTING the appeal and, in conformity therewith, MODIFYING the assailed Decision dated 10 November 2003 insofar as AWARDING herein complainant-appellant separation pay/severance pay/financial assistance equivalent to one-month pay inclusive of allowances and other like benefits for every year of service counted from 20 April 1972 up to 17 January 2003, plus attorney's fees equivalent to 10% of the total amount of the herein award and, finally, DIRECTING respondents-appellees banks to forthwith pay the said award. ^[14]

The NLRC observed that respondent failed to address the charges of 46 instances of forgeries cited in the labor arbiter's decision. The NLRC did not accept respondent's invocation of good faith in affixing her signatures on the withdrawal slips and held that these numerous lapses indicate failure on her part as branch manager to oversee and ensure the implementation of an effective system of check and balances in the processing, disposition and monitoring of deposits and withdrawals, among others. However, the NLRC believed that BPI failed to prove that respondent affixed her signatures on the deposit slips with malice or bad faith. Hence, in the interest of justice and equity, separation pay was granted.

Petitioner filed a motion for partial reconsideration of the NLRC decision and argued