

FIRST DIVISION

[G.R. Nos. 163293 & 163297, December 13, 2010
]

EQUITABLE PCI BANK (NOW BANCO DE ORO UNIBANK, INC.),*
PETITIONER, VS. CASTOR A. DOMPOR, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

A bank manager's abuse of authority in implementing bank policies is an abuse of the trust reposed in him by his employer which constitutes as a just cause for his termination.

This Petition for Review on *Certiorari*^[1] assails the Decision^[2] dated November 29, 2002 and Resolution^[3] dated April 23, 2004 of the Court of Appeals (CA) in CA-G.R. SP Nos. 63948 and 65259, which reversed the Resolution^[4] dated

August 31, 2000 of the National Labor Relations Commission (NLRC) finding respondent Castor A. Dompur to have been dismissed for cause.

Factual Antecedents

On October 1, 1975, respondent was employed by then Philippine Commercial and Industrial Bank (PCIB), which came to be Equitable PCI Bank and now herein petitioner Banco De Oro Unibank, Inc.^[5] In 1995, he was assigned as branch manager of PCIB's Makati Cinema Branch.

On July 24, 1996, PCIB's Operations Subcenter Head, Gerardo C. Gabriel (Gabriel), called the attention of PCIB's Ayala-Makati Area Head, Cora Mallillin (Mallillin), regarding a number of Philippine Long Distance Telephone Company (PLDT) dividend checks being sent for clearing by PCIB Makati Cinema Branch. It appears that respondent allowed Luz Fuentes (Fuentes), a client-depositor of PCIB Makati Cinema Branch who opened Checking Account No. 0672-04408-0 on July 14, 1995, to deposit several second-endorsed PLDT dividend checks beginning the last quarter of 1995.

Acting on said report, a special audit was conducted on August 14-21, 1996. At the same time, an investigating committee was formed.

On September 2, 1996, the investigating committee conducted a hearing. Several officers and personnel including respondent were queried in relation to the irregular transactions involving the account of Fuentes. Due to the ongoing investigation, respondent was placed under preventive suspension from September 9-27, 1996,^[6] which was further extended until October 8, 1996.^[7]

Meanwhile, on October 21, 1996, the audit team submitted its findings, thus:

FACTS OF THE CASE.

1. xxx [F]rom 9.01.95 to 7.31.96, there were 67,748 PLOT dividend checks totaling P6.713M sent by Makati Cinema Branch for clearing, xxx [T]he checks were second-endorsed and mainly deposited by a certain Ms. Luz Fuentes (CA No. 0672-04408-0). Of these checks, 3,028 totaling P283M are being held by the Area Office. These were the last batch of PLDT dividend checks negotiated at Makati Cinema Branch on 7.24.96.

2. The data mentioned in no. 1 were counter-checked with the transaction records at Makati Cinema Branch. The Daily Trial Balance and Transaction Register revealed that from the opening date of CA No. 0672-04408-0 on 7.14.95 to 7.24.96, other banks' checks totaling P6.657M were deposited to the account while P56M were purchased. TTie transactions were covered by 332 deposit slips.

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SIGNIFICANT FINDINGS.

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2. The account of Ms. Luz Fuentes (CA No. 0672-04408-0) was not closed by the Branch Head despite improper handling. From 12.01.95 to 7.31.96, 25 checks drawn on said account were lodged to Returned Checks and Other Cash Items, of which 11 were returned due to insufficiency of account balance.

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3. There were no documents or records presented by the Branch Head which serve as valid justification on the retention of the account and the acceptance of the second-endorsed PLDT dividend checks.

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EVALUATION.

1. The Branch Head, Mr. Castor A. Dompoy, Jr. committed gross negligence tantamount to fraud and abuse of authority when he approved the acceptance of checks for deposit/purchase beyond his single approving authority of P15M. He (Mr. Castor A. Dompoy, Jr.) failed to exercise prudence when he approved the acceptance of voluminous second-endorsed PLDT dividend checks in the name of different payees (individuals, schools, private corporations and government agencies) for deposit. The magnitude of the checks being deposited and large number of names of payees which included the names of prominent personalities [such as former First Lady Amelita Ramos, Bias Ople, Henry Sy, Lucio

Tan, etc.] as payees should have prompted him (Mr. Castor Dompur, Jr.) to question the legality of negotiation of the checks. These lapses exposed the Bank to possible loss of P6.713M because the drawer of the checks can claim reimbursement for wrong payment or forger)' on the endorsement.

2. The magnitude of the PLDT dividend checks being deposited and the similarity of strokes of endorsement of different payees on the checks are strong indications that the checks were stolen and that the negotiation of the checks is fraudulent.

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Thus, in a Memo⁹ dated October 23, 1996, respondent was directed to explain in writing why no disciplinary action should be taken against him for committing the following serious policy violations:

1) xxx Failure to comply with [PCIB Accounting Procedure Manual] APM 26B.5A.Ib which states that checks payable to corporations, societies, firms, etc. for credit to a personal account and/or checks with unusual endorsement should not be accepted;

2) [Allowing/approving the acceptance of second-endorsed checks] despite Ayala-Makati Area management's instruction to stop accepting [this] type of deposits on June 27, 1996[; and]

3) x x x failure to comply with [Credit Policy Supervision] (CPS) No. 6 which prohibits the purchase of second-endorsed PLDT checks totaling P56,435.26 in the absence of approved credit line on October 25, 1995.

Respondent submitted his reply^[10] on November 28, 1996. He claimed that there was no failure to comply with APM No. 26B.5A.Ib because his acceptance of second-endorsed checks for deposit was solely for marketing considerations; that he only accepted checks which are payable to individuals and duly endorsed by the individual payees; and, that he made Fuentes sign an Agreement on Acceptance of Second-Endorsed Checks^[11] in order to protect the interest of the bank.

Respondent further explained that in July 1996, he still accepted on two occasions second-endorsed checks despite the June 27, 1996 instruction of the management because, in the first instance, Mallillin gave her verbal approval thereto. On the second instance, the deposit was nevertheless cancelled since it included checks payable to corporations. Respondent further claimed that there was no violation of CPS No. 6 although he admitted that no Bills Purchase Line was established for Fuentes.

On February 7, 1997, respondent received a Memo^[12] dated January 7, 1997 dismissing him from employment on the grounds of serious policy violations, willful breach of trust, and loss of confidence, with further sanction of forfeiture of benefits

and contingent restitution of the total amount of P6,712,756.61 including costs.

Hence, respondent filed a case for illegal dismissal with money claims.

In his Position Paper, respondent reiterated that his acceptance of the second-endorsed checks did not violate any existing bank policy; and that he did not breach the trust reposed in him. He insisted that he accepted said checks solely for marketing considerations. Respondent also claimed denial of due process alleging that his dismissal was predetermined because no further investigation was conducted after the submission of his reply-explanation.

On the other hand, petitioner claimed that respondent committed flagrant and willful disobedience of bank policies and procedures when he accepted checks endorsed to corporations or firms for credit to the personal account of Fuentes as well as checks with unusual endorsements; when he accepted deposits which exceed his single approving limit; when he failed to close the account of Fuentes despite the mishandling of her account; and, when respondent failed to ensure that all procedures and approval requirements are complied with and being followed by designated staff and officer, thereby abusing his discretion and authority as branch manager. Petitioner alleged that respondent was accorded due process as he was given the opportunity to be heard and be informed of the charges.

Ruling of the Labor Arbiter

On May 26, 1999, the Labor Arbiter rendered a Decision^[13] finding respondent's dismissal valid. The Labor Arbiter found respondent guilty of serious misconduct or willful disobedience when he did not close the account of Fuentes despite the fact that from December 1995 to July 1996, 11 of the checks issued by Fuentes were dishonored due to insufficiency of funds. From May 1996 to July 9, 1996, Fuentes again issued three unfunded checks.

The Labor Arbiter also held that while all the second-endorsed checks that were deposited to Fuentes' account were not dishonored, still, the bank was exposed to a substantial risk of loss as there is always a possibility that the payees would later complain that their signatures were forged.

In fine, the Labor Arbiter concluded that respondent was guilty of serious misconduct or willful disobedience, resulting to loss of trust and confidence, which is a just cause for dismissal. The Labor Arbiter, however, awarded respondent separation pay equivalent to one-half (1/2) month salary for every year of service for equity considerations after giving due regard to respondent's 22 years of service.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered judgment is hereby rendered dismissing the instant complaint for lack of merit.

Respondent PCI Bank is, however, ordered to pay complainant Castor A. Dompur a separation pay of P495,000.00.

All other claims are also dismissed for lack of merit.

SO ORDERED.^[14]

Proceedings before the National Labor Relations Commission

Both parties appealed to the NLRC. Respondent assailed the legality of his dismissal for want of substantive and procedural due process.^[15] For its part, petitioner partially appealed the decision insofar as the award of separation pay in favor of respondent is concerned. It argued that PCIB's Code of Discipline provides for the automatic forfeiture of all benefits in cases of dismissal; that respondent's length of service should have instead been taken against him; and, that the amount granted is exorbitant.^[16]

In its Resolution dated August 31, 2000,^[17] the NLRC dismissed both appeals for lack of merit and, consequently, affirmed the Labor Arbiter's Decision. It held that petitioner, as employer, has the discretion of terminating an employee who holds a position of trust and confidence on the ground of lack or absence thereof. According to the NLRC, there were enough bases for the loss of trust and confidence on respondent by petitioner on account of the former's evident disobedience.

The NLRC also ruled that respondent was accorded due process. Before his termination, he was apprised of the charges against him in the October 23, 1996 Memo and was given a chance to refute the charges by virtue of a written reply-explanation submitted on November 28, 1996. The NLRC likewise sustained the award of separation pay as a form of equitable relief.

Petitioner then filed a Partial Motion for Reconsideration^[18] [sic] to again question the grant of separation pay, claiming that there were no legal and equitable bases for the award. Said motion was however denied in an October 26, 2000 Resolution^[19] of the NLRC. Respondent also filed his Motion for Reconsideration^[20] which was likewise denied by the NLRC in its Resolution²¹ dated February 28, 2001.

Proceedings before the Court of Appeals

Petitioner and respondent then filed their separate petitions for *certiorari* with the CA, docketed as CA-G.R. SP No. 63948 and CA-G.R. SP No. 65259, respectively. On respondent's motion, the CA consolidated both petitions in a Resolution^[22] dated October 16, 2001.

On November 29, 2002, the CA rendered its Decision finding respondent's dismissal as illegal. It held that respondent was not afforded due process prior to his termination. According to the CA, the audit team already recommended to the Board as early as October 21, 1996 respondent's dismissal from the service, yet the latter received only on November 15, 1996 the memorandum requiring him to submit his explanation. As such, the CA held that respondent's dismissal was a foregone conclusion.

The CA likewise ruled that there is no just cause for respondent's termination. According to the appellate court, petitioner's rules do not absolutely prohibit the negotiation of second-endorsed checks, "only that their negotiation is governed by