

FIRST DIVISION

[G.R. NO. 167716, March 23, 2006]

PREMIERE DEVELOPMENT BANK, PETITIONER, VS. ELSIE ESCUDERO MANTAL, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to annul and set aside the Decision of the Court of Appeals in CA-G.R. SP No. 80975 dated January 17, 2005^[1] and its Resolution dated April 7, 2005^[2] holding the petitioner Premiere Development Bank liable for illegal suspension and illegal dismissal, ordering it to reinstate respondent Elsie Escudero Mantal to her former position and to pay her full backwages from date of suspension and dismissal until actual reinstatement, half month salary and half month 13th month pay, as well as attorney's fees.

Respondent is a regular employee of petitioner's Cubao branch, serving as accounting clerk since July 17, 1996.^[3] On November 24, 2000, the branch manager, Rosario Detalla, instructed respondent with the following words in the vernacular, "*Elsie, baka may mag-confirm sa Bank Guarantee ng GIA Fuel, sabihin mo OKAY NA, may kulang pa lang dokumento.*"^[4]

Later that day, Emmie Crisostomo of Filpride Energy Corporation inquired whether GIA Fuel and Lubricant Dealer has a credit line or maintains an account with petitioner Bank which respondent confirmed after checking the files on the computer. Crisostomo also inquired if the bank guarantee signed by Detalla is in order, and likewise respondent replied in the affirmative. However, upon verification from petitioner's head office, Crisostomo was informed that the bank guarantee was spurious.

On the same day, respondent was summoned to the head office and was required to write down what she knew about the subject bank guarantee. Respondent also received a memorandum placing her under preventive suspension effective immediately for a period of 30 days. During the investigation, Detalla admitted issuing the falsified bank guarantee.

On December 21, 2000, Detalla tendered her irrevocable letter of resignation.^[5] Respondent was asked to execute a resignation letter on December 22, 2000, but she declined.^[6] The following day, respondent received a Notice of Termination dated December 22, 2000.^[7]

Respondent filed a complaint for illegal suspension, illegal dismissal, unpaid salary and 13th month pay, moral and exemplary damages.

On September 4, 2002, the Labor Arbiter^[8] rendered a decision^[9] holding petitioner liable for illegal suspension and illegal dismissal and ordering the reinstatement of respondent to her former position, with full backwages, half month salary and half month 13th month pay, and attorney's fees.^[10]

The National Labor Relations Commission (NLRC) reversed the labor arbiter's decision, and dismissed the complaint for lack of merit.^[11] The motion for reconsideration having been denied,^[12] respondent appealed to the Court of Appeals which found that petitioner failed to prove that respondent conspired with Detalla in issuing the falsified bank guarantee;^[13] that the alleged infraction of respondent was not related to her functions as encoder and accounts clerk, hence her dismissal could not be based on loss of trust and confidence, the breach of which must be related to the performance of the employee's functions;^[14] that respondent was not negligent in the performance of her functions inasmuch as she verified from the computer before answering the queries by Crisostomo;^[15] that the alleged negligence was not gross or habitual;^[16] that respondent merely conveyed the instructions of her immediate superior which appeared to be lawful and regular.
^[17]

The dispositive portion of the decision reads:

IN LIGHT OF THE FOREGOING, the petition is hereby GRANTED. The Decision dated 30 May 2003 of the public respondent NLRC reversing the Decision of the Labor Arbiter and its Resolution dated 30 September 2003 denying petitioner's motion for reconsideration are REVERSED and SET ASIDE. The Decision dated 4 September 2002 of Labor Arbiter Ariel Cadiente Santos is REINSTATED.

SO ORDERED.^[18]

The sole issue in the instant petition is whether respondent was validly suspended and dismissed from her position as accounting clerk.

Petitioner contends that respondent was validly dismissed because she was grossly negligent in the performance of her functions which caused petitioner to lose trust and confidence in her. It argues that respondent is guilty of misconduct for her failure to report the irregularity to the management.

The petition lacks merit.

Gross negligence means an absence of that diligence that a reasonably prudent man would use in his own affairs. To constitute a just cause for termination of employment, the neglect of duties must not only be gross but habitual as well. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.

In *JGB and Associates, Inc. v. National Labor Relations Commission*,^[19] we held that gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of

time, depending upon the circumstances. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job to the detriment of the employer and the latter's business.^[20]

On the other hand, misconduct is improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. Under Article 282 of the Labor Code, the misconduct, to be a just cause for termination, must be of such grave and aggravated character, not merely of a trivial or unimportant nature. For serious misconduct to warrant the dismissal of an employee, it (1) must be serious; (2) must relate to the performance of the employee's duty; and (3) must show that the employee has become unfit to continue working for the employer.^[21]

In the case at bar, respondent cannot be held liable for serious misconduct or gross negligence. No independent evidence was presented to prove her "willful conspiracy" with Detalla. Petitioner even admitted that there is no direct evidence that respondent benefited from the falsified bank guarantee. Liability for the incident lay solely with Detalla, who patently breached the trust and confidence of petitioner. Respondent merely followed the orders of the bank manager which appeared to be regular. Furthermore, the nature of respondent's job does not include processing of bank loans and guarantees. Her work as accounting clerk refers only to the opening of deposits and processing of withdrawals. The alleged infraction was not within the scope of her job function. Petitioner did not contest this fact.

Respondent also verified from the bank computer whether GIA Fuel and Lubricant Dealer had an account with petitioner, as can be gleaned from her statements in the Question and Answer conducted by the bank, to wit:

Tanong 1. Noong Nov. 24, 2000 nga bandang 2: o 2:30 na hapon. Nasaan ka noon.

Sagot 1. Nasa Cubao branch po at ginagawa ang aking trabaho bilang encoder. Nagring po ang telepono at aking sinagot ng ganito "Hello, Premiere Bank may I help you?" at nagpakilala ang nasa kabilang linya na siya daw si Ms. Emmie Crisostomo from Philpride at sabi ay "I verify ko lang kung may account dyan si GIA fuel." Ang sagot ko ay meron.

Tanong 2. Paano mo nasabi na meron?

Sagot 2. **Pumunta po ako sa computer at nag search ako sa file at nakita ko na may GIA fuel account at bumalik ako at (sic) telepono at sinabi ko sa kanya na meron.**

Tanong 3. **Mga ilang minuto mo ibinaba ang telepono para tingnan sa computer ang GIA fuel account?**

Sagot 3. **Mga 1 minuto dahil madali lang naman ang mag search sa computer.**