

THIRD DIVISION

[G.R. NO. 158045, February 28, 2005]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER,
VS. ANASTACIO D. ABAD, RESPONDENT.**

DECISION

PANGANIBAN, J.:

An employee dismissed for a just cause under Article 282 of the Labor Code may still be awarded separation pay as a measure of social justice. Such financial assistance, however, is not given when the employee has been validly dismissed for serious misconduct, or for causes that reflect on moral character or personal integrity.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, challenging the October 14, 2002 Decision^[2] and the April 11, 2003 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 66368. The assailed Decision disposed as follows:

"**WHEREFORE**, premises considered, the assailed *Decision* of respondent Commission in NLRC Case No. V-000848-99 is hereby **AFFIRMED** with **modification**, that is, in addition to the financial award granted by the NLRC, [petitioner] Bank is further ordered to give [respondent] a separation pay equivalent to one half (1/2) month's pay for every year of service. x x x."^[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The facts are narrated by the CA as follows:

"x x x Anastacio D. Abad was the senior Assistant Manager (Sales Head) of [petitioner Philippine Commercial International Bank (PCI Bank now Equitable PCI Bank)], Tacloban City Branch when he was dismissed from his work on 03 August 1998.

"He started working with said [petitioner] Bank since 03 December 1973, rose from the ranks and was receiving a monthly salary of P36,358.52 at the time of his termination.

"On 13 March 1998, [Abad] received a *Memorandum* from [petitioner] Bank concerning the irregular clearing of PNB-Naval Check of Sixtu Chu, the Bank's valued client.

"On 18 March 1998, [Abad] submitted his Answer, categorically denying that he instructed his subordinates to validate the out-of-town checks of Sixtu Chu presented for [deposit or encashment] as local clearing checks.

"During the actual investigation conducted by [petitioner] Bank, several transactions violative of the Bank's Policies and Rules and Regulations were [uncovered] by the Fact-Finding Committee. Said transactions placed the Bank at risk in the amount of P23,044,527.88 and were consummated in the span of only one (1) month – from 02 February 1998 to 02 March 1998.

"Consequently, Mr. Lorenzo A. Cervantes, the Fact-Finding Officer of [petitioner] Bank, issued, on 01 April 1998, another *Memorandum* to [Abad] asking the latter to explain the newly discovered irregularities.

"Not satisfied with the explanations of [Abad] in his 11 April 1998 *Reply*, [petitioner] Bank served another *Memorandum*, attaching thereto the 01 July 1998 *Decision* of the Fact-Finding Committee, terminating his employment effective immediately upon receipt of the same.

"On 07 September 1998, x x x Abad instituted a *Complaint for Illegal Dismissal With Non-Payment of Overtime Pay, Premium Pay for Holiday and Rest Day, Separation Pay, Retirement Benefits, Damages and Attorney's Fees*.

"On 30 August 1999, after the contending parties['] submission of their respective *Position Papers*, Labor Arbiter Guimoc promulgated his *Decision* in favor of [petitioner] and against [Abad], to wit:

'WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant [Abad] to be legal. [Petitioner Bank] is, however, directed to indemnify [Abad] in the amount of P10,000.00 for its failure to fully comply with the requirements of due process.

'x x x x x x x x x

'SO ORDERED.'^[5]

"Aggrieved by the ruling of the Labor Arbiter, [Abad] appealed the same before the [National Labor Relations Commission (NLRC)] which, on 29 November 2000, issued [a] *Decision*, affirming with modification the judgment of the Labor Arbiter, thus:

'WHEREFORE, premises considered, the decision of the Labor [A]rbiter Benjamin S. Guimoc dated 30 August 1999 is MODIFIED, to wit:

'Ordering the [petitioner Bank] to pay the complainant [Abad] in the amount of Twenty One Thousand Two Hundred Nine & 31/100 (P21,209.31) representing his proportionate 13th month pay for the year 1998.

'SO ORDERED.'^[6]

"After the denial of his *Motion for Reconsideration* by [the NLRC] in its *Resolution* dated 01 June 2001, [Abad] elevated the case before [the CA in a Petition for Certiorari under Rule 65 of the Rules of Court]."^[7]

Ruling of the Court of Appeals

The CA sustained the factual findings of the NLRC and the labor arbiter that the dismissal of Abad was valid. The appellate court ruled that the bank was able to establish that the latter had lost its trust and confidence in him.^[8]

However, the CA awarded separation pay equivalent to one half (1/2) month pay for every year of service, in accordance with the *social justice policy* in favor of the working class.^[9] It noted that Abad had acted in the belief that Sixtu Chu was a valued client of the bank, and that there was an existing bills purchase line agreement in client's favor.^[10]

Hence, this Petition.^[11]

The Issue

Petitioner states the issue in this wise:

"The Court of Appeals grossly erred in awarding separation pay equivalent to one-half (1/2) month's pay for every year of service to respondent, the same being contrary to law and jurisprudence."^[12]

The Court's Ruling

The Petition is unmeritorious.

Main Issue:

Separation Pay Despite Lawful Dismissal

The Court is tasked to determine the propriety of awarding separation pay to an employee despite the finding of lawful dismissal. Pertinent here are the rules on dismissals of employees.

Applicable Law

The award of separation pay is required for dismissals due to causes specified under Articles 283^[13] and 284^[14] of the Labor Code, as well as for illegal dismissals in which reinstatement is no longer feasible.^[15] On the other hand, an employee dismissed for any of the just causes enumerated under Article 282^[16] of the Labor Code is not, as a rule, entitled to separation pay.^[17]

As an exception, allowing the grant of separation pay or some other financial assistance to an employee dismissed for just causes is based on equity.^[18] The Court has granted separation pay as a measure of social justice even when an

employee has been validly dismissed, as long as the dismissal was not due to serious misconduct or reflective of personal integrity or morality.

This equitable principle was explained in *San Miguel Corporation v. Lao*^[19] as follows:

"In *Soco vs. Mercantile Corporation of Davao* [148 SCRA 526, March 16, 1987], separation pay was granted to an employee who had been dismissed for using the company vehicle for a private purpose. In *Tanala vs. National Labor Relations Commission* [322 Phil. 342, January 24, 1996] the payment of separation pay to an employee who had been dismissed for quarreling with a fellow worker outside the company premises was sustained. Likewise, in *Filipro, Inc. vs. NLRC* [229 Phil. 150, October 16, 1999], an award of separation pay was decreed in favor of an employee who had been validly dismissed for preferring certain dealers in violation of company policy. The Court, however, disallowed the grant of separation pay to employees dismissed for serious misconduct or for some other causes reflecting on his moral character. In the case of *Philippine Long Distance Telephone Co. (PLDT) vs. NLRC and Abucay* [164 SCRA 671, 682, August 23, 1988], the Court clarified a perceived incongruence in its several pronouncements by stating thusly:

'We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

'x x x x x x x x x

'The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense.'

The *dictum* was followed in *Philippine National Construction Corporation vs. NLRC* [170 SCRA 207, February 9, 1989], where the Court deleted an award of separation pay to an employee who had been found guilty of dishonesty for having stolen company property. *Cosmopolitan Funeral Homes, Inc. vs. Maalat* [187 SCRA 108, July 2, 1990] disallowed the grant of separation pay to an employee who was dismissed for dishonesty for an understatement of reported contract price against the actual contract price charged to and paid by the customers and for misappropriation of funds or collections. A similar holding was reached in *Zenco Sales, Inc. vs. NLRC* [234 SCRA 689, August 3, 1994], where the dismissed employee was found guilty of gross misconduct for having used his employer's property, equipment and personnel in his personal

business. The Court reversed the decision of the NLRC in *San Miguel Corporation vs. NLRC* [325 Phil. 940, March 29, 1996], granting an employee, dismissed for dishonesty, the privilege to retire from the company with a right to avail himself of 100% of the benefits the company had offered to retiring employees. Quite recently, in *Edge Apparel, Inc. vs. NLRC* [349 Phil. 972, February 12, 1998], the Court, categorizing the two causes for the dismissal of an employee — ‘just causes’ under Article 282 of the Labor Code and ‘authorized causes’ under Article 283 and 284 of the same code — reiterated that an employee whose employment was terminated for a just cause would not be so entitled as a matter of right to the payment of separation benefits.”

[20]

In line with *San Miguel*, separation pay depends on the cause of the dismissal and the circumstances of each case. The dismissal should not be due to serious misconduct or to causes reflective of moral character. Notwithstanding a valid dismissal, an employee’s lack of moral depravity could evoke compassion and thereby compel an award of separation pay.

Dismissal in the Present Case

The CA affirmed the factual findings of the labor arbiter and the NLRC that Abad had violated the bank’s policies, rules and regulations, and code of discipline.^[21] On this basis, the appellate court ruled that the dismissal was valid on the ground that the bank had lost its trust and confidence in Abad, who was a managerial employee.^[22]

This Court observes that petitioner is not challenging the ground relied upon by the CA in affirming the dismissal. Instead, petitioner merely disputes the award of separation pay, arguing that respondent deliberately violated the bank’s policies and was therefore not entitled to the grant.^[23] Such argument, though relevant to a justification of the dismissal, does not directly relate to the propriety of awarding separation pay.

Under the *San Miguel* test, separation pay may be awarded, provided that the dismissal does not fall under either of two circumstances: (1) there was serious misconduct, or (2) the dismissal reflected on the employee’s moral character. The dismissal in the present case was due to loss of trust and confidence, not serious misconduct. There had been jurisprudence granting separation pay for dismissals based on this ground.^[24] Not falling under the first qualification, the query now shifts to whether it was reflective of the moral character of respondent.

While he violated the bank’s policy, rules and regulations, there was no indication that his actions were perpetrated for his self-interest or for an unlawful purpose. On the contrary, and as the facts indicate,^[25] his actions were motivated by a desire to accommodate a valued client of the bank.

The Court is also mindful of previous rulings that have granted separation pay^[26] after giving considerable weight to long years of employment. Accordingly, respondent’s employment of 25 years, with only one other infraction that petitioner has failed to elaborate on, supports the award of separation pay.