

FIRST DIVISION

[G.R. NO. 160368, March 31, 2005]

**PHILIPPINE COMMERCIAL INDUSTRIAL BANK, PETITIONER, VS.
PEDRO L. CABRERA, RESPONDENT.**

D E C I S I O N

DAVIDE, JR., C.J.:

This case stemmed from two anomalous withdrawals totalling P202,000 against the savings account of one Philip Inocencio, a depositor of the Sixto Antonio-Pasig Branch of petitioner Philippine Commercial Industrial Bank. Such anomaly was imputed on respondent Pedro L. Cabrera, the Assistant Manager-Service Head of that Branch who had been with the petitioner bank for almost two decades.

The anomaly was discovered on 4 April 1998 when Inocencio went to the Branch to have his passbook updated. Customer Service Assistant (CSE) Corazon Alejandro, the branch personnel who attended to him, discovered that there was a discrepancy between his account balance as appearing on the bank's computer and that appearing on his passbook. The computer reported a balance of only P99,061.71, while the passbook reflected a balance of P301,841.43.

Inocencio was referred to Customer Service Support (CSS) Alcelino Gregorio, who made a verification of the unposted transactions on the passbook. In the process of conducting a verification, Gregorio noticed that pages 1 and 2 of the Daily Trial Balance and Transaction Register (DTBTR) print-out dated 23 March 1998 and debit supporting documents were missing. He then asked Inocencio to give him more time to verify the discrepancy and told the latter to come back to the branch at another date. Thereafter, Gregorio reported about the missing pages to Cabrera and requested the latter's assistance. Cabrera then undertook to personally look into the matter.

On the afternoon of 15 April 1998, Cabrera informed the bank's Area Operations Officer for Eastern Metro Manila Area Arnulfo M. Villalobos that he was successful in locating a withdrawal slip for P202,000 dated 21 March 1998. He further informed the latter of the following:

1. The withdrawal slip was validated using the terminal of CSE Amparo Advincula.
2. The withdrawal was approved by Assistant Manager-Sales Head Jose Enriquez, Jr.
3. The typewritten account no. 5433-03251-7 was altered to 5443-03251-7 (correct account number) by crossing out the first number 3 and superimposing number 4 on top.

4. The amount in words was torn off leaving the words "two thousand pesos" with visible traces of cigarette burns.
5. The computer validation was torn off and likewise had traces of cigarette burns with only the date of transaction left visible.
6. The withdrawal was post-reviewed by Cabrera himself as Service Head.
7. The denomination breakdown of the amount paid was not indicated on the reverse side of the withdrawal slip.
8. The client's signature on the withdrawal slip differed from the specimen signatures on the signature card on file.
9. Pages 3 and 4 of the Electronic Journal reading on 21 March 1998 of Advincula were missing.

The next day, or on 16 April 1998, the petitioner created a Fact-Finding Committee to investigate the anomaly. Pending investigation, Cabrera was placed under preventive suspension.

The investigation allegedly revealed that a week before the incident, the respondent verbally requested a one-day leave of absence on 21 March 1998 to attend his eldest daughter's graduation. His request for leave was approved by Branch Manager Rogelio B. Blaquera on 20 March 1998. On the same day, at 12:25 p.m. to 12:27 p.m., a balance inquiry, last transaction inquiry, and passbook updating on Inocencio's account were made on respondent's computer terminal. On 21 March 1998, despite the fact that he was supposed to be on the official leave, the respondent reported for work in the morning. Blaquera then offered him to take a half-day leave after lunch. However, in the afternoon, he was seen getting in and out of the Branch a number of times.

When the Electronic Journal of Advincula was retrieved from her computer terminal on 17 April 1998, it was discovered that on 21 March 1998, at 1:39 p.m. and 1:40 p.m., two unauthorized withdrawals amounting to P22,000 and P180,000, respectively, were made against the account of Inocencio. Advincula categorically stated that she did not process the said transactions. The corresponding amount of P202,000 were taken from her unlocked drawer while she was in the Ladies' Room. According to her, as a matter of practice, she would not secure her cash and other valuables in lockable areas or sign off her terminal whenever she would leave her counter. When the unauthorized withdrawals were made, only Corazon Alejandro was in the teller's counter.

The Teller's Electronic Journals, Error Correction Summary Report, and DTBTR print-out also allegedly showed that the respondent approved or overrode transactions using his password or supervisor's code #15 between 1:22 p.m. and 3:51 p.m. and that he delivered coin requisitions to the tellers and received cash deliveries from them between 1:28 p.m. and 3:02 p.m. of 21 March 1998.

For his part, the respondent denied having made a balance inquiry and passbook updating on Inocencio's account, and claimed that either Blaquera or Gregorio

accessed his computer terminal. He was supposed to be on vacation leave on 21 March 1998 to attend his eldest daughter's graduation. But having learned that his reliever was not available and considering that his daughter's graduation was still in the afternoon, he decided to report for work in the morning. He left the bank at 1:20 p.m. When he returned at about 5:30 p.m., the bank was already closed. To prove his presence in his daughter's graduation, he submitted photocopies of (1) the program paper where the name of his daughter was listed as among the graduates; and (2) a picture of him, together with his spouse and his daughter, at the venue of the graduation.

After conducting an investigation and evaluating the evidence gathered, including the written explanations of Cabrera and the other personnel assigned to the Branch, the Fact-Finding Committee concluded that Cabrera was culpable in view of the following circumstances:

- a. The series of deliberate and premeditated acts before the execution of the planned unauthorized withdrawals - balance inquiry, last transaction inquiry and updating on SA # 5443-0-3251-7 under the name of Philip Inocencio were done on 3.20.98 at 12:25 p.m. to 12:27 p.m. in his own computer terminal.
- b. On 3.21.98, although he was supposed to be on official leave, he unexpectedly reported for work which prompted BM/Blaquera to advise and offer him to just knock-off in the afternoon. At 1:39 p.m. and 1:40 p.m., the unauthorized withdrawals of P22,000 and P180,000, respectively, were made using the teller's terminal of CSE/Advincula and took the corresponding total amount of P202,000 from the unlocked drawer of aforesaid CSE who at that time was out of her teller's cage/counter. In that afternoon, he was seen going-out/getting-in the branch for several times and have accessed to branch transactions and computer terminals despite the fact that he was supposed to be attending his daughter's graduation day - the very reason of his request for a 1-day VL. This was vehemently denied by him claiming that he was no longer in the branch when the transaction took place. He said he left the bank at 1:20 p.m. and never touched/handled any bank transactions/records and computer terminal afterwards. However, it was the other way around as confirmed by several branch personnel and supporting documents/transaction media on hand.
- c. The sudden appearance and presentation of the forged withdrawal slip for P202,000 which for several days had been missing. The withdrawal slip was altered to distort the facts and several documents/print-outs related to the case were destroyed/missing to conceal the anomalous transactions. He has full access/control/custody of all these vital records.
- d. He violated the single occupancy of bank/branch premises during Mondays (off-working day).
- e. As SEH, he is directly responsible for the following procedural lapses in the branch, such as:

1. CSE – not securing case and other valuables in lockable area and not temporarily signing-off computer terminals when leaving their positions/areas.
2. CSS – not microfilming source documents and other transaction media required to be microfilmed.

Acting on the report and recommendation of the Fact-Finding Committee and the recommendation of BBS-Administration Group,^[1] the petitioner bank terminated Cabrera's employment on 22 July 1998, with forfeiture of benefits, on the ground of violation of Par. 1, Sec. 1, Art. V of the New Code of Discipline, specifically, "taking, converting or misappropriating Bank funds, money, property for personal profit and benefit"; serious misconduct; and fraud or willful breach of the trust reposed in him by his employer or duly authorized representative as provided for under paragraphs (b) and (c) of Article 282 of the Labor Code. He was likewise required to pay the amount of P202,000 "representing the amount irregularly withdrawn PLUS cost of recovery thereof."

Having been disgruntled by this turn of events, Cabrera filed on 10 August 1998 a complaint for illegal suspension and illegal dismissal against the petitioner. After the parties submitted their respective position papers and replies, Labor Arbiter Jose G. de Vera rendered a Decision^[2] dated 29 February 2000 dismissing respondent's complaint and declaring that the petitioner sufficiently established by substantial evidence that the respondent committed serious misconduct resulting in the loss of trust and confidence reposed on him by the petitioner.

Cabrera appealed to the National Labor Relations Commission (NLRC). But in its Resolution^[3] of 21 February 2001, the NLRC dismissed the appeal on the ground that the decision rendered by Labor Arbiter De Vera had become final and executory because Cabrera's counsel, Atty. Reynaldo M. San Juan, received a copy of the decision on 24 March 2000 and the Appeal with Memorandum^[4] was filed only on 5 June 2000, way beyond the 10-day reglementary period.

On 19 April 2001, respondent Cabrera moved for the reconsideration of the dismissal of his appeal. Such motion, however, was denied by the NLRC in its Resolution^[5] of 16 May 2001. Hence, Cabrera filed with the Court of Appeals a petition for *certiorari*.^[6]

While finding Cabrera's appeal with the NLRC to have been filed out of time, the Court of Appeals gave credence to the allegation of Cabrera that said infirmity was due to the gross negligence of his former counsel Atty. Reynaldo San Juan. It then proceeded to declare the illegality of Cabrera's dismissal for failure of the petitioner bank to adduce substantial evidence. The presence of Cabrera at the bank on 21 March 1998 despite his approved leave of absence and his presentation of the missing withdrawal slip for P202,000 are not sufficient bases for concluding that it was Cabrera who made the fraudulent withdrawals. Moreover, not a single person claimed to have seen Cabrera enter the teller's booth of Advincula at the time of the questioned withdrawals. Thus, in its Decision^[7] of 26 March 2003, the Court of Appeals ordered the petitioner to immediately reinstate the respondent to his former or equivalent position and to pay him full back wages from the date of his illegal