

## THIRD DIVISION

[ G. R. No. 149416, March 14, 2003 ]

**CARMELITA V. SANTOS, PETITIONER, VS. SAN MIGUEL CORPORATION, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

This petition for review on *certiorari*<sup>[1]</sup> filed by Carmelita V. Santos challenges the Decision of the Court of Appeals in CA-G.R. SP 64223 dated July 4, 2001 and its Resolution dated August 9, 2002.<sup>[2]</sup>

The factual milieu is as follows:

On September 15, 1987, respondent San Miguel Corporation (SMC) appointed petitioner Carmelita V. Santos as Finance Director of its Beer Division for Luzon Operations.

On September 6, 1989, respondent's Cash Department issued a Memorandum prohibiting the encashment of personal checks at respondent's Plants and Sales Offices.<sup>[3]</sup> The Memorandum reads:

"TO : ALL DIVISION FINANCE OFFICERS  
FROM : E. E. NOEL  
SUBJECT: CHECK ENCASHMENTS AT  
PLANTS/SALES OFFICES

"This is to reiterate our policy with regard to check encashment at SMC Plants and Sales Offices. The following are the only items accepted for such accommodation:

SMC checks payable to SMC employees;

RDBP checks payable to SMC employees;

Uncrossed dividend checks.

"Encashments must be made by the payees themselves. The check must be endorsed by the payee by affixing his/her signature at the back of the same.

"Other items such as SMCESALA, SSS, personal **checks are not accepted.** x x x" (emphasis ours)

On January 10, 1991, respondent SMC, through its Cash Management Department, noticed that petitioner encashed her three (3) personal checks in various Metro Manila Sales Offices, thus:

1. On December 17, 1990, petitioner Carmelita Santos encashed at respondent's Makati Sales Office her personal check (UCPB Check No. 036716 dated December 15, 1990) payable to respondent in the amount of ₱150,000.00. The check was returned by the bank because it was drawn against insufficient funds. Three days later, or on December 20, 1990, petitioner paid respondent in cash for the dishonored check.
2. On January 2, 1991, petitioner encashed at respondent's Pasig Sales Office another personal check (UCPB Check No. 036718 dated December 20, 1990) payable to cash in the amount of ₱140,045.00. When presented for payment, the check was dishonored by the drawee bank due to insufficient funds. Petitioner redeemed the check only on January 19, 1991.
3. On January 19, 1991, petitioner encashed at respondent's Diliman Sales Office another personal check (UCPB Check No. 036737 dated January 19, 1990) in the amount of ₱150,000.00. This check was accepted for payment.

On January 24, 1991, respondent commenced an audit investigation of the personal checks encashed by petitioner at its sales offices. Pending the audit investigation, petitioner agreed to take a fifteen-day vacation leave from January 25 to February 14, 1991.

On January 29, 1991, petitioner received from respondent an inter-office memorandum requiring her to explain in writing why no disciplinary action should be taken against her in view of her unauthorized encashment of her three personal checks at respondent's sales offices.<sup>[4]</sup>

In a reply-memorandum dated January 31, 1991, petitioner admitted that she encashed three personal checks at respondent's sales offices but claimed that such act was not irregular since all personnel in respondent's Beer Division were allowed to encash their personal checks at any sales office upon clearance from the region management concerned. She stated that her encashment of personal checks had prior clearance. She further clarified that only two of the three checks she encashed were dishonored for insufficiency of funds, but she promptly funded the checks upon receipt of notice of such dishonor, thereby causing no damage to respondent.<sup>[5]</sup>

Meanwhile, respondent obtained a copy of the audit results and learned that aside from petitioner's reported encashment of three personal checks, she had previously encashed fifty (50) personal checks from June 13, 1989 to January 19, 1991 in varying amounts, from ₱1,500.00 to ₱20,000.00, which were not endorsed by the Sales Operations Manager or the Region Finance Officer. Additionally, petitioner encashed two other personal checks in the amounts of ₱150,000.00 on December 12, 1990, and ₱100,000.00 on December 27, 1990.<sup>[6]</sup>

After receiving such report, respondent SMC formed an Investigating Panel to

conduct a full-blown investigation of petitioner's encashment of personal checks and to determine: (1) whether the region management gave prior consent to the transactions; (2) whether the person or persons who accepted or encashed the personal checks were in fact authorized to do so; (3) if there is any policy, procedure and/or accommodation for the encashment of personal checks and the extent/amount and frequency of such; and (4) the loss or damage accruing to respondent, if any.<sup>[7]</sup> The Investigating Panel was composed of Ernesto S. Escalante, SMC Director of Human Resources and Administration, as Chairman, and Jesus Domingo and Jo Christie Punsalang, as members.

In the meantime, on or February 15, 1991, petitioner returned from her vacation leave and reported for work. To her surprise, she found that she had been transferred from her room on the 16th Floor of the Pacific Star Building to a cubicle on the 19th Floor of the same building. There, she shared a space with the secretary of respondent's Quality Service Manager and spent each day doing nothing for no assignment was given to her.

Subsequently, petitioner received two inter-office memoranda<sup>[8]</sup> informing her of the commencement of an administrative investigation pertaining to her encashment of her personal checks and that she was relieved of her present assignment/position until the conclusion of the investigation.<sup>[9]</sup>

At the first investigative hearing on February 27, 1991, petitioner appeared but requested a postponement of five days to enable her to submit a supplemental letter to the Investigating Panel.

On March 5, 1991, petitioner submitted a letter-explanation accusing respondent of prejudging her case. She claimed to have been unceremoniously relieved of her duties and forced to go on vacation leave effective January 25, 1991. She demanded that she be re-assigned to her former position as Finance Director within three (3) days from notice.<sup>[10]</sup>

At the next scheduled hearing on March 6, 1991, petitioner appeared without her counsel. Considering her desire to be assisted by counsel during the investigation, the hearing was reset to March 15, 1991.

On March 15, 1991, petitioner called the Investigating Panel by phone, expressing her doubts on its impartiality. Despite notice, she refused to attend subsequent hearings. The Investigating Panel considered her refusal as a waiver of her right to be heard and thus continued the investigation in her absence.

On March 21, 1991, the Investigating Panel reported its findings as follows:

"xxx the Investigating Panel finds the encashment by Ms. Santos of her personal checks with the region/sales offices as highly irregular transactions to the detriment of the Company.

"The audit made on the personal check encashments by Ms. Santos at the Makati, Cubao and Diliman Sales Offices show that she has been encashing personal checks as early as June 1989 which were not endorsed by the sales operations manager or the region finance officer.

Four (4) of these checks were dishonored for having been drawn against insufficient funds but all were subsequently paid by Ms. Santos in cash. Further, in addition to the December 15, 1990 and December 20, 1990 bouncing checks of Ms. Santos, she encashed on December 12, 1990 a personal check for P150,000.00, on December 27, 1990, for P100,000.00, and on January 19, 1991, yet another personal check for P150,000.00. In all, her personal check encashments for that short period from December 12, 1990 to January 19, 1991 totalled P670,045.00.

"These encashments from December 12, 1990 to January 19, 1991 not only violated the policy reiterated in the Cash Management Department Memo dated September 6, 1989, but even the alleged practice permitting Payroll 2 personnel to encash their personal checks. The Investigating Panel does not think that the approval of the region finance officer and the sales operations manager, who respectively allowed the encashments of the December 15, 1990 and December 20, 1990 bouncing checks, would cure the irregularity of said encashments. These managerial personnel are not only lower in rank in relation to Ms. Santos in her capacity as Finance Director, but their authority is limited by the alleged practice itself: they cannot permit Ms. Santos' check encashments beyond her monthly salary.

"At the worst, the council of the Investigating Panel finds the facts to sustain prima facie that the personal check encashments by Ms. Santos constitute estafa through misappropriation or with abuse of confidence under Article 315, Paragraph 1(b) of the Revised Penal Code.

"xxx the Investigating Panel finds that Ms. Santos abused her position thereby giving ground for the Company's loss of trust and confidence upon her and her dismissal from the Company. Ms. Santos is a managerial employee. As Finance Director, Ms. Santos holds a position of trust and confidence. She is entrusted with the custody, handling, care and protection of Company funds. She is the highest ranking managerial employee for the finance function of the Luzon Beer Operations – third level from the Division Manager. She has functional control over all the plant and region finance officers, including cashiers within Luzon operations. As Finance Director, prudence should have dictated upon Ms. Santos caution and circumspection particularly as she performs the delicate and sensitive task of handling the finances of the Company. But this she did not do.

"Except for the two instances where the region finance manager and sales operations manager separately allowed the encashment by Ms. Santos of her personal checks, all the other checks were encashed by Ms. Santos without permission from the region management. In the two instances where clearance was given, the regional finance manager said that Ms. Santos is her superior that he just complied with her request, while the manager for sales operations said that he trusted Ms. Santos, she being a Finance Director. Even then, these managers acted beyond their authority in giving the permission to Ms. Santos in view of the amounts involved."<sup>[11]</sup>

The Investigating Panel recommended that petitioner Santos be terminated from employment. The Panel further advised the management to reprimand the regional finance officer and sales operations manager who permitted the encashment of petitioner's personal checks.

In a memorandum dated April 5, 1991, respondent adopted the findings of the Investigating Panel and informed petitioner of her termination from employment for abuse of position as Finance Director, engaging in highly irregular transactions to the detriment of the company and employer's loss of trust and confidence. [12]

Five days before the end of the administrative investigation, or on March 15, 1991, petitioner filed with the Labor Arbiter a complaint for constructive dismissal against respondent SMC and Ernesto S. Escalante, Chairman of the Investigating Panel. The complaint was later amended to illegal dismissal. [13]

On April 24, 1996, Labor Arbiter Dominador M. Cruz rendered judgment dismissing the complaint for lack of merit, [14] thus:

"WHEREFORE, judgment is hereby rendered, dismissing the instant case for lack of merit.

"However, for humanitarian considerations, respondent is directed to give complainant financial assistance equivalent to one month pay.

"SO ORDERED." [15]

On June 10, 1996, petitioner interposed an appeal to the National Labor Relations Commission (NLRC). [16] Respondent, for its part, filed a partial appeal.

On June 30, 1999, the NLRC promulgated a decision reversing that of the Labor Arbiter. [17] The NLRC held that respondent SMC was estopped from questioning petitioner's encashment of personal checks, having allowed such practice for several years prior to the present case. Further, respondent deprived petitioner of due process by belatedly including her prior encashments in the administrative complaint, upgrading the charge to abuse of position. This effectively deprived her of her right to be notified of a clear statement of the cause for termination and prevented her from refuting a more serious charge. The NLRC likewise doubted the impartiality of the Investigating Panel considering that it was formed after she had been constructively dismissed by demotion. The NLRC disposed of the case in this manner:

"WHEREFORE, in the light of the foregoing, the Decision of the Labor Arbiter dated 24 April 1996 is hereby REVERSED and in view hereof, another judgment is entered:

1. Ordering respondents to pay complainant's severance pay of one (1) month per year of service, computed from date of hire on 1 January 1985 until finality of this Decision;
2. Ordering respondents to pay complainant's full backwages based on her last basic monthly salary of