

THIRD DIVISION

[G.R. No. 116542, July 30, 1996]

**THE HONGKONG AND SHANGHAI BANKING CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
AND EMMANUEL A. MENESES, RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

What species of dishonesty would constitute a ground for termination? Is a provision in the employees' handbook stating that "any form of dishonesty" shall constitute "serious offense(s) calling for termination" valid and binding upon the respondent NLRC?

These questions are answered by this Court in resolving the instant petition for certiorari which seeks a partial reversal of the Decision^[1] of the respondent National Labor Relations Commission^[2] promulgated on April 19, 1994 insofar as it directs reinstatement of private respondent to his former position.

The Antecedent Facts

The undisputed facts, as summarized in the Labor Arbiter's decision, are as follows:

"Complainant is a regular rank and file employee of Hongkong and Shanghai Banking Corp. Ltd., with office address at Royal Match Building, Ayala Avenue, Makati, Metro Manila. He started working with the said bank in July 1986 as a clerk until his dismissal on February 17, 1993.

It appears that on February 3, 1993, complainant called the bank to inform the latter that he had an upset stomach and would not be able to report for work. His superior, however, requested him to report for work because the department he was then in was undermanned but complainant insisted that it was impossible for him to report for work, hence, he was allowed to go on sick leave on that day.

Later on that day, the bank called complainant at his given Tel. No. 521-17-54 in order to obtain vital information from him, but the bank was informed by the answering party at the phone number given by complainant that complainant had left early that morning.

When complainant reported for work the following day, February 4, 1993, he was asked by his superior to explain why he was not at his residence on February 3, 1993 when he was on sick leave because of an upset stomach.

Complainant explained that he indeed suffered from an upset stomach and that he even consulted Dr. Arthur Logos at 4:00 o'clock in the afternoon of the same day and the reason why he could not be reached by telephone was because he had not been staying at his given residence for over a week.

On February 4, 1993 the bank called up Dr. Logos to verify the truth of complainant's statement but the doctor denied that he examined or attended to complainant on February 3, 1993 and the last time complainant consulted him was in December 1992. For this reason, the bank directed complainant to explain his acts of dishonesty because allegedly he was not honest in telling the bank that he had an upset stomach on February 3, 1993, and that he consulted Dr. Logos on that day.

In his written statement, by way of answer to the memorandum, complainant insisted that he had diarrhea on February 3, 1993 and attached a certification from his aunt where he stayed from the evening of February 2, 1993 and the whole day of February 3, 1993 as well as a certification from his uncle named Andre R. Lozano attesting to the conversation between complainant and Melvin Morales regarding the whereabouts of complainant on that day. Complainant further admitted that his statement about his not staying at his house for one week and his consulting a doctor was incorrect, but that the said statement was not given with malicious intention or deceit or meant to commit fraud against the bank, its operations, customers and employees. The said statement according to him was impulsive reaction as a result of his emotional stress he had been going through because of his marital problems. He pleaded for leniency such that instead of termination, he be given a lighter penalty.

However, on February 16, 1993, the bank came out with a memorandum from the Vice-President, Human Resources Department terminating his services effective March 16, 1993 pursuant to Article 13, Section VI of the Collective Bargaining Agreement between the union of the rank and file employees of the bank and the company and the bank's Code of Conduct.

The following day, February 17, 1993, the bank sent complainant another memorandum directing him to settle his outstanding loan amounting to PHP179,834.00, net of a month's salary the bank was paying him in lieu of notice not later than June 16, 1993. The import of the said letter was while the effectivity of the said termination is March 16, 1993, the company opted to pay him in lieu of the notice from February 17, 1993 up to March 16, 1993 his pay without having to report for work."

Noting that the bank's Employee Handbook made "any form of dishonesty" a cause for termination, the labor arbiter^[3] ruled said ground to be overly broad, and stated that "(f)or us to agree that any form of dishonesty committed by an employee of the bank is a ground for dismissal, is to say the least stretching the import of the aforecited rule too far." The arbiter instead held that the offenses of dishonesty contemplated by the aforementioned rule which would warrant termination of

services are those involving deceit and resulting in loss of trust and confidence. The arbiter further found that the private respondent's proffered excuse, assuming it to be false, did not result in any damage to the bank, and therefore the bank had no reason to lose its trust and confidence in the private respondent on account of such manner of dishonesty. Additionally, the labor arbiter did not find in the record any proof that private respondent was not really suffering from diarrhea as claimed.

Thus, in her decision dated August 13, 1993, the arbiter declared the termination illegal and ordered petitioner bank to reinstate private respondent to his former position without loss of seniority rights and with backwages.

On appeal, the respondent Commission sustained the arbiter's findings and ruled that --

"x x x For while there is a semblance of truth to the charge of respondent (herein petitioner bank) that complainant (private respondent) had been dishonest as to his whereabouts on February 3, 1993, such act of dishonesty cannot be considered so serious (as) to warrant complainant's outright dismissal. The dishonesty that complainant had committed cannot be considered depraved. It was a simple kind of dishonesty that was committed not in connection with his job. x x x"

Brushing aside petitioner bank's argument about strained relations, the NLRC reasoned that the private respondent's falsehoods were not of such nature as to have actually caused animosity between the private respondent and the petitioner bank, and even if there was any such strained relations, "x x x it was not of so serious a nature or of such a degree as to justify his termination x x x". Thus, the NLRC ordered petitioner "to reinstate complainant to his former position but without backwages", considering that private respondent was not entirely faultless" since "he committed a certain degree of dishonesty in lying."

Now before this Court, petitioner argues[4] that the dismissal is reasonable and valid "pursuant to its Employee Handbook, specifically, Appendix A thereto which provides for serious offenses calling for termination x x x".

The Issue

Petitioner raises the following reason to warrant this review:

"Public respondent acted with grave abuse of discretion when it unilaterally curtailed and restricted petitioner's inherent and inalienable prerogative to set and impose reasonable disciplinary rules and regulations."

In short, the issue, as summed up by the Solicitor General, is whether or not the NLRC committed grave abuse of discretion in ruling that private respondent's act of making a false statement as to the real reason for his absence on February 3, 1993 did not constitute such dishonesty as would warrant his termination from service.

The Court's Ruling

The petition is bereft of merit.