

## SECOND DIVISION

[ G.R. No. 111173, September 04, 1996 ]

### PHILIPPINE SAVINGS BANK, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND VICTORIA T. CENTENO, RESPONDENTS.

#### DECISION

##### MENDOZA, J.:

This is a petition for certiorari to annul the decision of the National Labor Relations Commission in NLRC Case No. RB-IV-2-1554-85, affirming the decision of the Labor Arbiter, which found petitioner guilty of illegal dismissal, and the resolution of the NLRC denying reconsideration.

The facts are as follows:

Private respondent Victoria T. Centeno started, as a bank teller of petitioner Philippine Savings Bank, on November 3, 1965. Through the years she was promoted, becoming on February 4, 1985, assistant cashier of petitioner's Taytay branch, at a salary of P2,672.00 a month.

From September 17, 1984 to November 15, 1984, private respondent was acting branch cashier, substituting for Mrs. Victoria Ubaña, who had gone on maternity leave. As acting branch cashier, private respondent was in charge of the cash in the vault and the preparation of the daily cash proof sheet, which was a daily record of the cash in the vault and was used as basis in determining the starting balance on the next banking day.

On November 16, 1984, Mrs. Victoria Ubaña reported back to work. Before turning over the cash to Mrs. Ubaña, private respondent Centeno deposited P356,400.00 in the Metropolitan Bank and Trust Co. (Metrobank). However, what appeared as amount deposited in the November 16, 1984 cash proof and batch sheets of the cashier and clearing clerk, was P371,400.00, and not P356,400.00 as shown in the Metrobank passbook. Petitioner later charged that private respondent falsified the deposit slip and made it appear that she had deposited P371,400.00 when actually she had deposited only P356,400.00.

On December 18, 1984, the branch accounting clerk, Lolita Oliveros, discovered a discrepancy between the cash deposit recorded (P371,400.00) in the cash proof and batch sheets and the deposit actually made (P356,400.00) as reflected in the Metrobank passbook. She called the attention of the clearing clerk, Alberto C. Jose, to the matter. They reviewed the records and found that what had been attached to the debit ticket of Jose was a deposit slip for P356,400.00, and not for P371,400.00.

An audit team reviewed the account of the branch and found a P15,000.00 shortage

incurred on November 16, 1984, the day private respondent turned over her accountability to Mrs. Ubaña after the latter's maternity leave.

A committee was formed to investigate the shortage. Private respondent, the branch manager, Eladio C. Laurena, the cashier, Victoria N. Ubaña, the clearing clerk, Alberto C. Jose, and two other employees were called to the investigation. The committee found private respondent accountable for the shortage.<sup>[1]</sup> Hence, on January 7, 1985, private respondent was given a memorandum which stated:

In connection with the shortage of P15,000.00 at Taytay Branch which has been recently discovered by the Auditing Department which shortage appears to have been deliberately perpetuated through falsifications of various documents, all of which appear to have been done by you, you are hereby required to submit your explanation within seventy two (72) hours from receipt of this memo why no administrative and/or disciplinary action shall be taken against you.

In the meantime, you are hereby preventively suspended for a period of thirty (30) days effective January 8, 1985. (Emphasis added)

The manager, cashier, clearing clerk and a teller, were also given "show-cause" memoranda, but only private respondent was placed under preventive suspension.

All those required to show cause filed their respective answers, except private respondent. Instead she requested the bank's vice-president, Antonio Viray, on January 15, 1985, to give her until January 18, 1985 within which to file her answer on the ground that she needed to consult her lawyer. Her request was granted but private respondent nonetheless failed to answer the charges against her.

On February 4, 1985, private respondent was dismissed by the bank. The memorandum to her read:

Memorandum  
To : MS. VICTORIA T. CENTENO  
Assistant Cashier  
Taytay Branch

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This is in connection with the shortage of P15,000.00 at Taytay Branch which was incurred while you were in charge of the vault. Immediately after the discovery of the shortage, through the memorandum of the undersigned dated January 7, 1985 addressed to you, we required you to explain within seventy two (72) hours from receipt of said memo why no administrative and/or disciplinary action should be taken against you. Despite the lapse of the extension period you requested within which to submit your explanation, and up this date, you have not submitted your explanation.

After carefully evaluating the evidence presented and considering your failure to explain the shortage which tantamounts to admission of guilt, we have no alternative but to conclude, as we hereby conclude, that you

were the one who misappropriated the shortage of P15,000.00. You have therefore forfeited the confidence that the Bank has reposed on you as an officer.

IN VIEW OF THE FOREGOING, Management hereby dismisses you FOR CAUSE effective immediately with forfeiture of all benefits. The Bank reserves the right to take such actions it may deem necessary for the recovery of the P15,000.00. (Emphasis added)

Private respondent sued petitioner for illegal dismissal before the Labor Arbiter. Aside from claiming that her dismissal was without basis, she claimed that she was denied due process because she had not been informed of the specific acts for which she was dismissed. She claimed that during her 19 years of service in petitioner bank, she never "[played] fast and loose with bank funds."

Petitioner alleged that private respondent was dismissed for loss of trust and confidence as a result of the shortage, which, according to petitioner, she tried to conceal by falsifying the bank's cash proof sheet and the teller's vale. Petitioner claimed that private respondent was accorded due process prior to her dismissal.

On September 15, 1988, the Labor Arbiter found petitioner guilty of having illegally dismissed private respondent and of denying her due process. Accordingly the Labor Arbiter ordered:

WHEREFORE, responsive to the foregoing, judgment is as it is hereby entered in favor of complainant and against respondent:

1. Considering the termination of complainant illegal;
2. Ordering respondent to reinstate complainant to her former position or equivalent position with full backwages from the time of her unlawful termination and until actually reinstated without loss of seniority rights and other privileges appertaining to her position;
3. Ordering respondent to pay complainant moral and exemplary damages in the amounts of Fifty Thousand Pesos (P50,000.00) and Ten Thousand Pesos (P10,000.00), respectively; and,
4. Ordering respondent to pay complainant attorney's fees equivalent to ten (10%) per cent of the total award.

SO ORDERED.

On appeal, the NLRC affirmed with modification thus:

PREMISES CONSIDERED, the Decision of September 15, 1988 is hereby MODIFIED with the deletion of awards representing moral/exemplary damages and attorney's fees. However, the award of backwages and other benefits shall not exceed three (3) years as laid down by the Supreme Court. Respondent is hereby directed to pay complainant backwages in the amount of NINETY SIX THOUSAND ONE HUNDRED NINETY TWO PESOS (P96,192.00) and/or other benefits due. The other

findings stand AFFIRMED.

SO ORDERED.

Both parties moved for reconsideration, but their motions were denied by the NLRC in its resolution on July 8, 1993.

Hence this petition. Petitioner claims that the NLRC gravely abused its discretion in:

- a) holding that private respondent Centeno was denied due process of law prior to her dismissal; and
- b) failing to fully discuss all the six (6) assigned errors raised by the petitioner in its appeal by ignoring:
  - 1) the valid ground wherein petitioner based its termination of the service of private respondent, and that is loss of confidence;
  - 2) the specific circumstances that led the petitioner to lose its trust and confidence on private respondent; and
  - 3) the applicable settled law and jurisprudence that the private respondent, having been validly dismissed, is not entitled to reinstatement and backwages.

*First.* Contrary to the finding of the Labor Arbiter and the NLRC, private respondent was notified of the charge against her through a memorandum sent to her on January 7, 1985. Indeed she knew the reason for the "show-cause" order because before that, she and other employees had been asked to attend an investigation. The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination may be validly effected: first, a notice apprising the employee of the particular acts or omission for which his dismissal is sought and, second, a subsequent notice informing the employee of the decision to dismiss him.<sup>[2]</sup> In accordance with this requirement, private respondent was given the required notices, on January 7, 1985 and then on February 4, 1985.

The NLRC ruled that an investigation should have been conducted prior to private respondent's dismissal. As already noted, however, private respondent was informed of the charges against her and given an opportunity to answer the charges. Upon her request, she was given until January 18, 1985 within which to file her answer. But she failed to file her answer. Of course she later tried to explain that she did not find it necessary to do so because "there was, after all, no ground for any action against [her] . . . and [she] did not feel obligated, therefore, to dispute the action which was baseless and unfounded."<sup>[3]</sup> Furthermore, she claimed she thought "the Committee had prejudged the case against her."<sup>[4]</sup>

Whatever her reason might have been, the fact is that petitioner waived the right to be heard in an investigation. Due process is not violated where a person is not heard because he has chosen not to give his side of the case. If he chooses to be silent when he has a right to speak, he cannot later be heard to complain that he was silenced.<sup>[5]</sup> Private respondent having chosen not to answer, should not be allowed to turn the tables on her employer and claim that she was denied due

process. Indeed, the requirement of due process is satisfied when a fair and reasonable opportunity to explain his side of the controversy is afforded the party. A formal or trial-type hearing is not at all times and in all circumstances essential, especially when the employee chooses not to speak.<sup>[6]</sup> Under the circumstance of this case, it is too much to require petitioner to hear private respondent before the latter can be dismissed.

Happily, no liability was imposed on petitioner by either the Labor Arbiter or the NLRC despite the finding that petitioner had denied private respondent due process. Accordingly, all that we need to do in this case is to record our finding that petitioner fully complied with its duty under the law to accord due process to private respondent.

*Second.* Petitioner also claims that the NLRC gravely abused its discretion in not passing upon three (3) errors assigned by it on appeal.

We find the contention without merit. In affirming the Labor Arbiter, the NLRC found the evidence supporting the Labor Arbiter's factual findings to be substantial and for this reason apparently found it unnecessary to make a separate discussion. Factual findings of administrative agencies are generally accorded respect and even finality in this Court if they are supported by substantial evidence.<sup>[7]</sup>

Petitioner makes a "reconstruction" of the facts which, according to it, shows how the shortage incurred on November 16, 1984 was concealed. The "reconstruction" is as follows:

A) During the turn-over of the cash in vault by Mrs. Victoria Centeno to Mrs. Victoria Ubaña, after counting the cash in vault, no formal recording of how much cash was actually turned over was done. However, from the Cash Proof in November 16, 1984, it could be reconstructed and determined whether there is a shortage or not by the following figures:

Cash Balance, Nov. 15 '84	P589,572.02
Deduct: Cash Vales of Tellers at start of banking day	
Pico of Teller No. 1	P19,207.06
Pico of Teller No. 2	P21,666.21
Pico of Teller No. 3	P21,995.25
	<u>[P 62,868.52]</u>
Balance: Paper Bills & Coins P536,703.50	
Deduct: Deposit with Metrobank	P356,400.00
Balance that should have been turned over	170,303.50
Additional Vale-Coins-Teller 3	<u>P 11.00</u>
Balance P170,292.50	

Add: Sorted Paper Bills turned  
over by the tellers to the