

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**PHILIPPINE COMMERCIAL  
INTERNATIONAL BANK,**  
*Petitioner,*

*-versus-*

**G.R. No. 158045  
February 28, 2005**

**ANASTACIO D. ABAD,**  
*Respondent.*

X-----X

**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<sup>[1]</sup> under Rule 45 of the Rules of Court, challenging the October 14, 2002 Decision<sup>[2]</sup> and the April 11, 2003 Resolution<sup>[3]</sup> 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.”<sup>[4]</sup>

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

‘SO ORDERED.’<sup>[5]</sup>

“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.’<sup>[6]</sup>

“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].”<sup>[7]</sup>

### **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.<sup>[8]</sup>

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.<sup>[9]</sup> 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.<sup>[10]</sup>

Hence, this Petition.<sup>[11]</sup>

### **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.”<sup>[12]</sup>

## **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<sup>[13]</sup> and 284<sup>[14]</sup> of the Labor Code, as well as for illegal dismissals in which reinstatement is no longer feasible.<sup>[15]</sup> On the other hand, an employee dismissed for any of the just causes enumerated under Article 282<sup>[16]</sup> of the Labor Code is not, as a rule, entitled to separation pay.<sup>[17]</sup>

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.<sup>[18]</sup> 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 vs. Lao*<sup>[19]</sup> 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

‘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."<sup>[20]</sup>

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.<sup>[21]</sup> 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.<sup>[22]</sup>

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.<sup>[23]</sup> 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.<sup>[24]</sup> 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,<sup>[25]</sup> 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<sup>[26]</sup> 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.

### **Alleged Change of Theory**

Petitioner also contests the arguments of respondent that (1) Sixtu Chu was a valued a client and (2) had a bills purchase line agreement with the bank. Allegedly, these were raised for the first time on appeal.<sup>[27]</sup> Accordingly, petitioner contends that respondent was allowed to change his theory when he appealed the case to the CA.<sup>[28]</sup>

These contentions could have been proper subjects for our consideration, had petitioner itself not been guilty of the same fault of changing theory on appeal. A perusal of its Motion for Partial Reconsideration<sup>[29]</sup> of the assailed Decision shows that this issue was not raised therein. Petitioner did not question the CA's consideration of these alleged new defenses. Prior to raising the argument before this Court, it should have raised the matter in its Motion for Partial

Reconsideration, in order to give the appellate court an opportunity to correct its ruling.<sup>[30]</sup> For it to raise this very issue before us now would be improper, since it failed to do so before the CA.

At any rate, the alleged change of theory on appeal has not been sufficiently shown by petitioner. It has merely raised bare allegations and referred to the defenses in the Supplemental Position Paper filed by respondent with the labor arbiter.<sup>[31]</sup> From those bare statements, no firm conclusion can be inferred that respondent limited his allegations only to those stated therein.

All in all, petitioner has not successfully demonstrated any reversible error in the assailed Decision and Resolution of the appellate court.

**WHEREFORE**, the Petition is hereby **DENIED** and the assailed Decision and Resolution **AFFIRMED**.

Costs against petitioner.

**SO ORDERED.**

**Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.**  
**Carpio-Morales, J., on leave.**

---

[1] Rollo, pp. 9-33.

[2] Id., pp. 38-47. Seventh Division. Penned by Justice Andres B. Reyes Jr., with the concurrence of Justices Ruben T. Reyes (Division chairman) and Danilo B. Pine (member).

[3] Id., p. 49.

[4] Assailed Decision, p. 10; rollo, p. 47.

[5] The labor arbiter relied on *Wenphil Corporation vs. National Labor Relations Commission* (170 SCRA 69, February 8, 1989) in declaring that petitioner should be liable for damages for failing to comply with procedural due process. Labor Arbiter Decision, p. 10; rollo, p. 111.

The latest doctrine on valid dismissal sans due process allows recovery of nominal damages, depending on the relevant circumstances of each case. *Agabon vs. National Labor Relations Commission*, GR No. 158693, November 17, 2004.

[6] Contrary to the labor arbiter's findings, the NLRC found that petitioner had complied with procedural due process in dismissing Abad. NLRC Decision, p. 15; rollo, p. 127.

[7] Assailed Decision, pp. 2-4; rollo, pp. 39-41.

[8] Id., p. 7 & 44.

[9] Id., p. 8 & 45.

[10] Ibid.

The CA noted that Abad had placed the bank at risk in the amount of P23,044,527.88 “merely” because he had failed to verify whether Sixtu Chu’s maximum limit under the bill purchase line agreement applied to all transactions or to just a single transaction. Ibid.

[11] The case was deemed submitted for decision on March 30, 2004, upon this Court’s receipt of respondent’s Memorandum, signed by Atty. Avito P. Cahig. The Court received petitioner’s Memorandum, signed by Attys. Esteban Y. Mendoza, Calvin L. Kohchet-Chua and Gilbert M. Vioria, on February 3, 2004.

[12] Petitioner’s Memorandum, p. 14; rollo, p. 334.

[13] “Art. 283. Closure of establishment and reduction of personnel. -- The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking, unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertakings not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.”

[14] “Art. 284. Disease as ground for termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.”

[15] *Vinoya vs. National Labor Relations Commission*, 393 Phil. 441, 445, August 25, 2000; *Bongar vs. National Labor Relations Commission*, 356 Phil. 28, 34, August 24, 1998; *Quijano vs. Mercury Drug Corporation*, 354 Phil. 112, 121, July 8, 1998.

§4(b), Rule I, Book VI of the Omnibus Rules implementing the Labor Code provides:

“Sec. 4. Reinstatement to former position. — x x x

(b) In case the establishment where the employee is to be reinstated has closed or ceased operations or where his former position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent at least to one month salary or to one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year.”

[16] “Art. 282. Termination by employer -- An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties;
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- e. Other causes analogous to the foregoing.”

[17] San Miguel Corporation vs. Lao, 433 Phil. 890, 897, July 11, 2002.

§7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

“Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.”

[18] *Aparente Sr. vs. National Labor Relations Commission*, 387 Phil. 96, 107, April 27, 2000.

[19] *Supra*.

[20] *Id.*, pp. 898-900, per Vitug, J. (citing *Firestone Tire and Rubber Co. vs. Lariosa*, 148 SCRA 187, February 27, 1987; *PNCC vs. National Labor Relations Commission*, 366 Phil. 678, May 18, 1999; *United South Dockhandlers, Inc. vs. National Labor Relations Commission*, 335 Phil. 76, February 3, 1997; *Philippine Airlines, Inc. vs. National Labor Relations Commission*, 347 Phil. 215, December 5, 1997; *CJC Trading, Inc. vs. National Labor Relations Commission*, 316 Phil. 887, July 20, 1995; *Cathedral School of Technology vs. National Labor Relations Commission*, 214 SCRA 551, October 13, 1992).

[21] *Assailed Decision*, pp. 6-7; rollo, pp. 43-44.

[22] *Ibid.*

The CA relied on *Caoile vs. National Labor Relations Commission* (359 Phil. 399, November 24, 1998) in declaring that a reasonable basis to believe that the managerial employee was responsible for the purported misconduct sufficed for a dismissal on the ground of loss of trust and confidence.

[23] *Petitioner’s Memorandum*, p. 22; rollo, p. 341.

- [24] *Camua vs. National Labor Relations Commission*, 344 Phil. 460, 466, September 12, 1997; *Pepsico, Inc. vs. National Labor Relations Commission*, 177 SCRA 308, 312, September 7, 1989.
- [25] Assailed Decision, p. 2; rollo, p. 39.
- [26] *Aparente Sr. vs. National Labor Relations Commission*, supra; *Tanala vs. National Labor Relations Commission*, supra, p. 349; *Soco vs. Mercantile Corporation of Davao*, supra, p. 533; *Firestone Tire and Rubber Co. vs. Lariosa*, supra, p. 193.
- [27] Petitioner's Memorandum, pp. 18-19; rollo, p. 338-339.
- [28] *Ibid.*
- [29] Rollo, pp. 50-58.
- [30] The rationale for a motion for reconsideration is to allow the tribunal, board, or office to rectify the assigned errors and mistakes prior to elevating the matter for review. *Alcosero vs. National Labor Relations Commission*, 351 Phil. 368, 378, March 26, 1998; *Lasco vs. United Nations Revolving Fund for Natural Resources Exploration*, 311 Phil. 795, 799, February 23, 1995; *Zapata vs. National Labor Relations Commission*, 175 SCRA 56, 60, July 5, 1989.
- [31] Petitioner merely submitted respondent's Supplemental Position Paper filed with the labor arbiter as Annex "X"; rollo, pp. 254-260.