

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PHILIPPINE COMMERCIAL
INTERNATIONAL BANK,**
Petitioner,

-versus-

**G.R. No. 114920
August 23, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION and EDUARDO V.
MATURAN,**
Respondents.

X-----X

DECISION

REGALADO, J.:

The records of this case and UDK-11555 show that on March 23, 1993, petitioner received a copy of the resolution of the National Labor Relations Commission (NLRC), dated March 23, 1993, reversing the decision of the labor arbiter and declaring as valid and lawful the

dismissal of private respondent. On motion for reconsideration by the latter, said public respondent modified its former action in a resolution dated December 15, 1993, a copy whereof was received by petitioner on February 22, 1994.

Avowedly for the purpose of challenging the said modificatory resolution, petitioner filed two motions for extension of time to file a petition for certiorari on April 5, 1994 and April 12, 1994, respectively. On June 8, 1994, the Court, through its First Division in UDK-11555, issued a resolution denying said motions for extension of time for failure of petitioner to submit an affidavit of service as required by Circular 19-91.

On April 11, 1994, petitioner filed its present petition certiorari, in line with its original objective, which case was raffled to this Division. In a resolution dated June 13, 1994, herein respondents were ordered to file their respective comments to the petition. On July 29, 1994, private respondent Eduardo Maturan, through counsel, filed a "Manifestation with Motion for Clarification" of the allegedly contrasting resolutions issued by the Court which first denied the motion for extension of time to file petition and thereafter ordered respondents to file their comments. On the other hand, petitioner's motion for reconsideration of the resolution of June 8, 1994 was denied with finality on September 21, 1994.

In his "Manifestation with Motion to Deny Admission of Petition for Certiorari" filed on March 21, 1995, private respondent avers that he received another resolution, dated December 5, 1994 requiring him anew to file his comment, despite the aforesaid earlier resolution of September 21, 1994 which had not as yet been vacated or set aside. He contends that with the denial of petitioner's motion for extension, there is no basis for the filing and admission of the petition for certiorari and, consequently, this makes purposeless the need to file any comment on the part of both respondents.

Private respondent overlooks, or should now be made aware of, the fact that the filing of the motions for extension of time to file the petition and the subsequent denial thereof does not affect the validity of the filing of the present petition for certiorari which, under Rule 65 of the Rules of Court, should be made within a reasonable time.

Petitioner received a copy of the NLRC resolution denying its motion for reconsideration on February 22, 1994 while the present petition for certiorari was actually filed on April 26, 1994 which was accordingly done within a reasonable time.

This is an original action for certiorari which is merely required to be filed within a reasonable time from receipt of a copy of the questioned decision or resolution. Hence, with or without a motion for extension of time or the denial thereof, as long as the petition is actually filed within said reasonable period and complies with all requisites, the petition may be admitted by the Court. If the petition for certiorari under Rule 65 cannot be filed within said reasonable period, then a motion for extension of time do so is necessary. It is in petitions for review by certiorari under Rule 45, as a mode of appeal, where a specific reglementary period is imposed and by reason of which a motion for extension is indispensable if the petition cannot be seasonably filed. Consequently, private respondent's motion to deny admission of petition at bar is hereby denied.

As of this time, private respondent has not filed his comment. On its part, public respondent NLRC, through the Solicitor General, filed its comment on October 19, 1994. In the interest of expedient adjudication of this case, and since the submissions of petitioner and public respondent sufficiently present the issues and respective arguments of the contending sides, we will dispense with the comment of private respondent and proceed to decide this controversy.

The instant petition involves the dismissal of private respondent Eduardo Maturan, a bank teller of petitioner bank's General Santos City branch, whose services were terminated, on July 18, 1991 allegedly for incurring a cash shortage in the amount of P10,000.00, for failure to return the P8,000.00 cash withdrawal of a client, Rebecca Salud, and for extending unauthorized accommodations to clients. A complaint for illegal dismissal was filed before the NLRC Sub-Regional Arbitration Branch No. XI in General Santos City which thereafter rendered a Decision,^[1] dated May 7, 1992, and ordering the reinstatement of respondent Maturan to his former position without loss of seniority rights and privileges, and with payment of his back wages, allowances and other benefits from the time of his illegal

dismissal until promulgation of the decision, moral and exemplary damages, and attorney's fees.

In so ruling, the labor arbiter declared that the penalty of dismissal is too harsh considering that it had not been shown that private respondent had acted in bad faith and with malice; that, on the contrary, if respondent was really guilty, he would not have resorted to "client checking" because it would only expose his anomaly, whereas he could just have immediately declared the amount he supposedly abstracted as cash shortage; that the shortage had already been paid for; and that respondent's dismissal is irregular in that it was "union motivated," plus the fact that it took some time before respondent's immediate superiors and other bank officers actually conducted an investigation on the matter.

On appeal, public respondent NLRC rendered a Resolution^[2] promulgated on March 8, 1993 which reversed and set aside the decision of the labor arbiter, declaring as valid the dismissal of respondent and, accordingly, dismissing the complaint for lack of merit. However, said resolution was subsequently reconsidered and modified in another Resolution^[3] of the same commissioners promulgated on December 15, 1993, with the following dispositive portion:

"WHEREFORE, premises considered, the resolution of the Commission dated March 8, 1993 is hereby Modified in the sense that respondent bank is hereby ordered to reinstate complainant but without backwages from the time he was terminated up to the promulgation of the decision of the Labor Arbiter. Complainant shall be reinstated to a comparable position like that of a Customer Relations Assistant in lieu of the position of a teller. In case reinstatement is no longer feasible, the determination of which is tasked to the Labor Arbiter below during the execution stage, complainant is entitled to separation pay fixed in the amount of one (1) month salary, inclusive of other fringe benefits based on his latest salary for every year of service, a fraction of six (6) months to be considered as one (1) whole year. In the alternative, complainant may be allowed to avail of the company retirement plan if he qualifies, or whichever has greater benefits.

“Finally, respondent is further ordered to pay complainant his accrued backwages from the time it was withheld during the pendency of the appeal up to the rendition of this judgment. No costs.”

Hence, this petition wherein it is basically contended that respondent NLRC acted arbitrarily and with grave abuse of discretion in rendering its aforementioned modified resolution, on the arguments summarized as follows:

1. Petitioner avers that the P10,000.00 shortage incurred by respondent Maturan was attended by several irregularities, such as: (a) respondent's failure to rotate/reassign his cash box from August 11 to August 17, 1989; (b) the discrepancy of the teller's summary with the teller's ticker tape; (c) the respondent's failure to list the unsorted bills at the back of Summary of Teller's Transactions and Debits Cash Account Slips; (d) alterations/corrections on the Teller's Blotter were not approved by the cashier or any officer; (e) keeping money/valuables in his drawer instead of turning them over to the cashier. Hence, petitioner's loss of trust and confidence in him was justified. This was affirmed by no less than the NLRC when it stated that “(c)omplainant, however, may not be reinstated to his former position as teller since management, as we have already pointed out, had valid grounds to lose trust and confidence in him on said position formerly held. He may be reinstated to a comparable position that does not involve cash transactions like that of Customer Relations Assistant which he held when he was suspended pending his investigation.” Petitioner counters that even as Customer Relations Assistant, respondent will still be handling cash deposits for newly opened accounts. Hence, dismissal is just and proper under the circumstances.

The NLRC initially found that respondent had repeatedly violated the Company Code of Discipline which prohibits and penalizes with dismissal the foregoing irregular transactions. But, despite the absence of new evidence, it reversed itself and declared in its questioned resolution that such failure to

properly observe banking rules and procedures does not necessarily mean that he intended to commit fraud.

2. As to the P8,000.00 of Rebecca Salud, respondent NLRC declared in its earlier decision that respondent Maturan misled the labor arbiter and the commission in claiming that the P8,000.00 was deposited by Salud herself by adding P2,000.00 so as to make it appear that it represents the P10,000.00 deposited by Salud on August 17, 1989 when, in truth and in fact, the ledger account of Salud disclosed otherwise. The NLRC further held that the restitution of the missing amount did not absolve respondent Maturan from administrative liability. Yet, petitioner avers, the NLRC later ruled in its questioned resolution that dismissal was too harsh a penalty. Besides, according to petitioner, Miss Salud has never admitted that the P8,000.00 has already been returned to her. In fact, respondent Maturan visited Miss Salud to plead with her so that she could falsely admit that the P8,000.00 was part of the P10,000.00 deposited to her account.
3. The findings of respondent NLRC that the accommodations extended to Rebecca Salud was encouraged or tolerated by management and, in fact was equally extended by bank officers to other parties, is allegedly not supported by substantial evidence. Accommodations require the approval of the bank but, in the case of respondent, the accommodations he made were in violation of banking rules and procedure.

As a whole, these numerous infractions and acts of dishonesty prompted petitioner to dismiss herein respondent. Petitioner cites the ruling in *Allied Banking Corporation vs. Castro, et al.*^[4] which held that “(a) bank teller is entrusted with considerable sums of money. The teller as trustee is expected to possess a high degree of fidelity and trust. The repeated and numerous infractions committed by the private respondents in handling the moneys entrusted to them as tellers cannot be considered minor. Taking into account the nature of a teller’s job, the

infractions are too numerous to be ignored or treated lightly. The repeated acts of misconduct and willful breach of trust forfeited the respondent's right to security of tenure."

Petitioner hastens to add that loss of confidence is a valid ground for dismissing an employee and proof beyond reasonable doubt of the employee's misconduct is not required.

4. The considerable length of time that respondent has served the bank becomes of no moment when compared with the numerous violations that respondent has committed. "The infraction that he committed, *vis-a-vis* his long years of service with the company, reflect a regrettable lack of loyalty. If an employee's length of service is to be regarded as a justifying circumstance in moderating the penalty of dismissal, it will actually be a prize for disloyalty, perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables."^[5] Petitioner notes that even in its first resolution, respondent NLRC has likewise ruled that loss of trust and confidence justifies dismissal.

Since it is dismissal is justified, respondent is not entitled to reinstatement, backwages, or separation pay. The doctrine that employees dismissed for cause are entitled to separation pay on the ground of social and compassionate justice has been abandoned.^[6]

5. Assuming *arguendo* that dismissal is not proper, the relationship between petitioner and respondent has been so severely strained by reason of their respective imputations of bad faith that reinstatement is no longer prudent. Instead, respondent will just be entitled to separation pay so that he can be spared the agony of having to work anew with the employer under an atmosphere of antipathy and antagonism and the employer does not have to endure the continued services of the employee in whom it has lost confidence.^[7] At any rate, petitioner would rather pay separation pay to respondent than reinstate him.

Petitioner likewise questions the payment of backwages during the pendency of the appeal up to the rendition of the resolution of December 15, 1993 on the ground that the NLRC has initially declared the dismissal of respondent as legal. Where, the employee's dismissal was for a just cause, it would be neither fair nor just to allow the employee to recover something that he has not earned or could not have earned.^[8]

The aforecited case of Allied Banking Corporation vs. Castro, et al., which upheld the dismissal of the bank teller due to numerous infractions committed by him, is not applicable to the present case of herein respondent Maturan. In that case, the bank tellers there were found to have incurred several shortages on various dates (around 11 to 12 incidents were reported) within a span of 5 to 7 months; there were 2 to 4 reported incidents of overages incurred within a period of 4 months; they allowed encashment of checks over the counter without verification of the drawer's signature and without the approval of authorized officers; and they did not comply with instruction of their superiors to report to Central Bank Cash Units. These offenses justified the dismissal of the Employees concerned.

On the contrary, respondent Maturan was involved in a single incident of cash shortage in the amount of P10,000.00. By petitioner's own admission, the last shortage incurred by respondent prior to this incident was way back in January, 1988^[9] As correctly found by the labor arbiter, respondent is not a habitual violator which undesirable category would have warranted his dismissal.^[10] This is aside from the similar findings made by the labor arbiter and respondent NLRC that the dismissal was caused by respondent's active involvement in union activities. Consequently, it is justifiably believed that the dismissal of the private respondent is not warranted under the circumstances.

Furthermore, in the aforesaid Allied Banking Corporation case, there was a provision in the collective bargaining agreement which granted a yearly allowance for tellers to cover shortage which they may incur during the year. Thus, the NLRC held that this, in effect, is a recognition that among the hazards of tellers is the incidence of shortage and overages up to a certain limit. This very provision, therefore, is a clear indication that such errors are understandingly viewed and forgiven provided they do not go beyond the allowable limit.

The ruling therein supports the labor arbiter's observation that "(i)n (t)elling, (r)egardless of how long one has been in the trade, and how careful one is, there is no guarantee that one can never incur cash shortage or overage. No teller for that matter can testify that in his stint as such, everyday his actual cash on hand always tallies with the figure appearing in the teller's validating machine tape as the should be cash on hand.' Cash shortage and overages are but ordinary and normal banking activities." As a matter of fact, it is not disputed that there were other shortages or overages incurred by the other tellers in petitioner's General Santos City branch at about the same time that this particular infraction of private respondent occurred.^[11]

We must add, however, that these occurrences are subject to certain limitation, depending on the amount involved as well as the number and the gravity of the infractions. As earlier explained, we do not find the infraction committed by private respondent to be so grave as to warrant his dismissal. We are not even inclined to conform with the penalty imposed by respondent NLRC, that is, the non-payment of back wages from the time of respondent's dismissal up to the rendition of the decision of the labor arbiter (or from July 18, 1991 to May 7, 1992), considering that he has already paid, through salary deduction, the amount of P10,00000. Moreover, this mode of payment was even recommended for approval by no less than the Manager, Mr. Cubar^[12] and, as the records reveal it can be safely assumed that the same was approved because the amount was fully paid respondent on

March 28, 1990. The imposition of a penalty is, therefore, unwarranted.

The Labor arbiter and respondent NLRC uniformly found that the missing P8,000.00 of Rebecca Salud was included in the P10,000.00 deposit reflected in her account ledger. This is a factual finding which cannot be disturbed unless shown to have been made with grave abuse of discretion but which private respondent dealt with the missing money only serves to emphasize his good faith.

Thus, as cogently observed by the Solicitor General in his comment:

“The record clearly bears out that Salud went to the bank on August 17, 1989 and that she made a check deposit of P1,250.00 and two cash deposit of P10,000.00 and P11,200.00 that the same day — As a businesswoman who dealt with the bank on a regular basis and who particularly went to the bank on August 17 to make deposits, she surely would not have forgotten to include in her transaction the P8,000.00 which she left with respondent Maturan the day before. But more than a month later, she conveniently claims that the P8,000.00 had not been credited to her savings account. — Respondent Maturan had already demonstrated his honesty by not appropriating for himself the P8,000.00 which Agustin Bass had already acknowledge having received and by admitting to Rebecca Salud that he was keeping the P8,000.00 for her.”^[13]

To be a valid grounds for dismissal, loss of trust and confidence must be based on a willful breach of trust.^[14] And, as realistically stressed by the Solicitor General, unless based on a ground provided by law and supported by substantial evidence, dismissal will be disallowed, for what is at stake is not only the employee’s position, but also his means of livelihood.^[15] Considering that private respondent was acting in good faith, his dismissal would run counter to such established doctrinal rulings.

Finally there is the issue as to the long delay in the investigation of the incident and in effecting the dismissal of respondent only on July 18, 1989. The Solicitor General ably summed up the suspicious and

irregular circumstances which attended the dismissal of respondent, to wit:

- “1. On August 28, 1989, respondent Maturan started paying for the shortage of P10,000.00 he incurred on August 16, 1989;
2. On September 18, 1989, he was mysteriously required by Susana Go to again explain the shortage;
3. On September 20, 1989, he was summoned by Porfirio Cubar with whom he had a heated argument regarding the unauthorized accommodations given to Rebecca Salud;
4. On September 21, 1989, Go reported to Cubar that the circumstances surrounding the shortage were anomalous and irregular;
5. On September 25, 1989, forty days after the shortage was incurred, Cubar ordered respondent to explain within 24 hours why no disciplinary action should be taken against him for the P10,000.00 shortage;
6. On October 11, 1989, respondent Maturan met with an investigating committee which decided that a special investigation team will conduct an audit of all cash shortages incurred by the tellers of the General Santos Branch and will look into the complaints of respondent Maturan who claimed that he was being harassed and intimidated by some bank officials;
7. On October 13, 1989, in a separate report, officials of petitioner’s General Santos Branch submitted to PCIB Vice-President for Consumer Operations, Cristino Panlilio, a report detailing the irregularities and violations allegedly committed by respondent Maturan which attended the P10,000.00;
8. On October 20, 1989, an audit was conducted where respondent Maturan was made to answer a series of

questions in a questionnaire on the shortage of P10,000.00 incurred by him on August 16, 1989, and on the P8,000.00 of Rebecca Salud which the latter personally deposited, in addition to P2,000.00, into her savings account;

9. On March 1, 1990, respondent Maturan was given a loyalty award, a loyalty bonus of R4,733.00 and a PCIB ring for having completed 15 years of continued service with the bank;
10. On March 28, 1990, the shortage of P10,000.00 was fully paid by respondent Maturan;
11. On July 31, 1990, respondent Maturan was made a full-(f)ledged Customer Relations Assistant with a corresponding salary increase retroactive to October 3, 1989;
12. Within a period of almost nine months, respondent Maturan as a PCIBEU Union Steward was pursuing the grievances and complaints of union members on the irregular banking transactions and practices allegedly perpetrated by PCIB Accountant Susan Go and PCIB Cashier Rita Aquino;
13. On April 22, 1991, respondent Maturan was informed that the Mindanao Division Committee of petitioner will convene on May 9, 1991, to discuss the shortage of P10,000.00 incurred buy him last August 16, 1989;^[16]
14. On May 9, 1991, a meeting was held where the investigating committee recommended the dismissal of respondent Maturan;
15. On July 18, 1991, respondent Maturan was dismissed by petitioner PCIB, after a lapse of almost two years (23 months and 2 days) from the time he incurred the P10,000.00 shortage.”^[17]

Even the labor arbiter expressed surprise over the much delayed reaction of the bank officials concerned over the shortage incurred by private respondent, thus:

“What is surprising is the very much delayed reaction on of Actg. Cashier Susan Go and SM Cubar over the shortage of complainant. The shortage was incurred August 16, 1989, it was only on September 18, 1989 that complainant was made to explain by Actg. Cashier Susan Go (the very officer who counter-checked the steps undertaken by complainant in tracing and establishing his shortage, the circumstances of the shortage, and was required the same by SM Cubar on Sept. 25, 1989. There was already bad intent on the part of Actg. Cashier Susan Go, when an attempt was made to alter the date of her memo Annex E from September 18 to August 18, 1989. Likewise, SM Cubar could have required an earlier explanation and investigation of the case, he having earlier knowledge of the shortage, as manifested by his recommendation for approval of the mode of paying the shortage as proposed by complainant on August 21, 1989.”^[18]

It is quite interesting and significant that the findings of the labor arbiter and respondent NLRC to the effect that private respondent’s dismissal was by reason of or related to his union activities were not categorically refuted by petitioner. Neither were the allegations of harassment and intimidation committed on private respondent by bank officers Go and Cubar ever denied.

To conclude, we hold that there is grossly insufficient evidence to warrant the dismissal of private respondent on the ground of loss of trust and confidence. We are convinced, however, that the filing of the complaint for illegal dismissal and the protracted proceedings with confrontational exchanges therein between the parties have now evidently strained their erstwhile harmonious relationship. The reinstatement of private respondent would, in our view, no longer be beneficial to either party. An award of back salaries and severance pay in lieu of reinstatement would thus appear to be in order.^[19]

WHEREFORE, the challenged resolution of public respondent National Labor Relations Commission is hereby **MODIFIED**, and

petitioner Philippine Commercial International Bank (PCIB) is ordered to pay private respondent Eduardo Maturan (1) backwages from the time of his illegal dismissal until the rendition of the questioned resolution of public respondent, that is, from July 18, 1991 up to and including December 13, 1993; and (2) separation pay in the amount of one month's salary for every year of service, inclusive of other fringe benefits based on his latest salary, a fraction of six months to be considered as one whole year. In all other respects, the aforesaid resolution is hereby **AFFIRMED**.

SO ORDERED.

**Puno, Mendoza and Francisco, JJ., concur.
Narvasa, C.J., is on leave.**

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- [1] Rollo, 34; Case No. RAB-11-08-50286-91.
 - [2] *Ibid.*, 45; NLRC CA No. M-000888-92, with Presiding Commissioner Musib M. Buat as ponente, and Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr., concurring.
 - [3] *Ibid.*, 84-85.
 - [4] G.R. No. 70608, December 22, 1987, 156 SCRA 789.
 - [5] Citing Flores vs. National Labor Relations Commission, et al., G.R. No. 96969, March 2, 1993, 219 SCRA 350.
 - [6] Citing Cathedral School of Technology, et al. vs. National Labor Relations Commission, et al., G.R. No. 101438, October 13, 1992, 214 SCRA 551; Flores vs. National Labor Relations Commission, et al., ante.
 - [7] Citing Esmalin vs. National Labor Relations Commission, et al., G.R. No. 67880, September 15, 1989, 177 SCRA 537.
 - [8] Citing Cathedral School of Technology, et al. vs. National Labor Relations Commission, et al., supra.
 - [9] Rollo, 15.
 - [10] *Ibid.*, 41.
 - [11] *Ibid.*, 39-40. See also NLRC Resolution of December 15, 1993, 3-4; Rollo, 78-79.
 - [12] *Ibid.*, 35.
 - [13] *Ibid.*, 156.
 - [14] Marcelo, et al. vs. National Labor Relation Commission, et al., Resolution, G.R. No. 113458, January 31, 1995, 240 SCRA 783.
 - [15] Citing Pilipinas Bank vs. National Labor Relations Commission, et al., G.R. No. 101372, November 13, 1992, 215 SCRA 750.
 - [16] It will be noted that the last inquiry made on the incident was on October 17, 1989, but it was only on this date, April 22, 1991, and only after the

intensification of the union activities of private respondent concerning foremost the irregularities of the bank officials, that the investigation on the incident was resurrected.

[17] Rollo, 148-151.

[18] Ibid., 40.

[19] Marcelo, et al. vs. National Labor Relations Commission, et al., supra.

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