

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PILIPINAS BANK,
*Petitioner,***

-versus-

**G.R. No. 101372
November 13, 1992**

**HONORABLE NATIONAL LABOR
RELATIONS COMMISSION and
NATALE JEMINA,**

Respondents.

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D E C I S I O N

CAMPOS, J.:

At bar is a Petition for Review on *Certiorari* of the Resolution^[*] of the National Labor Relations Commission rendered on April 24, 1990 in NLRC NCR Case No. 2-584-87 entitled "Natale B. Jemina vs. Pilipinas Bank and/or Augusto E. Orosa" affirming the Labor Arbiters Decision^[**] finding private respondent's dismissal as illegal and ordering the payment of his backwages for one (1) year and separation or severance pay equivalent to one (1) month's salary for every year of service, without qualification and deduction, in lieu of his reinstatement.

The facts, as culled from the pleadings, are as follows:

Private respondent Natale Jemina was the Assistant Branch Manager of the Binondo Branch of petitioner Pilipinas Bank. Among his duties as such were the following:

- a. custody over all cash and properties inside the vault;
- b. bundle-counting of the cash-in-vault at the close of the banking hours in the presence of the Manager or another bank employee (the Manager's designated substitute witness). In the absence of the Manager or the substitute, complainant had the authority to designate another employee to counter-verify the amount of the cash-in-vault;
- c. signing of the Cash Proof Sheet after the counting and counter-verification of the Cash Proof Sheet by the Manager or the designated substitute witness.^[1]

On November 18, 1986, petitioner Bank discovered a cash shortage in the vault of its Binondo Branch in the amount of P100,000.00. Private respondent, as Assistant Branch Manager or "official custodian of the vault", together with the Bank Manager, Roberto D. Ilagan, was implicated in the said shortage. After an investigation by the Bank regarding the matter, both officers were dismissed on the grounds of violation of the Bank's Code of Offenses and loss of trust and confidence.

Both private respondent Natale Jemina and Bank Manager Roberto D. Ilagan assailed their dismissal for being illegal in two separate complaints filed before the Labor Arbiter. The Labor Arbiter sustained the dismissal of Roberto D. Ilagan, while she declared Natale Jemina's dismissal as illegal. From the latter decision, petitioner Bank appealed to the NLRC, which affirmed the decision of the Labor Arbiter. Hence, this petition.

It is not disputed that private respondent was the Assistant Manager of the Binondo Branch at the time of the shortage. On November 17, 1986, the Branch Manager was absent, and complainant took over the duties of the Branch Manager for that day.

Petitioner Bank and private respondent, however, have conflicting stories as regards the events that led to the loss of P100,000.00 in the vault of petitioner Bank's Binondo Branch.

Petitioner Bank's version of the incident is as follows:

As the Official Custodian of the vault, "complainant was gravely remiss in the performance of his duties in the light of the following:

1. Complainant did not make a bundle-count of the cash-in-vault at the close of banking hours on November 17, 1986, in the presence of the Manager's designated witness. In the absence of the Manager or his designated substitute, complainant did not designate/assist the teller to act as a witness to the counting;
2. Complainant made no formal turn-over of cash accountabilities on November 17, 1986. This notwithstanding the fact that he was to absent himself the following day;
3. With the absence of a turnover, there was no counter-verification of the cash-in-vault, a procedure required to be done on a daily basis;
4. Complainant does not dispute the fact that he failed to follow the vital turn-over procedure of accountabilities on November 17, 1986;
5. The Labor Arbiter's Decision confirms the fact of 'non-turnover.'^[2]

Private respondent Jemina, in his Comment,^[3] asserted that he cannot be held liable for non-compliance with the Joint Custodial requirement as prescribed under Section 1166.4 of the Central Bank Manual of Regulations for Banks because of the following undisputed facts disclosed during the full blown trial before the Labor Arbiter:

"On November 17, 1986 the Branch Manager went to the Hilton Branch on official business and/or bank transaction. (Constancia, May 19, 1987) The complainant-Assistant Branch Manager was left the official custody of the Cash-In-Vault charged with the following duties:

- a) Custody over all cash and properties inside the vault;
- b) Bundle-Counting of the cash-in-vault at the close of banking hours in the presence of the Manager's designated substitute; and
- c) Signing the Cash Proof Sheet after the counting and counter-verification of the Cash Proof Sheet by the designated substitute witness.

Complainant (private respondent herein) started sorting the day's collection earlier than the usual time due to the announcement received from the Head Office allowing the Branch's employees to go home early because of on-going strike of passenger's (sic) jeeps and buses in Metro-Manila. In such sorting out, complainant was assisted by the Current Account Bookkeeper and distributing clerk and at about 4:00 o'clock in the afternoon, the teller turned over to him all her remaining cash holdings together with the supporting slips and tickets for verification of all turn-overs made during that day which are also the basis of Cash-In-Vault Daily Report. They found the total cash balanced with the distributing clerk's blotter. Then complainant put the remaining cash and picos boxes inside the cash safe. Thereafter, complainant conducted bundle counts after sorting the cash, in the presence of the Current Account Bookkeeper and distributing clerk, not only once but several times until he was sure that his bundle count tallies with the entries of the cash-in-vault report. Then he deposited all the cash inside the vault and his staff saw the actual act of depositing all the cash sorted and bundle counted. Afterwards, he summoned the bank's security guard to witness the actual closing of the vault, record the time at the guard's log book and subjected himself to body search by the guard in compliance with the bank's policy."^[4]

Private respondent also pointed out the fact that the Cash-In-Vault Report for November 17, 1986 was duly verified by no less than the Branch Manager, Mr. Roberto Ilagan on the following day, November 18, 1988. This meant that the amount indicated in the Cash-In-Vault

tallied with that of the actual cash he deposited in the bank's vault on November 17, 1988. The alleged shortage was discovered only at 11:00 o'clock in the morning of the following day, or two hours after the bank opened for business transactions. Significantly, private respondent was absent from work on that particular day as he was assigned to attend a meeting at the Head Office.

The issue before Us is whether in the light of the foregoing, private respondent, Natale Jemina, was gravely remiss in his duties, which dereliction resulted in the Bank's loss of P100,000.00. Or stated differently, was private respondent grossly negligent in the performance of his duties warranting thereby his dismissal.

We rule in the negative.

Petitioner Bank failed to present an iota of evidence directly showing Jemina's participation in the loss of P100,000.00. It was not even able to pinpoint the exact date when the loss occurred. All it tried to establish was that Jemina was negligent in the performance of his duties in that he did not observe the joint custodial requirement of counter-verification of the amount of the cash in the vault on November 17, 1986, or the day before the loss was discovered. And on this basis, petitioner dismissed Jemina on the alleged grounds of loss of confidence and violation of the Bank's Code of Offenses.

But Jemina's failure to counter-verify the cash in the vault was sufficiently explained by him to be due to the Bank Manager's absence on that particular day. Left alone without the Manager's appointing a substitute in his behalf, and his co-employees rushing to go home because of the on-going transportation strike, Jemina did the most prudent thing under the circumstances by asking the Current Account Bookkeeper and the distributing clerk to assist him in the sorting out of the cash in the vault; by doing the bundle count in the latter's presence and letting his staff witness his depositing all the cash inside the vault. The actual closing of the vault was likewise witnessed by the security guard on duty. Before leaving the bank's premises, Jemina subjected himself to body search by the guard.^[5] All these disprove the presence of negligence.

We also note, with significance, the fact that the Bank Manager himself verified the Cash-In Vault Report of November 17, 1986 when the latter reported for work the following day. The verification meant that the amount indicated in the Report tallied with that of the actual cash private respondent deposited in the bank's vault the day before. Granting that there was indeed a shortage of P100,000.00 despite such verification, the Bank Manager was negligent. But as correctly observed by the Labor Arbiter, Jemina cannot be made responsible for the negligence of said Bank Manager. *Res inter alios acta*.

We cannot also discount the significant fact that the shortage was discovered only two hours, or at 11:00 o'clock in the morning, after the bank opened for business transactions on November 18, 1986. Jemina was not in the office on that day as he went direct to the Head Office to attend a meeting. Between the afternoon of November 17, 1986, when Jemina deposited all the bank's cash inside the vault, and November 18, 1986 at 11:00 o'clock in the morning, when the loss was discovered, there existed a plethora of possibilities regarding the loss of the money inside the vault. But we do not dwell on possibilities, suspicion and speculation. We rule based on hard facts and solid evidence.

We have consistently held that loss of confidence is a recognized ground for the discharge of an employee from employment.^[6] But such ground must be founded on facts established by substantial evidence. The burden of establishing such facts as reasonably cause loss of confidence in an employee — such facts as reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his participation therein is such as to render him unworthy of trust and confidence demanded of his position — is on the employer.^[7] In this case, the records are bereft of any showing that private respondent Jemina is responsible, solely or partly, for the loss of the P100,000.00 in the vault of petitioner Bank's Binondo Branch. Both the Labor Arbiter and the NLRC analyzed the employer's proofs and came to the reasoned conclusion that they did not adequately demonstrate Jemina's connection with the said loss. True, Jemina is a possible suspect. After all, the cash operations of the branch were under his control and supervision. He had joint custody with the Branch Manager over all cash and properties inside the vault. He had access to the vault where the

monies of the bank were kept. Indeed, petitioner Bank has every reason to suspect Jemina for the P100,000.00 shortage in its vault. But suspicion has never been a valid ground for the dismissal of an employee. The employee's fate cannot, in justice, be hinged upon conjectures and surmises.^[8]

The employer's evidence, although not required to be of such degree as is required in criminal cases, i.e., proof beyond reasonable doubt, must be substantial. The same must clearly and convincingly establish the facts upon which loss of confidence in the employee may be made to rest.^[9] Here, Jemina's dismissal cannot justifiably be sustained since the findings in this case, and the investigation made by the employer, failed to establish either complicity or culpability on his part. There was nothing in the record to show who, as between the Bank Manager and his Assistant, was responsible for the loss. While dishonesty or disloyalty of an employee is not to be condoned, neither should a condemnation on that ground be tolerated based on suspicion spawned by speculative inference.^[10]

It is the avowed policy of the law^[11] to protect labor. So that, unless based on a ground provided by law and is 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.^[12]

Thus, there being no basis in law or in fact for Jemina's dismissal, We hereby affirm the order of the public respondent NLRC for the payment to Jemina of his backwages starting from the period of his dismissal but not to exceed three (3) years, without qualification and deduction; and severance pay equivalent to one month's salary for every year of service. This is the more equitable disposition than reinstatement, considering the strained relations between Jemina and petitioner Bank. This way, (Jemina) can be spared the agony of having to work anew with the (petitioner Bank) under an atmosphere of antipathy and antagonism, and the latter does not have to endure the continued service of the former in whom it has lost confidence.^[13]

IN THE LIGHT OF THE FOREGOING, the Resolution of the NLRC dated April 24, 1990 is affirmed subject to the above modification.

SO ORDERED.

**Feliciano, Regalado and Nocon, JJ., concur.
Narvasa, C.J., is on official leave.**

[*] Penned by Romeo B. Putong, Commissioner.

[**] Decision, “Natale B. Jemina vs. Pilipinas Bank and/or Augusto E. Orosa”, NLRC NCR Case No. 2-584-87, January 31, 1989, Nieves B. de Castro, Labor Arbiter.

[1] This procedure is prescribed under Section 1166.4 of the Central Bank “Manual of Regulations for Banks and Other Financial Intermediaries” which provides: 1166.4 Joint Custody.

a. Joint Custody shall mean the processing of transactions in the presence of and under the direct observation of a second person. Both persons shall be equally accountable for the physical protection of the items and records involved

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[2] Rollo, pp. 11-12.

[3] Rollo, pp. 104-107.

[4] Decision, “Natale B. Jemina vs. Pilipinas Bank and/or Augusto E. Orosa”, NCR NCR Case No. 2-584-87 January 31, 1989, Nieves V. de Castro, Labor Arbiter; Rollo, pp. 70-71.

[5] Decision, id.

[6] Commercial Motors Corporation vs. Commissioners, NLRC, 192 SCRA 191 (1990); Hernandez vs. NLRC, 176 SCRA 269 (1989); Mercury Drug Corporation vs. NLRC, 177 SCRA 580 (1989); Dole Phils., Inc. vs. NLRC, 123 SCRA 673 (1983).

[7] Commercial Motors Corporation vs. Commissioners, id.

[8] San Miguel Corporation vs. NLRC, 180 SCRA 281 (1989).

[9] Starlite Plastic Industrial Corporation vs. NLRC, 171 SCRA 315 (1989); General Bank and Trust Company vs. CA, 135 SCRA 569 (1985) cited in Commercial Motors Corporation vs. Commissioners, supra, note 6.

[10] San Miguel Corporation vs. NLRC, supra, note 8.

[11] 1987 Philippine Constitution.

Section 18, Article II. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Section 3, Article III. The State shall afford full protection to labor.

[12] Euro-Linea Phils., Inc. vs. NLRC, 156 SCRA 78 (1987).

[13] Citytrust Finance Corporation vs. NLRC, 157 SCRA 76 (1988) cited in Quezon Electric Cooperative vs. NLRC, 172 SCRA 88, 97-98 (1989).