

# FIRST DIVISION

[ G.R. No. 202049, June 15, 2020 ]

**PHILIPPINE SAVINGS BANK, PETITIONER, VS. HAZEL THEA F. GENOVE, RESPONDENT.**

## DECISION

**REYES, J. JR., J.:**

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court are: 1) the Decision<sup>[2]</sup> dated August 8, 2011, which reversed and set aside the Resolutions dated May 21, 2007,<sup>[3]</sup> and August 24, 2007,<sup>[4]</sup> respectively issued by the National Labor Relations Commission (NLRC) in NLRC Case No. V-000730-06 (RAB VII-02-0324-05); and 2) the Resolution<sup>[5]</sup> dated May 11, 2012, denying the Philippine Savings Bank's (petitioner's) motion for reconsideration, both of which were promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 03070 entitled "*Hazel Thea F. Genove v. Philippine Savings Bank, Jaime Araneta and Priscilla M. Torres.*"

The facts, as culled from the records of the case, are as follows:

On July 19, 1995, Hazel Thea F. Genove (respondent) was employed as a bank teller by herein petitioner and was eventually assigned at its branch located at Cebu Mandaue-San Miguel. It was alleged that respondent was the only teller employed by the said branch since May 2004.

On July 7, 2004, at around 2:00 p.m., the spouses Ildebrando and Emma Basubas (spouses Basubas) went to petitioner's branch at Cebu Mandaue-San Miguel to purchase a cashier's check in the amount of P1,358,000.00. They brought two bags of money at the teller's counter and asked respondent to count the money inside the bags. Respondent accommodated their request and started to count the money inside the First bag in bundles of P1,000.00. However, since she was the only teller at that time, respondent had to stop her counting from time to time to assist the other customers that came to the bank for their respective transactions.

In the meantime, Mrs. Basubas secured the cashier's check from the branch cashier, Luvimin S. Tago (Tago),<sup>[6]</sup> and left the bank while Mr. Basubas stayed behind to wait for respondent to finish counting the money.

When respondent opened the second bag, she saw that instead of P1,000.00 bills, the monies inside consisted of various denominations and the spouses Basubas did not prepare a denomination breakdown thereof. Respondent then called the attention of Mr. Basubas to oversee the counting of the monies inside the second bag. After all the denominations inside the second bag were counted and tallied by respondent, she found that the total amounted only to P1,345,000.00 or a

difference of P13,000.00 from the amount of the cashier's check issued to them. Mr. Basubas then handed the said difference in the amount to respondent to cover the supposed deficiency and left the bank thereafter.

Shortly before 4:00 p.m., the spouses Basubas returned and informed respondent that their collections had lacked P13,000.00. Thus, respondent recounted the amount of cash she had at hand and compared it with the recorded transactions within that day and found that the amounts balanced with each other. Having informed of the results thereto, the spouses Basubas left the bank again.

However, after the bank had already closed, the spouses Basubas called respondent and asked for another recount. Respondent asked Tago if the spouses Basubas could be allowed to enter the bank premises for the said recounting, which the latter assented to. A few minutes thereafter, the spouses Basubas arrived with their supplier, the spouses Fernandez.

Respondent conducted another recount of her cash at hand and compared it with her recorded transactions for the day, and the resulting amounts remained balanced with each other, as with the previous recounting done earlier that day. Not satisfied, the spouses Basubas requested for a body search of respondent, her personal belongings and the teller's cage. When respondent agreed to the search, the bank's security guard, Sg. Joel Misal (Sg. Misal) began to frisk her body and combed through her personal belongings, as well as the teller's cage, but yielded nothing. Therefore, the spouses Basubas and the spouses Fernandez left the bank premises.

Tago then instructed respondent to make an incident report regarding the events that transpired that day. Soon after, Tago noticed a piece of paper with money under a cabinet near the teller's cage. Tago requested respondent to pick it up, and it turned out to be a deposit slip with Twelve Thousand Pesos (P12,000.00) folded and taped together like a fan or a flattened cone. Tago requested for Sg. Misal and the janitor to search the area again, thinking that the remaining P1,000.00 bill was merely blown away somewhere nearby. Moments later, the janitor reports that he found one piece of P1,000.00 bill taped inside the sliding door cabinet under the old and discarded bill arranger.

Immediately thereafter, Tago called the spouses Basubas to return the P13,000.00 to them. After receiving the P13,000.00 from Tago, the spouses Basubas insisted for an investigation regarding the incident and claimed that that they could no longer trust the bank.

On August 5, 2004, petitioner sent a show-cause letter<sup>[7]</sup> to respondent, directing the latter to submit a written explanation on why her services should not be terminated for dishonesty and/or qualified theft, gross negligence and violation of the bank's policies and Code of Conduct. Furthermore, in a Memorandum dated September 16, 2004, respondent was made to undergo a polygraph test at the National Bureau of Investigation (NBI), Manila and attend the administrative hearing that was set on October 29, 2004.

Thus, on November 12, 2004, petitioner issued its Memorandum<sup>[8]</sup> notifying respondent of its decision to terminate her employment with the bank upon receipt of the same, explaining that she had failed to conduct the initial counting of the

monies in the presence of the spouses Basubas and the fact that the missing P13,000.00 were found within respondent's cubicle.

Aggrieved, respondent filed a complaint for illegal dismissal, nonpayment of 13<sup>th</sup> month pay, separation pay, leave benefits and tellers' allowances against herein petitioner before the Regional Arbitration Branch (RAB) No. VII of the NLRC in Cebu City.

In her Position Paper,<sup>[9]</sup> respondent admitted that she began to count the monies given to her by the spouses Basubas without their presence, but when she found out that the second bag consisted of different denominations than what was stated in their wrapper, she called Mr. Basubas to oversee the counting of the remaining bundles of money. She also pointed out that she submitted herself and her personal belongings to a search conducted by the security guard of the bank. Her cubicle was also combed thoroughly by the security guard and yielded nothing in result. She even went to the NBI to take a polygraph test as requested by the management.

Respondent justified the lapses she committed in the performance of her duties as a mistake borne from the heavy workload she had to complete that particular day as the lone teller of the bank. She also pointed out that she had served petitioner for almost 10 years without any issue regarding her honesty. Furthermore, she was terminated from her employment by the management by reason of mere suspicion regarding her honesty in recounting the monies given to her by the spouses Basubas.

On the ground of gross negligence, respondent countered that a single or isolated act of negligence does not constitute a just cause for her dismissal from her employment. Petitioner had not even shown that her negligence was gross and habitual. While she admitted that she took a risk in not following the proper procedure in deference to a valued and well-known client of the bank, it was tolerated and accepted by the latter as shown by the previous and similar transactions she facilitated earlier that day and even before she was transferred to the Cebu Mandaue-San Miguel branch of petitioner. In fact, she did her best to accommodate the spouses Basubas in counting more than a million pesos in different denominations while also entertaining other clients of the bank, being the only teller of the same. Finally, the breach in trust and confidence reposed to her by petitioner must be willful and substantial to constitute as a valid cause for termination.

### **Ruling of the RAB**

On March 20, 2006, the RAB rendered a Decision partially in favor of petitioner and respondent, to wit:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Philippine Savings Bank to pay complainant Hazel Thea F. Genove the amount of EIGHTY-SIX THOUSAND FIVE HUNDRED FIFTY-THREE PESOS AND 33/10 (P86,553.33) representing proportionate 13<sup>th</sup> month pay, teller's allowance and monetary value of her unused

leave credits.

The other claims and the case against the individual respondents are dismissed for lack of merit.

SO ORDERED.<sup>[10]</sup>

The RAB ruled that respondent was dismissed for cause and in accordance with law by reason that as a confidential employee, whose trust and confidence reposed on her by petitioner was breached, the latter cannot be expected to continue her employment with the same. There is enough basis for petitioner to recall their trust and confidence with respondent as she had committed operational lapses in her transaction with the spouses Basubas. Also, the fact that the missing P13,000.00 was found in her cubicle serves as sufficient basis for petitioner to suspect that respondent was responsible for its disappearance.

However, petitioner is still liable for the proportionate 13<sup>th</sup> month pay due to respondent for the year 2004, her teller's allowance for the same year and her accumulated unused leave credits since these were not controverted by the former.

Not contented with the ruling of the RAB, herein respondent seasonably filed her appeal with the NLRC.

### **Ruling of the NLRC**

On February 28, 2007, the NLRC, in its Decision, reversed the ruling of the RAB, stating that:

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED insofar as the issue of dismissal. Complainant was dismissed without a valid cause. As such, respondent Philippine Savings Bank is hereby directed to reinstate complainant to her former position without loss of seniority rights with full backwages from the time of dismissal until actual reinstatement. In addition, complainant should be paid of her monetary benefits granted in the appealed Decision plus ten percent (10%) attorney's fees on the total monetary awards.

SO ORDERED.<sup>[11]</sup>

The NLRC found that the charge of dishonesty against respondent was not satisfactorily established. It was not shown that respondent kept the missing P13,000.00 to herself. In fact, a search of her person, her personal belongings and her cubicle yielded nothing. Moreover, she complied with the request of the management to undergo a polygraph test conducted by the NBI. The tribunal also took into consideration that respondent had been exposed to heavy volumes of transactions daily since May 2004 as the lone teller of the branch of herein

petitioner in Cebu-Mandaue, San Miguel. The fact that the money was found under respondent's desk does not automatically indicate dishonesty. It might have been inadvertently dropped from the bags since some bills were not intact.

With regards to the charge of gross negligence and violation of bank policies and Code of Conduct, the NLRC held that the negligent acts committed by respondent were not so gross as to warrant her separation from work. It pointed out that petitioner tolerated the practice of long-time clients leaving their cash deposits with the teller. Respondent might have simply got overwhelmed by her workload on that day that she failed to call the attention of the spouses Basubas in a timely manner when she started to count the monies inside the first bag.

However, the tribunal did not mean that such acts of negligence should be encouraged or countenanced considering that a bank's operation is imbued with public interest. It was merely evaluating the facts and circumstances which brought about the incident and relating these circumstances as to what may be considered a tolerable degree of negligence. Thus, in the eyes of the said tribunal, respondent merely committed an error of judgment or simple negligence. And since respondent's termination was not done in bad faith, fraudulent or oppressive to labor, respondent's claim for damages has no basis in law. But it granted her claim for attorney's fees as she was forced to litigate her claims and engaged a counsel to protect her interests.

Petitioner filed its Motion for Reconsideration<sup>[12]</sup> of the Decision of the NLRC on April 16, 2007. In a complete turnabout, the NLRC granted the motion in its Resolution dated May 21, 2007, and reversed its finding that respondent had been illegally dismissed from her employment, which reads as follows:

WHEREFORE, premises considered, the motion for reconsideration of respondents is hereby GRANTED. The Decision of the Commission promulgated on February 28, 2007 is RECONSIDERED and complainant is declared to have been validly dismissed from employment. As such, she is not entitled to reinstatement, payment of backwages and attorney's fees.

SO ORDERED.<sup>[13]</sup>

The tribunal found the procedural lapses committed by respondent as "undeniably gross and [inexcusable]." It pointed out that she should have exercised utmost diligence and care in handling the cash given to her by the spouses Basubas, in order to protect the interests of the bank, as well as its clients. Respondent should have required the spouses Basubas to prepare a denomination breakdown of the monies they have given to her and called Mr. Basubas to witness the counting of the same right from the start in order to avoid confusion and undue exposure of the bank to a certain risk. Finally, the missing P13,000.00 was found in respondent's cubicle, where only she had the access thereto.

Aggrieved by such reversal of its previous ruling, respondent filed her own motion for reconsideration, but to no avail. Thus, respondent sought recourse with the CA