

## FIRST DIVISION

[ G.R. No. 194944, September 18, 2017 ]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. TERESITA FE A. GREGORIO, RESPONDENT.**

### D E C I S I O N

**JARDELEZA, J.:**

Petitioner Philippine National Bank (PNB) filed this petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court challenging the Decision<sup>[2]</sup> of the Court of Appeals (CA) dated July 15, 2010 in CA-G.R. SP No. 110045 and its Resolution<sup>[3]</sup> dated December 21, 2010 which denied PNB's motion for reconsideration. The CA found that the National Labor Relations Commission (NLRC) committed grave abuse of discretion when it reversed the Labor Arbiter (LA) and ruled that PNB illegally dismissed respondent Teresita Fe A. Gregorio (Gregorio).<sup>[4]</sup>

Gregorio was initially hired by PNB as an apprentice teller in 1978. She rose through the ranks and eventually became the Branch Manager, with a level of Senior Manager, of PNB's Sucat, Parañaque Branch (PNB Sucat).<sup>[5]</sup>

Sometime in December 2002, a depositor requested confirmation that PNB Sucat offers a unique kind of high-return investment, as promised by branch officers and personnel.<sup>[6]</sup> Thus, from January 8 to 24, 2003, PNB's Internal Audit Group (IAG) conducted a credit review at PNB Sucat regarding its activities connected with loan against deposit hold-out transactions.<sup>[7]</sup>

On February 3, 2003, a certain Benita C. Rebollo (Rebollo) also executed an affidavit detailing her transactions with Gregorio.<sup>[8]</sup>

On February 18, 2003, the IAG submitted its evaluation, findings, and recommendation in a Memorandum<sup>[9]</sup> (IAG Memorandum) which essentially detailed how Gregorio authorized the conduct of irregular transactions in PNB Sucat. From its investigation and Rebollo's affidavit, the IAG discovered Gregorio's purported irregular lending activities: Gregorio, along with Gloria Miranda (Miranda), a customer relation specialist of PNB Sucat, allegedly convinced depositors to invest in a PNB product that had an above-market interest income yield. To avail of this product, Gregorio required depositors to avail of a loan secured by their deposits with PNB Sucat. The loan proceeds are thereafter loaned to other borrowers who undertook to pay a 5% monthly interest. Of the 5%, 3% will be paid to them as income interest yield while the remaining 2% will go to PNB Sucat as commission. Parenthetically, the IAG found no records showing that PNB Sucat received any commission arising from these loan activities. To facilitate the loans, Gregorio required the depositors to accomplish loan documents such as the Application/Approval Form on Loans Against Deposit Hold-out, Promissory Notes,

and Deposit Hold-out Agreements. The proceeds of the loans are then released through manager's checks. These checks, in turn, are credited to the savings accounts of persons other than the borrowers.<sup>[10]</sup>

The IAG Memorandum identified other irregular transactions within PNB Sucat to prove Gregorio's supposed *modus operandi*: Gregorio approved the application of loan proceeds of 25 borrowers to settle the outstanding loans covered by 44 promissory notes and bank charges of other borrowers.<sup>[11]</sup> Sampled bank transactions from the period of February 15 to August 29, 2001 show that Gregorio approved 21 manager's checks representing the proceeds of loans against deposit hold-outs. These were loan proceeds of 15 borrowers credited to the accounts of persons other than the borrowers. There were no documents showing the borrowers' written consent to the crediting of their loan proceeds to other people's accounts. Dollar loans against hold-out were granted to three borrowers which proceeds, however, were credited without written consent to the account of a third person.<sup>[12]</sup>

The IAG's investigation also revealed that there were two deposit hold-out borrowers who received the monthly 3% interest income yield through their savings accounts. This was paid either in cash or fund transfer from the account of a certain Grace de Guia Brozas (Brozas). The IAG asserted that this is the dummy account of Miranda, who worked with Gregorio in the conduct of these irregular lending activities,<sup>[13]</sup> on the basis of bank records showing several fund transfers of large amounts from Miranda's account to Brozas' account.

The IAG also noted in its Memorandum that tellers of PNB Sucat accepted for encashment eight managers' checks representing loan proceeds without the proper endorsement of the loan borrowers.<sup>[14]</sup> In other instances, the tellers paid managers' checks in cash even when it was not clear if the proper bank officer approved the checks for encashment or deposit.<sup>[15]</sup>

Further, the IAG found that the 3% interest was paid to the depositors who availed of the loan against hold-out transactions either: (1) to their savings or checking accounts with PNB Sucat or (2) by Gregorio in cash.<sup>[16]</sup>

Later on, two other depositors executed affidavits narrating their transactions with Gregorio. Specifically, Maxima Villar (Villar) and Virginia Pollard (Pollard) executed affidavits on May 19, 2003 and October 14, 2003, respectively, depicting essentially the same transaction that Rebollo stated in her affidavit. In sum, these depositors claimed in their affidavits that Gregorio convinced them to invest in a PNB product that had a high interest income yield. They were required to sign withdrawal slips and other loan documents. Later on, they claimed that, upon inquiry with PNB Sucat, they were surprised to learn that they have outstanding loans with the bank and that their deposits were subject of a hold-out agreement. They were presented with bank documents concerning their loans and holdout agreements. They insisted in their affidavits that they never agreed to contract a loan with the bank.<sup>[17]</sup>

On May 30, 2003, the PNB Administrative Adjudication Panel (Panel) charged Gregorio with gross misconduct and dishonesty based on Villar's affidavit.<sup>[18]</sup> On February 4, 2004, Gregorio was again charged with gross dishonesty and/or willful breach of trust and gross misconduct and/or negligence.<sup>[19]</sup> Gregorio filed separate

answers to these charges on June 12, 2003<sup>[20]</sup> and February 16, 2004,<sup>[21]</sup> respectively. In her answer to the first charge, Gregorio submitted Villar's affidavit of retraction which she received on June 11, 2003. According to Villar's affidavit of retraction: (1) the loan against deposit hold-out transaction was a matter between PNB Sucat's depositors and their respective borrowers; (2) these loans "are [the depositors-borrowers'] private concern. Employees of the [b]ranch do not have to do anything with them (*sic*) and their business concerns;"<sup>[22]</sup> (3) Villar executed the earlier affidavit "out of [her] sincere fear and anxiety that [she] may not be able to get [her] money from PNB Sucat with interest, for reasons which [she] was (*sic*) not able to verify the facts first before executing the affidavit;"<sup>[23]</sup> (4) Gregorio never induced Villar to enter into any illegal activity or to sign any blank bank documents; (5) the hold-out of Villar's deposit was made upon her instructions.<sup>[24]</sup> Notably, Rebollo also executed an affidavit of retraction of her earlier affidavit.<sup>[25]</sup>

In her answer to the second charge, Gregorio denied Pollard's claim that she made the latter sign blank bank documents. Instead, according to Gregorio, Pollard was made to sign "documents with blank spaces on them that [Pollard], like other depositors, have (*sic*) to fill out."<sup>[26]</sup> Gregorio also stated that she never borrowed money from Pollard nor induced her to invest money in high interest-yielding ventures. Rather, Pollard's loan activities were between her and her borrowers. Gregorio asserts that Pollard only complained because her borrower had failed to pay her. Nevertheless, whatever losses she may have incurred is her concern. Gregorio, as well as the staff of PNB Sucat, has nothing to do with this.<sup>[27]</sup>

On March 22, 2004, the Panel conducted a meeting on the charges which Gregorio attended.<sup>[28]</sup> On March 29, 2004, the Panel recommended Gregorio's dismissal<sup>[29]</sup> after taking into consideration the affidavits executed by Rebollo, Villar, and Pollard, as well as the results of the IAG investigation. Although the Panel noted the affidavits of retraction from Villar and Rebollo, it did not give credence to these later affidavits. As to Villar's affidavit of retraction, the decision stated that the original of the affidavit was never presented before the Panel and thus its authenticity was never established. It also cited jurisprudence stating that affidavits of retraction are generally unreliable. As to Rebollo's affidavit of retraction, the decision emphasized that this second affidavit even revealed Gregorio's active participation in the supposed irregular lending activities when Rebollo stated that:

***[N]a ang mga pangyayari ay alam ko, at ang ginawa lamang ni Mrs. Gregorio ay tinulungan ako kung papaano kumita ang pera ko ng mas mataas kay sa binibigay na tubo ng bangko sa aking "time deposit"; na ang kanyang ginawa lamang ay ipinakilala ako kay Mrs. Realina Ty na siya raw ay "supplier" ng City Hall ng Parañaque at siya ang gagamit ng aking pera.*** x x x<sup>[30]</sup> (Emphasis and underscoring in the original.)

On May 4, 2004, PNB issued a memorandum dismissing Gregorio from service based on the Panel's recommendation. This prompted Gregorio to file before the NLRC an action for illegal dismissal, damages and attorney's fees, with prayer for reinstatement with full backwages against PNB. The LA found that Gregorio was illegally dismissed, rooting his finding on the insufficiency of PNB's bases in dismissing Gregorio. The LA asserted that as to the first charge, PNB based its decision solely on Villar's first affidavit which has since been successfully rebutted by

Gregorio when she presented Villar's affidavit of retraction. There was thus no basis for holding Gregorio guilty on the first charge.<sup>[31]</sup>

As to the second charge, the LA found that PNB based its decision solely on Pollard's affidavit, which Gregorio was again able to refute. Moreover, since Gregorio was never given the opportunity to confront Pollard, the LA concluded that Pollard's affidavit simply cannot suffice to warrant a finding of Gregorio's guilt on the second charge.<sup>[32]</sup> It also found that the consistent high performance ratings previously given by PNB to Gregorio militate against PNB's position.<sup>[33]</sup> The LA thus held:

**WHEREFORE**, all foregoing premises considered, judgment is hereby rendered:

1. Declaring complainant **TERESITA FE A. GREGORIO** to have been illegally dismissed from her employment and ordering respondent **PHILIPPINE NATIONAL BANK** to immediately reinstate her to her former or substantially equivalent position without loss of seniority rights and other privileges; and
2. Further ordering respondent **PHILIPPINE NATIONAL BANK** to pay complainant **TERESITA FE A. GREGORIO** the amount of **P1,554,247.75** representing the monetary awards granted the latter as initially computed above.

For being a mere nominal party, Mr. Lorenzo V. Tan is hereby ordered dropped as party-respondent in this case.

**SO ORDERED.**<sup>[34]</sup> (Emphasis in the original.)

PNB appealed to the NLRC which reversed the LA's Decision in a Decision<sup>[35]</sup> promulgated on September 26, 2008. The dispositive portion of the NLRC Decision reads:

**WHEREFORE**, premises considered, the appeal of respondent Philippine National Bank is GRANTED. The Decision of Labor Arbiter Napoleon M. Menese dated December 8, 2005 is REVERSED and SET ASIDE, and a new one is hereby rendered DISMISSING the above-entitled [complaint] for lack of merit.

**SO ORDERED.**<sup>[36]</sup> (Emphasis in the original.)

The NLRC held that PNB met the required burden of proof. According to the NLRC, PNB used the affidavits of Rebollo, Villar, and Pollard as well as the result of the IAG's investigation as bases for its findings. It agreed with PNB that Rebollo and Villar's affidavits of retraction did not necessarily make their earlier statements false as recantations are generally looked upon with disfavor as they can be easily fabricated. It added that the LA erred in holding that Gregorio should have been given the opportunity to confront Pollard. According to the NLRC, the confrontation of a witness is not required in company investigations for administrative liability of the employee. Further, the NLRC highlighted that Gregorio's supposed evidence consisted of nothing more than mere denials. Finally, it held that Gregorio's previous commendations did not necessarily mean that she could not have committed the

charges against her.<sup>[37]</sup>

Gregorio filed a motion for reconsideration<sup>[38]</sup> of the NLRC's Decision. This, however, was denied.<sup>[39]</sup> Thus, Gregorio filed a special civil action for *certiorari*<sup>[40]</sup> under Rule 65 of the Rules of Court before the CA, alleging that the NLRC, in reversing the LA, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its Decision dated July 15, 2010, the CA granted Gregorio's petition, reversed the NLRC, and reinstated the LA's Decision. Agreeing with Gregorio that PNB presented no sufficient evidence to warrant her dismissal, the CA found no factual or legal basis for the charges of gross misconduct and willful breach of trust and confidence. It found all the questioned bank transactions to be well documented and the loan against hold-out agreements to be regular transactions of PNB Sucat. The CA added that while Villar and Pollard legitimately availed of this loan arrangement, they suffered losses because their borrowers failed to pay the promised interest. For the CA, this was neither Gregorio's fault nor within her control. It also highlighted that PNB based its decision to terminate Gregorio on the three affidavits, two of which were recanted by Villar and Rebollo.<sup>[41]</sup> As to Pollard's affidavit which was never recanted, the CA found that: (1) PNB never gave Gregorio the opportunity to confront Pollard; and (2) Pollard's allegations were unsubstantiated.<sup>[42]</sup> Aside from stressing that there was also no evidence that PNB incurred losses or damages because of Gregorio's activities, the CA also found relevant the fact that Gregorio has consistently received high performance ratings.

PNB is now before this Court challenging the CA's ruling. It asserts that the CA erred in finding that it acted solely on the basis of the three (3) affidavits. In truth, PNB based its decision on the IAG Memorandum, the affidavits executed by Rebollo, Villar, and Pollard, the affidavits of retraction subsequently executed by Villar and Pollard, and Gregorio's answers to the two charges against her.<sup>[43]</sup> PNB maintains that these altogether provide substantial evidence to establish Gregorio's irregular transactions as manager of PNB Sucat.<sup>[44]</sup> These irregular transactions, in turn, amount to gross misconduct, gross dishonesty and willful breach of trust and confidence.<sup>[45]</sup>

In her comment, Gregorio insists that there was no factual basis for her dismissal.<sup>[46]</sup> Further, she challenges the purported new allegation in PNB's petition that she ran "a bank within [a] [b]ank."<sup>[47]</sup> Since this was never raised in any of the proceedings below, Gregorio claims that raising it now on a petition for review before this Court is a breach of her right to due process.<sup>[48]</sup>

At the onset, we must emphasize that decisions of the NLRC are reviewable by the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court. This means that the CA must look at an NLRC Decision and ascertain if it merits a reversal exclusively on the basis of one ground-the presence of grave abuse of discretion amounting to lack or excess of jurisdiction. Necessarily then, when a CA decision is brought before us through a petition for review on *certiorari* under Rule 45, the question of law presented before us is this-whether the CA correctly found that the NLRC acted with grave abuse of discretion in rendering its challenged Decision.