

SECOND DIVISION

[G.R. No. 179648, August 07, 2013]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. MARY SHEILA
ARCOBILLAS, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

"The rule is well-settled that the filing of a [M]otion for [R]econsideration is an indispensable condition to the filing of a special civil action for certiorari x x x."^[1]

Before us is a Petition for Review on *Certiorari*^[2] assailing the November 15, 2006 Decision^[3] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 00326, which dismissed the Petition for *Certiorari* filed therewith and affirmed with modification the August 31, 2004 Decision^[4] of the National Labor Relations Commission (NLRC) in that it ordered petitioner Philippine National Bank (PNB) to shoulder 40% of the financial losses it sustained due to the inadvertent act of misposting committed by its teller, respondent Mary Sheila Arcobillas (Arcobillas), who was ordered to pay the remaining 60%.

Factual Antecedents

On May 15, 1998, the PNB Foreign Currency Denomination-Savings Account (FCD-S/A) No. 305703555-1 of Avelina Nomad-Spoor (Nomad-Spoor) was credited with US\$138.00. However, instead of posting its peso equivalent of P5,517.10, Arcobillas, the assigned administrative teller at PNB Bacolod-Lacson branch, erroneously posted US\$5,517.10, resulting in an overcredit of US\$5,379.10. Said amount was later withdrawn by Nomad-Spoor on May 29, 1998 and June 8, 1998 to the damage of PNB in the amount of P214,641.23.

The misposting was discovered only about seven months later. After investigation by PNB's Inspection and Investigation Unit Arcobillas was administratively charged with neglect of duty.^[5]

In her Affidavit^[6] executed on May 5, 1999, Arcobillas admitted her mistake, apologized for it, and stated that she did not benefit from the unintentional misposting. She narrated that she erroneously posted US\$5,517.10, instead of P5,517.10, which figure represents the peso value of US\$138.00. She honestly believed that the US\$5,517.10 was correct because when added to the other on-line dollar transaction of US\$1,004.60 the result was US\$6,521.70, which tallied with the teller's machine reading. Arcobillas further explained that the heavy workload that day, a Friday coinciding with payroll day, plagued with intermittent power interruptions, brought on a severe headache which greatly affected her work performance.

On February 24, 2000, PNB's Administrative Adjudication Panel found Arcobillas guilty of gross neglect of duty and meted upon her the penalty of forced resignation with benefits, to take effect immediately upon her receipt thereof. Upon denial of her plea for reconsideration, Arcobillas instituted a Complaint^[7] for illegal dismissal with money claims against PNB, PNB's Senior Manager Reynald A. Rey and Senior Vice-President Rosauro C. Macalagay.

Ruling of the Labor Arbiter

In a Decision^[8] dated December 27, 2002, the Labor Arbiter found no sufficient evidence to establish gross and habitual negligence. The Labor Arbiter noted (1) Arcobillas's performance rating of "Very Satisfactory" (VS) from January 1994 to December 1997 and her promotion to Bank Teller III in December 1995 despite having been suspended for one month in October 1995 due to the similar infraction of misposting; (2) her garnering a VS rating from January-June 1998 and July-December 1999 despite the pendency of the administrative charge that led to her eventual dismissal; and, (3) that the misposting was committed without malice, bad faith or dishonest motive. The Labor Arbiter also pointed out that the resulting damage could not be solely attributed to Arcobillas. The Bank Accountant, Financial Management Specialist, and those comprising the branch accounting unit failed to observe the bank's internal control measures of validating and verifying the bank's daily transactions. Had they done so, the said misposting could have been discovered at the earliest opportunity. Hence, the decretal portion of the Labor Arbiter's Decision:

WHEREFORE, in view of the foregoing considerations, respondents PHILIPPINE NATIONAL BANK, REYNALD A. REY and ROSAURO C. MACALAGAY are hereby directed to reinstate complainant MARY SHEILA ARCOBILLAS to her former position without loss of seniority rights plus payment of full backwages inclusive of allowances and other benefits [or] their monetary equivalent from March 16, 2000 to date of promulgation of this Decision; 13th month pay for the year 1999, unpaid salaries for the period February 2000 to March 15, 2000 in the amount of FIVE HUNDRED SIXTY FOUR THOUSAND SEVEN HUNDRED SEVENTY FOUR PESOS and 72/100 (P564,774.72) plus ten percent (10%) thereof [P56,477.47] as attorney's fees x x x or in the total amount of SIX HUNDRED TWENTY ONE THOUSAND TWO HUNDRED FIFTY TWO PESOS and 19/100 (P621,252.19).

SO ORDERED.^[9]

Ruling of the National Labor Relations Commission

PNB appealed to the NLRC and argued in its Memorandum on Appeal^[10] that malice, bad faith or dishonest motive is not a requirement before an employer could validly dismiss its employee on the ground of neglect of duty. It posited that Arcobillas's admission of her negligence and her prior commission of the same infraction of misposting justify her termination from employment for gross and habitual neglect of duty. It argued that the Labor Arbiter's reliance on Arcobillas's performance rating is misplaced because her dismissal is not grounded on loss of

trust and confidence.

On August 31, 2004, the NLRC rendered a Decision^[11] affirming with modification the Labor Arbiter's Decision. While it concurred with the Labor Arbiter's ruling that there was no sufficient ground to dismiss Arcobillas since the misposting was not deliberately done and hence does not constitute gross and habitual neglect, it nevertheless declared her not entirely faultless and free from any penalty less punitive than termination. The NLRC thus pronounced Arcobillas, as well as those other employees who were remiss in validating/ verifying the bank's transactions, equally liable for the financial losses suffered by PNB. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION. As a form of penalty the financial losses of respondents in the amount of P214,641.23 should be equally shouldered by complainant and by those who are directly responsible in the validation/verification of complainant's transaction as teller. The misposting done by complainant found by respondent to be gross neglect of duty shall be considered as a final warning that commission of [a] similar offense in the future shall be treated as gross and habitual neglect of duty.

All [other] aspects of the decision are hereby affirmed.

SO ORDERED.^[12]

PNB received a copy of the said Decision on October 14, 2004.^[13] Without filing a Motion for Reconsideration, PNB filed a Motion for Extension of Time to File Petition for *Certiorari*^[14] until December 23, 2004. On said date, PNB filed its Petition for *Certiorari*^[15] before the CA. Subsequently on May 25, 2005, the NLRC issued an Entry of Final Judgment declaring its August 31, 2004 Decision final and executory as of October 19, 2004.^[16]

Ruling of the Court of Appeals

Despite the non-filing of a Motion for Reconsideration with the NLRC, the CA took cognizance of PNB's Petition for *Certiorari*. Nevertheless, it dismissed the same in a Decision^[17] dated November 15, 2006. It agreed with the findings of both the Labor Arbiter and the NLRC that Arcobillas's negligence cannot be considered gross and habitual as to warrant her dismissal from employment. First, Arcobillas exercised ordinary diligence in her work when she checked and tallied her on-line dollar transactions with the teller's machine reading. Second, Arcobillas's heavy workload and severe headache mitigated the mistake committed. Third, the misposting was an isolated act of negligence and was not committed repeatedly as to constitute habit. The CA likewise sustained the monetary awards as computed by the Labor Arbiter but modified the NLRC Decision in that it made PNB shoulder 40% of the loss it sustained and Arcobillas to pay the remaining 60% instead of Arcobillas being equally liable with PNB's

other employees tasked to validate the teller's transactions. The CA reasoned that PNB is just as negligent in its selection and supervision of employees for it has the

fiduciary duty to insure that its employees exercise the highest standard of integrity in the performance of their duties. The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition for certiorari is **DISMISSED**. The assailed Decision dated August 31, 2004 of the National Labor Relations Commission, Fourth Division is hereby **AFFIRMED with MODIFICATION** in that, the financial loss in the amount of P214,641.23 be shared as follows: petitioner must shoulder 40% or P85,856.49 while private respondent shoulders 60% or P128,784.73 thereof to be paid through regular payroll deductions spread out [over] three (3) years.

All aspects of the decision are hereby **AFFIRMED**.

SO ORDERED.^[18]

PNB filed a Motion for Reconsideration^[19] while Arcobillas, a Motion for Partial Reconsideration.^[20] Both, were, however, denied by the CA in a Resolution^[21] dated August 17, 2007.

Issues

Hence, PNB filed this Petition for Review on *Certiorari* raising the following issues:

1. Whether x x x private respondent's dismissal on the ground of habitual negligence was justified under Article 282 of the Labor Code.
2. Whether x x x the Court of Appeals can correct the evaluation of the evidence by, or the factual findings of the NLRC in a petition for *certiorari*.
3. Whether x x x the Court of Appeals can delve on an issue that was not raised by the parties.^[22]

The Parties' Arguments

Aside from insisting that Arcobillas's dismissal on the ground of gross and habitual negligence is justified, PNB argues that the CA exceeded its authority by delving on factual findings when it modified the distribution of PNB's financial losses between it and Arcobillas in a 60-40 ratio, an issue which was not even raised by the parties.

On the other hand, Arcobillas, in her Comment,^[23] prays that: 1) the distribution of financial loss as decreed by the CA be set aside; 2) PNB be directed to pay the monetary awards granted her by virtue of the NLRC Decision dated August 31, 2004 which has long become final and executory; 3) PNB be ordered to pay her the salaries and benefits unjustly withheld before her illegal dismissal, to wit: unpaid salaries for February 2000 – March 15, 2000, anniversary bonus as of July 21, 1999, millennium bonus due since December 23, 1999, teller's incentive allowance for 1999 and for January 1 – March 15, 2000, hospitalization benefit due in January 2000 and 13th month pay for the year 1999; and, 4) PNB be directed to adjust her longevity pay.