

## FIRST DIVISION

[ G.R. No. 167518, March 23, 2011 ]

### **BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. PIO ROQUE S. COQUIA, JR., RESPONDENT.**

## **D E C I S I O N**

### **DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the Decision<sup>[2]</sup> dated December 14, 2004 and Resolution<sup>[3]</sup> dated March 16, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84230, which affirmed the Resolution<sup>[4]</sup> dated December 17, 2003 of the National Labor Relations Commission (NLRC), holding the dismissal of respondent Pio Roque S. Coquia, Jr. (respondent Coquia) as illegal and ordering petitioner Bank of the Philippine Islands (petitioner BPI) to pay him separation pay in lieu of reinstatement.

### ***Factual Antecedents***

Respondent Coquia's stint with petitioner BPI lasted for 26 years commencing in 1972 when he was assigned as bookkeeper and was thereafter promoted to various positions in different BPI branches, such as examiner in 1975, senior examiner in 1977, assistant auditor in 1981, assistant manager in 1984, senior assistant manager in 1987, manager in 1989 and as senior manager in Dagupan Branch from 1992 to 1998.

Respondent Coquia alleged that on June 3, 1998, he was instructed to take a vacation leave starting June 4, 1998 on account of an internal audit to be conducted in BPI Dagupan Branch. Two days after he returned to work on June 15, 1998, he was asked to continue his leave of absence until the auditors shall have concluded their examination. In a notice dated July 16, 1998,<sup>[5]</sup> he was placed under preventive suspension for 30 days due to further investigation of the various irregularities found to have been committed by him, as follows:

1. Possible conflict-of-interest on account of lending activities;
2. Reversal of accrued expense and their corresponding payments without supporting invoices and/or official receipts;
3. Questionable payments for re-painting services and pest control treatment;
4. Irregular encashment of another bank's check against cash-in-vault beyond banking hours;

5. Reported temporary or "daylight" borrowings from the tellers; and
6. Allowing your driver/bodyguard access to the branch's restricted areas, facilities and records.

On August 18, 1998, respondent Coquia received a show cause memo dated August 17, 1998<sup>[6]</sup> directing him to explain in writing why no disciplinary action should be taken against him for committing serious offenses/violations of bank policies<sup>[7]</sup> on the basis of the internal auditor's findings. He was also advised in the memo that a hearing will be held to give him an opportunity to ventilate his side.

On November 23, 1998, a Notice of Termination dated November 18, 1998<sup>[8]</sup> was served on respondent Coquia. Thus, on November 27, 1998, he filed a complaint<sup>[9]</sup> for illegal suspension, illegal dismissal and other monetary claims

against petitioner BPI and some of its corporate officers.

### ***Proceedings before the Labor Arbiter***

In its Position Paper,<sup>[10]</sup> petitioner BPI posited that respondent Coquia's conduct in causing the issuance of Manager's Check No. 9303<sup>[11]</sup> payable to a certain Mario Santiago for payment of accrued expenses for the painting of the bank's stairway hall in 1997, as well as Manager's Check No. 9302<sup>[12]</sup> payable to AVS Termite and Pest Control Services for payment of pest/termite control treatment performed in 1997, and the subsequent encashments thereof, when there was no painting job or pest control treatment performed within such period of time, manifests his intent and criminal design to defraud the bank. Petitioner BPI presented the affidavit of Mario Santiago,<sup>[13]</sup> the purported payee of Manager's Check No. 9303, attesting to the fact that the signatures found on the dorsal portion of the check and its supporting voucher are not his, and the affidavit of the branch's head security guard<sup>[14]</sup> attesting to the falsity of the purpose for which the checks were issued. In addition, it presented the joint affidavit of the branch's operations manager, Ferdinand M. Rabago (Rabago), and operations assistant manager, Mario A. Gabrillo (Gabrillo),<sup>[15]</sup> declaring that the checks were prepared and issued upon the instruction and initiative of respondent Coquia. On account of these anomalies, a criminal complaint for estafa thru falsification of commercial documents before the City Prosecutor's Office of Dagupan City was filed against respondent Coquia. Petitioner BPI also claimed that respondent Coquia's actuation in permitting the encashment of an uncleared check beyond banking hours, known as overnight borrowing, and in resorting to temporary or daylight borrowings from tellers were evidently irregular transactions violative of bank policies. Further, allowing his driver/bodyguard unlimited access to the bank's restricted areas, facilities and records, as well as to perform clerical functions inside the bank's premises, constitutes flagrant and gross violation of bank rules and orders from superior management. Petitioner BPI likewise presented sworn statements of its employees<sup>[16]</sup> attesting to the so-called overnight and daylight borrowings of respondent Coquia and to the activities being performed inside the bank by his driver/bodyguard, Jess Coquia. Indeed, according to petitioner BPI, as respondent Coquia's position requires the highest degree of trust, such reprehensible conduct

warrants his termination from employment.

Respondent Coquia, on the other hand, claimed innocence of the charges of serious misconduct and breach of trust as grounds for his dismissal. On the charge of spurious expenses, he denied liability by explaining that Rabago and Gabrillo were the ones who caused the preparation of the checks and vouchers containing forged signatures of payees and that he merely approved and signed the same for being regular on its face. According to him, after being informed of the real purpose for the issuance of the checks (as payment for valid contingent expenses) he consented to the disbursements. As regards the alleged overnight borrowings, he claimed justification for authorizing irregular encashment upon the request of important clients and after confirmation from his assistant manager. Likewise, his resort to temporary or daylight borrowing, which involves the borrowing of money from tellers but returning the amount loaned before the close of banking hours, did not cause any prejudice to the bank but in fact was done for the benefit of valued clients. Lastly, he denied having allowed his driver/bodyguard access to confidential bank records and operations.<sup>[17]</sup>

On July 29, 1999, the Labor Arbiter rendered a Decision<sup>[18]</sup> finding respondent Coquia's dismissal illegal. The Labor Arbiter held that there is no factual basis for the loss of trust and confidence reposed upon respondent Coquia since, while he may have involved himself in some irregular transactions, the same nevertheless had redounded to the benefit of the bank and without fraudulent intent on his part. First, respondent Coquia's issuance of spurious checks was not driven by any criminal design to defraud the bank. In fact, the expenditures have promoted the bank's business interest. Second, the overnight and daylight borrowings were mere favors extended to clients deserving of such accommodation which did not result in any damage to the bank's operation. Lastly, the driver/bodyguard's actions in performing irregular functions inside the bank did not in any way compromise confidential bank records.

The Labor Arbiter also ruled that respondent Coquia's involuntary leave of absence is considered as an illegal suspension for being in excess of the maximum period of suspension of 30 days allowed under the Labor Code. It also declared respondent Coquia entitled to moral and exemplary damages for the anxiety he had gone through while being investigated in an oppressive manner. Only petitioner BPI, excluding its corporate officers, was held liable for the awards granted to respondent Coquia. Thus, the Labor Arbiter disposed of the case as follows:

PREMISES CONSIDERED, the dismissal of the complainant is hereby declared to be illegal and respondent BPI is hereby ORDERED to reinstate him to his former position without loss of seniority or other benefits and to pay him the following:

- a) P520,800.04 [1 month 12 days (1998) and 7 months (1999) x P62,000.00] as backwages for the period from the time of his dismissal on November 23, 1998 up to the promulgation of this decision[:]
- b) P1,000,000.00 by way of moral damages;
- c) P500,000.00 by way of exemplary damages;

d) Attorney's fees equivalent [to] 10% of the aggregate award.

In addition, the respondent company is ORDERED to refrain from deducting from complainant's accumulated sick and vacation leaves the period from June 3, 1998 to November 23, 1998.

SO ORDERED.<sup>[19]</sup>

### ***Proceedings before the National Labor Relations Commission***

Aggrieved, petitioner BPI appealed to the NLRC on the ground that the Labor Arbiter committed serious error in holding that respondent Coquia was illegally suspended and dismissed. The NLRC, in its Decision dated April 19, 2000,<sup>[20]</sup> reversed the assailed decision and declared that there exist sufficient bases for the dismissal. The NLRC ruled that respondent Coquia has conducted unsound banking practice in transgression of Central Bank rules and regulations in authorizing and approving fictitious expenses, in accommodating the encashment of a check instead of sending it first for clearing and in maliciously engaging in irregular transactions.

Respondent Coquia filed a motion for reconsideration, which was granted by the NLRC in its Resolution dated September 24, 2001.<sup>[21]</sup> This time, the NLRC sustained the merits of respondent Coquia's explication of absence of bad faith and malice in his actions and considered his satisfactory performance and loyal dedication to the bank. The NLRC thus reinstated and affirmed the awards rendered by the Labor Arbiter.

Petitioner BPI then filed its own motion for reconsideration. The NLRC, in its Resolution dated December 17, 2003,<sup>[22]</sup> denied the motion and affirmed the illegality of respondent Coquia's termination from employment but this time, modified the awards granted to him. It noted that respondent Coquia was not entirely faultless of the charges which stripped him of entitlement to backwages. Likewise, he has no right to damages since his termination was in compliance with due process and not attended by any ill-motive on the part of petitioner BPI. Furthermore, since reinstatement is no longer possible due to strained relation between the parties, separation pay is proper under the circumstances. Thus, the decretal portion of the NLRC Resolution reads:

WHEREFORE, the assailed Decision is hereby MODIFIED. Accordingly, the awards of backwages and moral and exemplary damages are hereby deleted.

In lieu of reinstatement, complainant is hereby awarded separation pay in the amount of One Million Six Hundred Twelve Thousand Pesos (P1,612,000.00).

Finally, the Order directing respondents to refrain from deducting from complainant's accumulated sick and vacation leaves the period from June 3, 1998 to September 23, 1998 is hereby REITERATED. Considering however complainant's non-reinstatement, reference to company

practice, policy or the Collective Bargaining Agreement may be made to determine if said accumulated leaves may be converted to their cash equivalent.

SO ORDERED.<sup>[23]</sup>

### ***Proceedings before the Court of Appeals***

From the said NLRC Resolution, petitioner BPI and respondent Coquia filed their separate petitions before the CA. Petitioner BPI's Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order<sup>[24]</sup> was docketed as CA-G.R. SP No. 83883. On the other hand, respondent Coquia's Petition for *Certiorari*<sup>[25]</sup> was docketed as CA-G.R. SP No. 84230.

The CA, however, resolved the petitions differently. In CA-G.R. SP No. 84230, the CA, through its Special Sixteenth Division, rendered a Decision<sup>[26]</sup> dated December 14, 2004 which denied respondent Coquia's petition and sustained the NLRC's deletion of the award of backwages and moral and exemplary damages. The CA likewise sustained the award of separation pay as reinstatement was no longer possible due to strained relation between petitioner BPI and respondent Coquia.

Petitioner BPI filed a Motion for Reconsideration<sup>[27]</sup> which was denied by the CA in its Resolution dated March 16, 2005.<sup>[28]</sup> Hence, petitioner BPI filed the instant petition for review on *certiorari*, assigning the following errors:

I. .WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION, WHEN IT RULED ON THE ISSUE OF PAYMENT OF SEPARATION PAY IN FAVOR OF PRIVATE RESPONDENT, CONSIDERING THE FACT THAT ANOTHER DIVISION OF THE HONORABLE COURT OF APPEALS FIRST ACQUIRED JURISDICTION OVER SAID SUBJECT MATTER, AS REPEATEDLY MANIFESTED BY PETITIONER.

II. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING (SIC) THAT PRIVATE RESPONDENT IS ENTITLED TO SEPARATION PAY, NOTWITHSTANDING THE FINDING THAT THE TERMINATION OF HIS EMPLOYMENT WAS FOR JUST CAUSE.

IT IS WELL SETTLED IN THIS JURISDICTION THAT THE AWARD OF SEPARATION PAY, OR FINANCIAL ASSISTANCE IS JUSTIFIED ONLY WHERE THE EMPLOYEE IS VALIDLY DISMISSED FOR CAUSES OTHER THAN SERIOUS MISCONDUCT OR THOSE ADVERSELY AFFECTING HIS MORAL CHARACTER.

FURTHER, THIS JURISDICTION IS REplete WITH JURISPRUDENTIAL DOCTRINES THAT THE POSITION OF A MANAGERIAL EMPLOYEE ENTAILS A HIGH DEGREE OF TRUST AND CONFIDENCE. THE EMPLOYER UPON WHOSE DISCRETION LIES