

## THIRD DIVISION

**[ G.R. Nos. 180849 and 187143, November 16, 2011 ]**

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. DAN PADAO, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

These are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court.

In G.R. No. 180849, petitioner Philippine National Bank (*PNB*) seeks the reversal of the December 14, 2006 Decision<sup>[1]</sup> and October 2, 2007 Resolution<sup>[2]</sup> of the Court of Appeals (*CA*) in CA-G.R. SP No. 76584, which upheld the ruling of the National Labor Relations Commission, Cagayan de Oro City (*NLRC*) in its October 30, 2002 Resolution,<sup>[3]</sup> reversing the June 21, 2001 Decision<sup>[4]</sup> of the Executive Labor Arbiter (*ELA*) which found the dismissal of respondent Dan Padoa (Padoa) valid.

In G.R. No. 187143, PNB seeks the reversal of the December 9, 2008 Decision<sup>[5]</sup> and February 24, 2009 Resolution<sup>[6]</sup> of the *CA* in CA-G.R. SP No. 00945, which allowed the execution of the October 30, 2002 *NLRC* Resolution.

### THE FACTS

#### **A. G.R. No. 180849**

On August 21, 1981, Padoa was hired by PNB as a clerk at its Dipolog City Branch. He was later designated as a credit investigator in an acting capacity on November 9, 1993. On March 23, 1995, he was appointed regular Credit Investigator III, and was ultimately promoted to the position of Loan and Credit Officer IV.

Sometime in 1994, PNB became embroiled in a scandal involving "behest loans." A certain Sih Wat Kai complained to the Provincial Office of the Commission on Audit (*COA*) of Zamboanga del Norte that anomalous loans were being granted by its officers: Assistant Vice President (*AVP*) and Branch Manager Aurelio De Guzman (*AVP de Guzman*), Assistant Department Manager and Cashier Olson Sala (*Sala*), and Loans and Senior Credit Investigator Primitivo Virtudazo (*Virtudazo*).

The questionable loans were reportedly being extended to select bank clients, among them Joseph Liong, Danilo Dangcalan, Jacinto Salac, Catherine Oplentissima, and Virgie Pango. The exposé triggered the conduct of separate investigations by the *COA* and PNB's Internal Audit Department (*IAD*) from January to August 1995. Both investigations confirmed that the collateral provided in numerous loan accommodations were grossly over-appraised. The credit standing of the loan

applicants was also fabricated, allowing them to obtain larger loan portfolios from PNB. These borrowers eventually defaulted on the payment of their loans, causing PNB to suffer millions in losses.

In August 1995, Credit Investigators Rolando Palomares (*Palomares*) and Cayo Dagpin (*Dagpin*) were administratively charged with Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and violation of Republic Act (R.A.) No. 3019 (*Anti-Graft and Corrupt Practices Act*), in connection with an anomalous loan granted to the spouses, Jaime and Allyn Lim (*the Lims*). These charges, however, were later ordered dropped by PNB, citing its findings that Dagpin and Palomares signed the Inspection and Appraisal Report (*IAR*) and the Credit Inspection Report (*CIR*) in support of the Lims' loan application in good faith, and upon the instruction of their superior officers. PNB also considered using Dagpin and Palomares as prosecution witnesses against AVP de Guzman, Loan Division Chief Melindo Bidad (*Bidad*) and Sala.

The following month, September 1995, administrative charges for Grave Misconduct, Gross Neglect of Duty and Gross Violations of Bank Rules and Regulations and criminal cases for violation of R.A. No. 3019 were filed against AVP de Guzman, Sala, Virtudazo, and Bidad. Consequently, they were all dismissed from the service by PNB in November 1996. Later, Virtudazo was ordered reinstated.

On June 14, 1996, Padoa and Division Chief Wilma Velasco (*Velasco*) were similarly administratively charged with Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and violation of R.A. No. 3019.

The case against Padoa was grounded on his having allegedly presented a deceptively positive status of the business, credit standing/rating and financial capability of loan applicants Reynaldo and Luzvilla Baluma and eleven (11) others. It was later found that either said borrowers' businesses were inadequate to meet their loan obligations, or that the projects they sought to be financed did not exist.

Padoa was also accused of having over-appraised the collateral of the spouses Gardito and Alma Ajero, the spouses Ibaba, and Rolly Pango.

On January 10, 1997, after due investigation, PNB found Padoa guilty of gross and habitual neglect of duty and ordered him dismissed from the bank. Padoa appealed to the bank's Board of Directors. On January 20, 1997, Velasco was also held guilty of the offenses charged against her, and was similarly meted the penalty of dismissal. Her motion for reconsideration, however, was later granted by the bank, and she was reinstated.

On October 11, 1999, after almost three (3) years of inaction on the part of the Board, Padoa instituted a complaint<sup>[7]</sup> against PNB and its then AVP, Napoleon Matienzo (*Matienzo*), with the Labor Arbitration Branch of the NLRC Regional Arbitration Branch (*RAB*) No. IX in Zamboanga City for 1] Reinstatement; 2] Backwages; 3] Illegal Dismissal; and 4] Treachery/Bad Faith and Palpable Discrimination in the Treatment of Employees with administrative cases. The case was docketed as RAB 09-04-00098-01.

In a Decision dated June 21, 2001, the ELA found Padoa's dismissal valid. Despite

the finding of legality, the ELA still awarded separation pay of one-half (1/2) month's pay for every year of service, citing *PLDT v. NLRC & Abucay*.<sup>[8]</sup> The ELA held that in view of the peculiar conditions attendant to Pado's dismissal, there being no clear conclusive showing of moral turpitude, Pado should not be left without any remedy.

Pado appealed to the NLRC, which, in its Resolution<sup>[9]</sup> dated October 30, 2002, reversed and set aside the ELA Decision and declared Pado's dismissal to be illegal. He was thereby ordered reinstated to his previous position without loss of seniority rights and PNB was ordered to pay him full backwages and attorney's fees equivalent to ten percent (10%) of the total monetary award.

PNB's Motion for Reconsideration<sup>[10]</sup> was denied by the NLRC in its Resolution<sup>[11]</sup> dated December 27, 2002.

Aggrieved, PNB filed a petition for certiorari<sup>[12]</sup> with the CA but it was dismissed in a Decision<sup>[13]</sup> dated December 14, 2006. PNB moved for reconsideration<sup>[14]</sup> but the motion was denied in the CA Resolution<sup>[15]</sup> dated October 2, 2007.

### **B. G.R. No. 187143**

During the pendency of G.R. No. 180849 before the Court, the NLRC issued an entry of judgment on September 22, 2003, certifying that on February 28, 2003, its October 30, 2002 Resolution had become final and executory.<sup>[16]</sup>

On December 5, 2003, Pado filed a Motion for Execution of the NLRC Resolution dated October 30, 2002. This was granted by the ELA on April 22, 2004.

On May 4, 2004, PNB and AVP Matienzo sought reconsideration of the ELA's Order based on the following grounds: (1) the October 30, 2003 Resolution was inexistent and, thus, could not become final and executory; and (2) Pado's motion for execution was granted without hearing.

Acting thereon, the ELA denied PNB's motion for reconsideration on the ground that motions for reconsideration of an order are prohibited under Section 19, Rule V of the NLRC Rules of Procedure.

Thus, Pado filed his Motion to Admit Computation<sup>[17]</sup> dated July 14, 2004. In its Comment,<sup>[18]</sup> PNB alleged that the computation was grossly exaggerated and without basis, and prayed for a period of thirty (30) days within which to submit its counter-computation since the same would come from its head office in Pasay City.

On September 22, 2004, the ELA issued the Order<sup>[19]</sup> granting Pado's Motion to Admit Computation. The order cited PNB's failure to submit its counter-computation within the two extended periods (totaling forty days), which the ELA construed as a waiver to submit the same. Thus, the ELA ordered the issuance of a writ of execution for the payment of backwages due to Pado in the amount of ₱ 2,589,236.21.

In a motion<sup>[20]</sup> dated September 29, 2004, PNB sought reconsideration of the order

with an attached counter-computation. The ELA denied the same in its Order<sup>[21]</sup> dated October 20, 2004 on the ground that the motions for reconsideration of orders and decisions of the Labor Arbiter are prohibited under Section 19, Rule V of the NLRC Rules of Procedure. The ELA further stated that PNB had been given more than ample opportunity to submit its own computation in this case, and the belatedly submitted counter-computation of claims could not be considered. Thus, a writ of execution<sup>[22]</sup> was issued on October 21, 2004.

On November 11, 2004 and January 19, 2005, PNB filed its Motion to Quash Writ of Execution and its Motion to Dissolve Alias Writ of Execution, respectively. Both were denied by the ELA in an Order<sup>[23]</sup> dated February 8, 2005.

On February 18, 2005, PNB filed a Notice of Appeal with Memorandum on Appeal<sup>[24]</sup> with the NLRC. On September 20, 2005, however, the NLRC issued a Resolution<sup>[25]</sup> dismissing the bank's appeal. PNB's Motion for Reconsideration<sup>[26]</sup> was also denied in the December 21, 2005 Resolution.<sup>[27]</sup>

Thus, on March 7, 2006, PNB filed a Petition for Certiorari<sup>[28]</sup> with the CA, assailing the findings of ELA Plagata and the NLRC.

In a Decision<sup>[29]</sup> dated December 9, 2008, the CA dismissed the petition, and later denied PNB's motion for reconsideration on February 24, 2009.

### **ISSUES**

In G.R. No. 180849, PNB presents the following Assignment of Errors:<sup>[30]</sup>

A. THE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT THE POSITION OF A CREDIT INVESTIGATOR IS ONE IMBUED WITH [THE] TRUST AND CONFIDENCE OF THE EMPLOYER.

B. THE COURT OF APPEALS ERRED IN TREATING THE ACT OF FALSIFYING THE CREDIT AND APPRAISAL REPORTS AND THAT OF MERELY AFFIXING ONE'S SIGNATURE IN A FALSE REPORT PREPARED BY ANOTHER AS ONE AND THE SAME DEGREE OF MISCONDUCT WHICH WARRANTS THE SAME PENALTY.

In G.R. No. 187143, PNB presents the following Assignment of Errors:<sup>[31]</sup>

THE LABOR COURTS AND THE APPELLATE COURT ERRED WHEN THEY INVARIABLY IGNORED PNB'S COUNTER-COMPUTATION AND MERELY RELIED ON RESPONDENT DAN PADAOS SELF-SERVING COMPUTATION OF HIS MONEY AWARD.

THE LABOR COURTS AND THE APPELLATE COURT ERRED WHEN THEY ACCEPTED THE COMPUTATION OF RESPONDENT PADAOS WITHOUT REQUIRING PROOF TO SUPPORT THE SAME.

In G.R. No. 180849, PNB argues that the position of a credit investigator is one reposed with trust and confidence, such that its holder may be validly dismissed based on loss of trust and confidence. In disciplining employees, the employer has the right to exercise discretion in determining the individual liability of each erring employee and in imposing a penalty commensurate with the degree of participation of each. PNB further contends that the findings of the CA are not in accordance with the evidence on record, thus, necessitating a review of the facts of the present case by this Court.<sup>[32]</sup>

On the other hand, Padao counters that local bank policies implemented by the highest-ranking branch officials such as the assistant vice-president/branch manager, assistant manager/cashier, chief of the loans division and legal counsel, are presumed to be sanctioned and approved by the bank, and a subordinate employee should not be faulted for his reliance thereon. He argues that a person who acts in obedience to an order issued by a superior for some lawful purpose cannot be held liable. PNB is bound by the acts of its senior officers and he, like his fellow credit investigators, having acted in good faith in affixing his signature on the reports based on the instruction, order and directive of senior local bank officials, should not be held liable.<sup>[33]</sup>

Padao also claims that PNB cruelly betrayed him by charging and dismissing him after using him as a prosecution witness to secure the conviction of the senior bank officials, that he was never part of the conspiracy, and that he did not derive any benefit from the scheme.<sup>[34]</sup>

### **The Court's Ruling**

In the 1987 Constitution, provisions on social justice and the protection of labor underscore the importance and economic significance of labor. Article II, Section 18 characterizes labor as a "primary social economic force," and as such, the State is bound to "protect the rights of workers and promote their welfare." Moreover, workers are "entitled to security of tenure, humane conditions of work, and a living wage."<sup>[35]</sup>

The Labor Code declares as policy that the State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.<sup>[36]</sup>

While it is an employer's basic right to freely select or discharge its employees, if only as a measure of self-protection against acts inimical to its interest,<sup>[37]</sup> the law sets the valid grounds for termination as well as the proper procedure to be followed when terminating the services of an employee.<sup>[38]</sup>

Thus, in cases of regular employment, the employer is prohibited from terminating the services of an employee except for a just or authorized cause.<sup>[39]</sup> Such just causes for which an employer may terminate an employee are enumerated in Article