

SECOND DIVISION

[G.R. No. 178762, June 16, 2010]

LUZVIMINDA A. ANG, PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.

DECISION

ABAD, J.:

This case is about the dismissal of an employee for offenses committed during her employment in a government-owned corporation but which offenses were discovered after the privatized corporation rehired her to work for it.

The Facts and the Case

In her Position Paper,^[1] petitioner Luzviminda A. Ang (Ang) claimed that respondent Philippine National Bank (PNB), then a government-owned corporation, hired her on December 4, 1967 as a probationary clerk. But she rose from the ranks, eventually becoming an Assistant Department Manager I, a position she held when the PNB was privatized on May 26, 1996 and when she, like her co-employees, was deemed automatically retired. The bank computed Ang's gratuity benefits, the monetary value of her leave credits, and the other benefits due her and cleared her of any accountability.

But the PNB re-employed Ang as Assistant Manager effective on May 27, 1996 and assigned her in its Tuguegarao, Cagayan Branch.^[2] Less than four months later, however, or on September 3, 1996 the PNB administratively charged her with serious misconduct and willful breach of trust for taking part in a scam, called "kiting operation," where a depositor used a conduit bank account for depositing several unfunded checks drawn against the same depositor's other current accounts and from which conduit bank account he later withdrew those checks. The PNB alleged that Ang had allowed this illegal activity from January 2 to April 3, 1996 while she was the Assistant Department Manager I in its Tuguegarao Branch.^[3]

On September 16, 1996 the PNB heaped other charges against Ang of serious misconduct and gross violation of the bank's rules and regulations as follows:

- She issued six certificates of deposit between June 5, 1992 up to January 10, 1996 in amounts exceeding the true deposit balance of various depositors;
- She issued two bank commitments dated January 24, 1994 and for providing a credit line in favor of a government contractor without authority and in violation of SEL Cir. 2-166/91 of July 10, 1996; and

-- She committed tardiness and "under time" from October to December 1995 and January to March 1996 in violation of Gen. Cir. 1-61/91 of February 1, 1991.^[4]

In answer to the first charge, Ang claimed that it was not a "kiting operation," but an accommodation of a very valued client. She admitted that the checks were not funded and were converted into account receivables or accommodation loans that the client had settled, including interests, penalties, and other charges. Consequently, the PNB did not suffer any loss from those transactions; it even reaped enormous profits from them.^[5]

On the second charge, Ang claimed that the issuance of the certificates had been tolerated to accommodate valued clients as a marketing strategy and prevent their move to other banks. These had been open transactions, said Ang, which were known to all the officers of the branch. Again, the PNB did not suffer any loss on account of the issuance of those certificates. The clients involved maintained their loyalty to the bank.^[6]

On the third charge, Ang claimed that the PNB's loan commitments in those cases amounted to mere recommendations since she had no authority to approve loans. Furthermore, she could not have violated SEL Cir. 2-166/91 dated July 10, 1996 since this was not yet in effect when she issued those commitments on January 24, 1994. Besides, the circular merely prescribed the fees to be collected.^[7]

On the last charge, Ang claimed that she was not covered by the circular governing office hours because she was a bank officer. Managerial employees, according to her, worked beyond the usual eight hours and even worked on Saturdays and Sundays. She added that, since the bank had already made deductions for tardiness on her pay check, she cannot anymore be administratively charged for it.^[8]

Ang further pointed out that the causes for her termination took place when she was yet a government official. The PNB had since ceased to be government-owned. If she were to be charged for those causes, the jurisdiction over her case would lie with the Civil Service Commission. Even then, since she already retired from the government service, the employment that could be terminated no longer existed.^[9]

Ang added that the causes for her termination had also become academic after the PNB cleared her of any accountability when she once retired from employment with it.

Pending administrative investigation, the PNB assigned Ang to its Aparri Branch on April 3, 1997.^[10] Its Inspection and Investigation Unit recommended her dismissal on June 3, 1997 to the Board of Inquiry.^[11] Ang alleged that the PNB dismissed her from work on July 25, 1997, withholding her fringe benefits, gratuity benefits, monetary value of her leave credits, rights and interests in the provident fund, and other benefits due her as of May 26, 1996.^[12] She sought reconsideration, but the bank denied it.

On January 27, 1998 Ang filed a complaint against the PNB before the National

Labor Relations Commission (NLRC), Regional Arbitration Branch II, Tuguegarao, Cagayan in NLRC RAB II CN 01-00022-98 for illegal dismissal, illegal deductions, non-payment of 13th month pay, allowances, separation pay, and retirement benefits with prayer for payment of moral and exemplary damages, attorney's fees, and litigation expenses.

Answering the complaint, the PNB claimed that it observed due process in terminating Ang, notifying her of the charges and giving her a chance to defend herself in a formal hearing but she waived this and opted to submit a position paper. The PNB Board of Inquiry informed her of its decision before implementing the same. Indeed, she even sought its reconsideration.^[13] The PNB pointed out that since it separated petitioner Ang for a just cause, she was not entitled to termination pay. Further she ceased to be entitled to the benefits she claimed.^[14]

The PNB also pointed out that although it cleared Ang of any accountability before her retirement as a civil servant, it premised such clearance from existing knowledge and records. The PNB had not yet discovered her frauds and omissions when it issued the clearance. Besides, what the PNB issued was not really a clearance but a certification that Ang had no pending administrative case. It issued that certification on August 12, 1996 and filed the first administrative charge against her on September 3, 1996.^[15]

On March 30, 1999 the Labor Arbiter (LA) rendered a Decision,^[16] finding the PNB's dismissal of Ang illegal for failure to show that the dismissal was for a valid cause and after notice and hearing. Specifically, the PNB failed to prove any basis for loss of trust. The LA ordered the reinstatement of petitioner Ang to her former position or its substantial equivalent, without loss of seniority rights and with full backwages and other benefits or their money value from the time of her actual dismissal on July 25, 1996 up to her reinstatement.

Further, the LA ordered the PNB to pay Ang P488,567.87 in gratuity pay plus 1 percent interest per month from the time it fell due until actual payment, P1 million as moral damages, and P500,000.00 as exemplary damages plus 10 percent of the total monetary award as attorney's fees. The LA made the monetary value of her fringe benefits and others, not included in the computed amount, subject to recomputation upon the finality of the NLRC decision. In case reinstatement was not feasible, Ang was to have the option to be paid separation pay of at least one month pay for every year of her 30 years of service in addition to her full backwages and gratuity benefits.

The PNB appealed the decision to the NLRC but the latter dismissed the appeal on January 30, 2004.^[17] Upon motion for reconsideration, however, on October 29, 2004 the NLRC reconsidered its finding of lack of due process, considering Ang's admission during direct examination that the PNB informed her of the charges against her and gave her a chance to present her side with the assistance of a counsel. The NLRC deleted the award of damages because of absence of bad faith on the part of the PNB officers but maintained the LA's finding that the PNB had not proved loss of trust as a ground for dismissal.

On petition for *certiorari* with the Court of Appeals (CA), the latter rendered a