

SECOND DIVISION

[G.R. Nos. 170542-43, December 13, 2010]

ANTONIO A. ABOC, PETITIONER, VS. METROPOLITAN BANK AND TRUST COMPANY, RESPONDENT.

[G.R. No. 176460]

METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. ANTONIO A. ABOC, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Assailed in these consolidated petitions for review is the October 28, 2005 Decision^[1] of the Court of Appeals-Cebu City (CA) disposing two consolidated cases, CA-G.R. SP. No. 80747 and CA-G.R. SP. No. 81363. The CA Decision affirmed the Decision^[2] of the National Labor Relations Commission (NLRC) which reversed the Decision^[3] of the Labor Arbiter (LA) finding Antonio A. Aboc (Aboc) to have been illegally dismissed by the Metropolitan Bank and Trust Company (Metrobank).

These two cases stemmed from a complaint for illegal dismissal and damages filed by Aboc against Metrobank on October 1, 1998.

In his position paper,^[4] Aboc, the Regional Operations Coordinator of Metrobank in Cebu City with a monthly salary of P11,980.00, alleged that on August 29, 1988, he started working as a loans clerk. He was given merit increases and awarded promotions during his employment because of his highly satisfactory performance. For nine years, he maintained an unblemished employment record until he received an inter-office letter^[5] on January 29, 1998, requiring him to explain in writing the charges that he had actively participated in the lending activities of his immediate supervisor, Wynster Y. Chua (Chua), the Branch Manager of Metrobank where he was assigned.

Aboc wrote a letter^[6] to Metrobank explaining that he had no interest whatsoever in the lending business of Chua because it was solely owned by the latter. He admitted, however, that he did some acts for Chua in connection with his lending activity. He did so because he could not say "no" to Chua because of the latter's influence and ascendancy over him and because of his "*utang na loob*" (debt of gratitude).^[7]

His participation in the lending activity was limited to ministerial acts such as the preparation of deposit and withdrawal slips and the typing of statement of accounts for some clients of Chua. In fact, Chua wrote a letter to Metrobank absolving him of any responsibility and participation in his lending activities. Despite the same,

Metrobank still dismissed him on February 12, 1998.

Metrobank, on the other hand, replied that sometime in November 1995, Chua, Judith Eva Cabrido (assistant manager), Arthur Arcepi (accountant), and Aboc organized a credit union known as Cebu North Road Investment (*CNRI*). Said officers and employees used Metrobank's premises, equipment and facilities in their lending business. Apparently, its head office was not informed of the organization of CNRI. Had it been informed of the organization of said credit union, it would not have tolerated or approved of it because the nature of its business would be in conflict, inimical, and in competition with its banking business. Moreover, they did not register CNRI with the Securities and Exchange Commission (*SEC*) and with the Department of Trade and Industry (*DTI*). The lending and investment business of CNRI was confined not only to the employees of Metrobank but also to outsiders, including clients of the bank.^[8]

Metrobank also disclosed that on August 13, 1996, Aboc and his companions created another credit union, the First Fund Access (*FFA*), which opened accounts with Metrobank under fictitious names. Again, it was not informed of the existence of this credit union.

In September 1997, Chua and Aboc were observed to have openly convinced outsiders and clients of Metrobank to patronize their lending and investment business. During the investigation conducted by Metrobank on January 15, 1998, it was discovered that Aboc solicited investors including its clients for said credit union. He also induced bank clients to withdraw their accounts and invest them in CNRI. He even signed as one of the signatories in the trust receipts of some bank clients.

During the administrative investigation, Metrobank likewise discovered that Aboc committed the following acts:

1. Preparation of all necessary documents on deposits/placements and loans of said lending activities.
2. Preparation of checks and acting as co-signatory of Chua in payment for matured deposits/placements or proceeds of loans to the damage and prejudice of Metrobank.

Metrobank required Aboc to submit a written explanation why he should not be dismissed for cause and attend a conference in the morning of February 10, 1998 at the Visayas Regional Office, Fuente Osmeña Center, Cebu City, in which he was allowed to bring a counsel of his own choice. On February 6, 1998, he submitted his written explanation. On February 10, 1998, he attended the conference.

Thereafter, Metrobank found that Aboc's actions constituted serious misconduct and a breach of trust and confidence. On February 12, 1998, Metrobank terminated his services.

Ruling of the Labor Arbiter

After the parties had submitted their respective position papers, the LA rendered her decision on July 12, 1999, finding that Aboc was illegally dismissed from the service by Metrobank. The dispositive portion of her decision reads:

WHEREFORE, VIEWED FROM THE FOREGOING, judgment is hereby rendered declaring complainant Antonio Aboc to have been illegally dismissed from the service by respondent Metropolitan Bank and Trust Company (Metrobank). Consequently, same respondent Metrobank is hereby ordered to reinstate complainant Aboc to his former position or to a substantially equivalent position without loss of seniority rights and other privileges, and to pay said complainant the following, to wit:

1. Backwages

February 12, 1998 to July 12, 1999

P11, 980.00 x 18 monthsP215, 640.00

13th month = 1 yrP11, 980.00

5 monsP 4, 991.66

P 16, 971.66

Service Incentive Leave (P11, 980.00 divided

by 26 = P460.76 x 52,303.80 P19,275.46 P234, 915.46

2. 10% Attorney's Fees.....P 23, 491.54

GRAND TOTAL AWARD-----P258, 407.00^[9]

The LA reasoned out that Metrobank failed to prove by clear and convincing evidence the charges of serious misconduct, breach of trust and loss of confidence against Aboc. His lending activities were not foreign to Metrobank in the sense that credit unions commonly existed in its other branches and that said credit unions were handled by its high ranking employees.

The LA added that Aboc's participation in the lending activities was due to "force of circumstance." He was an "unwilling participant" in the business of his superior because he could not just say "no" to Chua in view of the latter's moral ascendancy over him. In fact, Chua vouched for his non-participation in the lending business. According to the LA, to sanction the penalty of dismissal against Aboc would be unfair.^[10]

Moreover, the LA ruled that Metrobank did not comply with the due process requirement in dismissing Aboc because no hearing was conducted after he was required to explain. He was never informed that he was going to be investigated in connection with the charges being leveled against him. The conference set up by Metrobank could not be considered a substitute to the actual holding of a hearing.

Ruling of the National
Labor Relations Commission

On December 11, 2002, the NLRC set aside the decision of the LA but ordered Metrobank to pay Aboc reinstatement wages from July 12, 1999 to September 16,

1999; salary increase from January 2000 to June 2001; Christmas bonus for the year 2000; 13th month pay differential for the year 2000; and salary differential for July and August 2001. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby set aside and vacated and a new one entered dismissing the complaint. However, respondent Metropolitan Bank and Trust Company is hereby ordered to pay the following amounts with respect to complainant's reinstatement pending appeal:

1. Reinstatement Wages (July 12, 1999 to September 16, 1999 at P11, 980.00)	P23,960.00
2. Salary Increase from January 2000 to June 2001 at P1, 500.00/month	27,000.00
3. Christmas Bonus CY 2000	18,030.00
4. 13 th Month Pay Differential for CY 2000	1,500.00
5. Salary Diff'l for July & Aug. 2001	<u>7,200.00</u>
Total	P77,690.00

SO ORDERED.^[11]

The NLRC ruled that Aboc was guilty of serious misconduct and breach of trust and loss of confidence based on the following overt acts:

1. Complainant (*Aboc*) was an organizer of both CNRI and FFA, business entities which directly competed with the line of business of respondent (*Metrobank*);
2. Complainant was a responsible officer of both credit unions and actively participated in their transactions, using the respondent bank's office, facilities, and equipments.
3. Complainant, as bank officer, had the serious responsibility of reporting to respondent the establishment of CNRI and FFA but he deliberately failed to do so.
4. Petitioner admits having opened new accounts bearing fictitious names knowing fully well that it was against bank policy.

The NLRC wrote that Aboc's loyalty should be first and foremost to Metrobank. This consideration should be over and above whatever personal debts of gratitude he owed Chua.

On due process, the NLRC ruled that Metrobank fully complied with the two-notice rule under the Labor Code. It sent an inter-office letter dated July 16, 1998 to Aboc asking him to explain why his services should not be terminated for cause. Subsequently, Aboc submitted a written explanation dated February 6, 1998. He was likewise invited to a conference, which he attended on February 10, 1998, purposely to give him the chance to explain his side and to adduce evidence in his behalf.

On the monetary awards, the NLRC explained that Aboc was entitled to receive them because he was included in the payroll by Metrobank as he was ordered reinstated by the LA.

Both Aboc and Metrobank were not satisfied with the NLRC Decision. The former filed a motion for reconsideration^[12] while the latter filed a motion for partial reconsideration^[13] on the monetary award.

On September 17, 2003, the NLRC issued a resolution^[14] affirming its finding of valid dismissal but modifying the monetary award by directing Metrobank to pay Aboc his CBA benefits during his reinstatement pending appeal and his salary during the period stated therein, thereby partially granting Aboc's motion for reconsideration and denying Metrobank's motion for partial consideration.

Aggrieved, Metrobank challenged the grant of monetary award in a petition^[15] before the CA, docketed as CA-G.R. SP. No. 80747, while Aboc questioned the validity of his dismissal in a petition,^[16] docketed as CA-G.R.SP. No. 81363. The two petitions were consolidated by the CA because they involved the same parties and intertwined issues.

Ruling of the Court of Appeals

On October 28, 2005, the CA rendered its decision affirming the decision of the NLRC, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In CA-G.R. No. 807407, the petition is partially granted insofar as the finding of public respondent on the validity and legality of the dismissal of private respondent Antonio A. Aboc.
2. In CA-G.R. No. 81363, the petition is partially granted insofar as the grant of the monetary award in favor of petitioner Antonio A. Aboc.

No pronouncement as to costs.

SO ORDERED.^[17]

The CA wrote that Aboc's participation in the organization of two (2) credit unions operating inside Metrobank without its knowledge and consent was inimical to the welfare of the bank. The lending and investment transactions of the credit unions