

SECOND DIVISION

[G.R. Nos. 142732-33, December 04, 2007]

**MARILOU S. GENUINO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, CITIBANK, N.A., WILLIAM
FERGUSON, AND AZIZ RAJKOTWALA, RESPONDENTS.**

[G.R. NOS. 142753-54]

**CITIBANK, N.A., WILLIAM FERGUSON, AND AZIZ RAJKOTWALA,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
AND MARILOU GENUINO, RESPONDENTS.**

D E C I S I O N

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 seeks to set aside the September 30, 1999 Decision^[1] and March 31, 2000 Resolution^[2] of the Court of Appeals (CA) in the consolidated cases docketed as CA-G.R. SP Nos. 51532 and 51533. The appellate court dismissed the parties' petitions involving the National Labor Relations Commission's (NLRC's) Decision^[3] and Resolution,^[4] which held that Marilou S. Genuino was validly dismissed by Citibank, N.A. (Citibank). The NLRC likewise ordered the payment of salaries from the time that Genuino was reinstated in the payroll to the date of the NLRC decision. Upon reconsideration, however, the CA modified its decision and held that Citibank failed to observe due process in CA-G.R. SP No. 51532; hence, Citibank should indemnify Genuino in the amount of Php 5,000. Both parties are now before this Court assailing portions of the CA's rulings. In G.R. Nos. 142732-33, Genuino assails the CA's finding that her dismissal was valid. In G.R. Nos. 142753-54, Citibank questions the CA's finding that Citibank violated Genuino's right to procedural due process and that Genuino has a right to salaries.

Citibank is an American banking corporation duly licensed to do business in the Philippines. William Ferguson was the Manila Country Corporate Officer and Business Head of the Global Finance Bank of Citibank while Aziz Rajkotwala was the International Business Manager for the Global Consumer Bank of Citibank.^[5]

Genuino was employed by Citibank sometime in January 1992 as Treasury Sales Division Head with the rank of Assistant Vice-President. She received a monthly compensation of Php 60,487.96, exclusive of benefits and privileges.^[6]

On August 23, 1993, Citibank sent Genuino a letter charging her with "knowledge and/or involvement" in transactions "which were irregular or even fraudulent." In

the same letter, Genuino was informed she was under preventive suspension.^[7]

Genuino wrote Citibank on September 13, 1993 and asked the bank the following:

- a. Confront our client with the factual and legal basis of your charges, and afford her an opportunity to explain;
- b. Substantiate your charge of fraudulent transactions against our client; or if the same cannot be substantiated;
- c. Correct/repair/compensate the damage you have caused our client.

^[8]

On September 13, 1993, Citibank, through Victorino P. Vargas, its Country Senior Human Resources Officer, sent a letter to Genuino, the relevant portions of which read:

As you are well aware, the bank served you a letter dated August 23, 1993 advising you that ongoing investigations show that you are involved and/or know of irregular transactions which are at the very least in conflict with the bank's interest, and, may even be fraudulent in nature.

These transactions are those involving Global Pacific and/or Citibank and the following bank clients, among others:

1. Norma T. de Jesus
2. Carmen Intengan/Romeo Neri
3. Mario Mamon
4. Vienna Ochoa/IETI
5. William Samara
6. Roberto Estandarte
7. Rita Browner
8. Ma. Redencion Sumpaico
9. Cesar Bautista
10. Teddy Keng
11. NDC-Guthrie
12. Olivia Sy

In view of the foregoing, you are hereby directed to explain in writing three (3) days from your receipt hereof why your employment should not be terminated in view of your involvement in these irregular transactions. You are also directed to appear in an administrative investigation of the matter which is set on Tuesday, Sept. 21, 1993 at 2:00 P.M. at the HR Conference Room, 6th Floor, Citibank Center. You may bring your counsel if you so desire.^[9]

Genuino's counsel replied through a letter dated September 17, 1993, demanding for a bill of particulars regarding the charges against Genuino. Citibank's counsel replied on September 20, 1993, as follows:

- 1.2. [T]he bank has no intention of converting the administrative investigation of this case to a full blown trial. What it is prepared to do is give your client, as required by law and Supreme Court decisions, an

opportunity to explain her side on the issue of whether she violated the conflict of interest rule—either in writing (which could be in the form of a letter-reply to the September 13, 1993 letter to Citibank, N.A.) or in person, in the administrative investigation which is set for tomorrow afternoon vis-à-vis the bank clients/parties mentioned in the letter of Citibank, N.A.

x x x x

2.2. You will certainly not deny that we have already fully discussed with you what is meant by the conflict with the bank's interest vis-à-vis the bank clients/parties named in the September 13, 1993 letter of Citibank to Ms. Genuino. As we have repeatedly explained to you, what the bank meant by it is that your client and Mr. Dante Santos, using the facilities of their family corporations (Torrance and Global) appear to have participated in the diversion of bank clients' funds from Citibank to, and investment thereof in, other companies and that they made money in the process, in violation of the conflict of law rule. It is her side of this issue that Citibank, N.A. is waiting to receive/hear from Ms. Genuino.^[10]

Genuino did not appear in the administrative investigation held on September 21, 1993. Her lawyers wrote a letter to Citibank's counsel asking "what bank clients' funds were diverted from the bank and invested in other companies, the specific amounts involved, the manner by which and the date when such diversions were purportedly affected." In reply, Citibank's counsel noted Genuino's failure to appear in the investigation and gave Genuino up to September 23, 1993 to submit her written explanation. Genuino did not submit her written explanation.^[11]

On September 27, 1993, Citibank informed Genuino of the result of their investigation. It found that Genuino with Santos used "facilities of Genuino's family corporation, namely, Global Pacific, personally and actively participated in the diversion of bank clients' funds to products of other companies that yielded interests higher than what Citibank products offered, and that Genuino and Santos realized substantial financial gains, all in violation of existing company policy and the Corporation Code, which for your information, carries a penal sanction."^[12]

Genuino's employment was terminated by Citibank on grounds of (1) serious misconduct, (2) willful breach of the trust reposed upon her by the bank, and (3) commission of a crime against the bank.^[13]

On October 15, 1993, Genuino filed before the Labor Arbiter a Complaint^[14] against Citibank docketed as NLRC Case No. 00-10-06450-93 for illegal suspension and illegal dismissal with damages and prayer for temporary restraining order and/or writ of preliminary injunction. The Labor Arbiter rendered a Decision^[15] on May 2, 1994, the dispositive portion of which reads:

WHEREFORE, finding the dismissal of the complainant Marilou S. Genuino to be without just cause and in violation of her right to due process, respondent CITIBANK, N.A., and any and all persons acting on its behalf or by or under their authority are hereby ordered to reinstate complainant immediately to her former position as Treasury Sales

Division Head or its equivalent without loss of seniority rights and other benefits, with backwages from August 23, 1993 up to April 30, 1994 in the amount of P493,800.00 (P60,000 x 8.23 mos.) subject to adjustment until reinstated actually or in the payroll.

Respondents are likewise ordered to pay complainant the amount of 1.5 Million Pesos and P500,000.00 by way of moral and exemplary damages plus 10% of the total monetary award as attorney's fees.^[16]

Both parties appealed to the NLRC. The NLRC, in its September 3, 1994 Decision in NLRC-NCR Case No. 00-10-06450-93 (CA No. 006947-94), reversed the Labor Arbiter's decision with the following modification:

WHEREFORE, Judgment is hereby rendered (1) SETTING ASIDE the appealed decision of the Labor Arbiter; (2) DECLARING the dismissal of the complainant valid and legal on the ground of serious misconduct and breach of trust and confidence and consequently DISMISSING the complaint a quo; but (3) ORDERING the respondent bank to pay the salaries due to the complainant from the date it reinstated complainant in the payroll (computed at P60,000.00 a month, as found by the Labor Arbiter) up to and until the date of this decision.

SO ORDERED.^[17]

The parties' motions for reconsideration were denied by the NLRC in a resolution dated October 28, 1994.^[18]

The Ruling of the Court of Appeals

On December 6, 1994, Genuino filed a petition for certiorari docketed as G.R. No. 118023 with this Court. Citibank's petition for certiorari, on the other hand, was docketed as G.R. No. 118667. In the January 27, 1999 Resolution, we referred these petitions to the CA pursuant to our ruling in *St. Martin Funeral Home v. NLRC*.^[19]

Genuino's petition before the CA was docketed as CA-G.R. SP No. 51532 while Citibank's petition was docketed as CA-G.R. SP No. 51533. Genuino prayed for the reversal of the NLRC's decision insofar as it declared her dismissal valid and legal. Meanwhile, Citibank questioned the NLRC's order to pay Genuino's salaries from the date of reinstatement until the date of the NLRC's decision.

The CA promulgated its decision on September 30, 1999, denying due course to and dismissing both petitions.^[20] Both parties filed motions for reconsideration and on March 31, 2000, the appellate court modified its decision and held:

WHEREFORE, save for the **MODIFICATION** ordering Citibank, N.A. to pay Ms. Marilou S. Genuino five thousand pesos (P5,000.00) as indemnity for non-observance of due process in CA-G.R. SP No. 51532, this Court's 30 September 1999 decision is **REITERATED** and **AFFIRMED** in all other respects.

SO ORDERED.^[21]

Hence, we have this petition.

The Issue

WHETHER OR NOT THE DISMISSAL OF GENUINO IS FOR A JUST CAUSE AND IN ACCORDANCE WITH DUE PROCESS

In G.R. Nos. 142732-33, Genuino contends that Citibank failed to observe procedural due process in terminating her employment. This failure is allegedly an indication that there were no valid grounds in dismissing her. In G.R. Nos. 142753-54, Citibank questions the ruling that Genuino has a right to reinstatement under Article 223 of the Labor Code. Citibank contends that the Labor Arbiter's finding is not supported by evidence; thus, the decision is void. Since a void decision cannot give rise to any rights, Citibank opines that there can be no right to payroll reinstatement.

The dismissal was for just cause but lacked due process

We affirm that Genuino was dismissed for just cause but without the observance of due process.

In a string of cases, ^[22] we have repeatedly said that the requirement of twin notices must be met. In the recent case of *King of Kings Transport, Inc. v. Mamac*, we explained:

To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing or conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During