

FIRST DIVISION

[G.R. NO. 146021, March 10, 2006]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS.
ELIZABETH G. SARMIENTO, RESPONDENT**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* filed by Bank of the Philippine Islands (petitioner) seeking to annul the Decision dated September 15, 2000^[1] and the Resolution dated November 13, 2000^[2] of the Court of Appeals (CA) in CA G.R. CV No. 50135 affirming *in toto* the decision of the Regional Trial Court of Quezon City dismissing the complaint for sum of money filed by petitioner against Elizabeth Sarmiento (respondent).

The factual backdrop as found by the CA is as follows:

Appellee Sarmiento was the assistant manager of appellant bank's España Branch. Sometime in 1987, the España Branch was investigated for several alleged anomalous transactions involving time deposits (Exhibit A). Among the suspects in the alleged scam was appellee Sarmiento. From October 10, 1987 to June 30, 1988, appellee Sarmiento did not regularly report for work but went to her office in the bank only once in a while. She however received her full salary for the said period totaling P116,003.52. Subsequently, she received a demand from the appellant bank to return said amount because it was mistakenly paid to her. She refused to do so and so appellant bank instituted an action for collection in the court below.

Appellant bank asserted that since appellee Sarmiento did not actually work during the period adverted to, she was not therefore, entitled to receive any salary. The payment to her of said salary was a mistake.

According to appellee Sarmiento however, when an internal audit was being undertaken in connection with the investigation of the alleged bank scam, Vice President Arturo Kimseng of the Audit Department of appellant bank verbally directed her to stop working while the investigation was going on. This directive was obviously for the purpose of preventing appellee Sarmiento from tampering with the records or from influencing her subordinates to cover-up for her. It was because of said oral instruction that appellee Sarmiento went to office sparingly.^[3]

On April 3, 1995, the Regional Trial Court of Quezon City, Branch 98, dismissed ^[4] the complaint for failure of petitioner to establish its case by preponderance of evidence with costs against it. The trial court found that the principle of *solutio*

indebiti upon which petitioner based its complaint for a sum of money is untenable. It ruled that since respondent was petitioner's Assistant Manager at the España Branch, she was a managerial employee who was not under obligation to punch in her card in the Bundy clock; that she was allowed to visit the business establishments of petitioner's several clients thus she could not be seen reporting for work which was not a conclusive proof that she was not rendering service to her employer; that respondent was lawfully entitled for payment of her salaries for the period from October 10, 1987 to June 30, 1988, amounting to P116,003.52; that petitioner's averment that during the periods aforementioned respondent had already ceased reporting rest on a very shaky ground since respondent claimed that she was instructed by petitioner's Assistant Vice-President of the Auditing Department to refrain from reporting regularly inasmuch as there was an on-going internal audit; that petitioner failed to present countervailing evidence on this point, hence such claim remained un rebutted; and that petitioner did not even bother to adduce clear and convincing evidence when the services of respondent was terminated.

Petitioner filed its appeal with the CA which in a Decision dated September 15, 2000 affirmed the Decision of the trial court and dismissed the appeal. Petitioner's motion for reconsideration was likewise denied in a Resolution dated November 13, 2000.

In finding for the respondent, the CA made the following disquisition:

These are admitted or fully established facts which constitute the foundation of this Court's verdict, to wit:

1. Appellee Sarmiento was an assistant manager of appellant bank's España Branch and therefore was a managerial employee.
2. As a managerial employee, appellee Sarmiento was not required to report for work in accordance with a definite time schedule.
3. For the period, October 10, 1987 to June 30, 1988, appellee Sarmiento went to her office only once in a while but received her full salary for said period.
4. According to appellant bank, appellee Sarmiento's services in said bank were terminated on August 26, 1988. Consequently, for the period, October 10, 1987 to June 30, 1988, appellee was still an employee of the bank.
5. During the period in question, appellee Sarmiento was not suspended from office.
6. No criminal, civil or administrative action has been instituted by appellant bank against appellee Sarmiento.

In this suit, the basis of appellant's bank's claim for reimbursement of the salary paid to appellee Sarmiento for the period in question is the rule of "no work, no pay". Since she did not work during the period in question, she was not entitled to any salary. Appellee Sarmiento counters this position with the argument that the reason why she did not report for work regularly was because she was verbally instructed by Vice-

President Arturo Kimseng not to report for work while the investigation in the bank was going on. Consequently, it was not her desire, much less her fault, that she went to office very rarely.

The only issue to resolve is whether or not appellee Sarmiento was indeed verbally instructed by Vice President Arturo Kimseng not to report for work while the investigation was still going on.

It is true that Vice President Arturo Kimseng denied having given said oral instruction to appellee Sarmiento. That notwithstanding, this Court shares the view of the lower court that indeed appellee Sarmiento was enjoined from reporting for work during the period of investigation.

This is plausible because it jibes with the common practice in the business world. When a managerial employee is under investigation, the employer has three options. First: to suspend the managerial employee during the period of investigation — but this entails notice and hearing to comply with the demands of administrative due process. Second: to allow the managerial employee to continue working during the period of investigation so that the employer can derive benefit out of the salary being paid to the former. Third: to let the managerial employee discontinue working during the period of investigation but continue paying his salary. Usually, the employers choose the third option because they consider the salary paid without work a reasonable price to pay for ensuring the integrity of the records under the control and to avoid influence being exerted upon subordinate employees who may be potential witnesses against the former.

If there had been no such instruction to appellee Sarmiento, why did not the branch manager or even higher corporate officials call her attention for not reporting to office regularly? If her attention was called but she continued to be absent, why was she not suspended? Why was her salary paid? These questions were not satisfactorily answered by appellant bank.

Accordingly, this Court holds that the payment of the salary to appellee Sarmiento during the period in question was correct and the latter's receipt was legal. She has therefore, no obligation to return it.^[5]

Hence, the instant petition for review on the following grounds:

- I. The Honorable Court of Appeals erred in holding based on a misapprehension of facts that the "only issue to resolve is whether it is true or not that appellee Sarmiento was indeed verbally instructed by Vice President Arturo Kimseng not to report for work while the investigation was still going on."
- II. In connection with the foregoing, the Honorable Court of Appeals also erred in holding without any basis at all, that it "shares the view of the lower court that indeed appellee Sarmiento was enjoined from reporting for work during the period of investigation."