

FIRST DIVISION

[G.R. NO. 172401, October 30, 2006]

**CARLOS G. AZUL, PETITIONER, VS. BANCO FILIPINO SAVINGS
AND MORTGAGE BANK, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court assails the August 23, 2004 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 79099, declaring petitioner's dismissal as lawful and setting aside the National Labor Relations Commission (NLRC) (1) Decision^[2] dated December 27, 2002 in NLRC NCR CA No. 030660-02, which affirmed the August 16, 2001 Decision^[3] of Labor Arbiter Jesus Orlando M. Quiñones in Sub-RAB 05-11-00385-00 finding respondent bank guilty of illegal dismissal and (2) Order^[4] dated May 7, 2003 denying respondent bank's motion for reconsideration for being one day late. Also assailed is the March 28, 2006 Resolution^[5] denying petitioner's motion for reconsideration.

The following facts are undisputed:

Petitioner Carlos G. Azul was the branch accountant of respondent Banco Filipino Savings & Mortgage Bank-Iriga branch. Upon audit, the bank found that petitioner was involved in "kiting" operations by treating check deposits as "cash" and allowing withdrawals from uncollected check deposits. The audit reported a total loss of P4,469,500.00.

An Ad Hoc Committee conducted a formal investigation, during which petitioner did not deny his participation in the operations but insisted that he was merely following the instructions of Danilo Disuanco, the branch manager. The latter allegedly instructed petitioner to use his password and ID to release the float days, or the number of days for checks to be cleared for withdrawal. Petitioner denied that he profited from the prohibited transactions. After the investigation, the bank terminated petitioner's services and forfeited his benefits pursuant to Section IX of the bank's Employee Guidelines.

Petitioner filed with the NLRC Sub-Regional Arbitration Branch No. V at Naga City a complaint for illegal dismissal with prayer for reinstatement, payment of backwages and other benefits, actual and moral damages and attorney's fees. On August 16, 2001, the Labor Arbiter rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding respondent BANCO FILIPINO guilty of illegal dismissal, and is hereby ordered to actually reinstate complainant to his former position without loss of seniority rights and other privileges, or at the option of the respondent, payroll reinstatement; and to pay complainant's full

backwages, which amounts to Php824,125.00, and ten percent (10%) of said award representing attorney's fees for Php82,412.50.

All other claims and charges are DISMISSED for lack of merit.

SO ORDERED.^[6]

On appeal, the NLRC affirmed the Labor Arbiter. It also denied the bank's motion for reconsideration for being one day late. The Labor Arbiter later issued a writ of execution and directed the Sheriff to collect P901,984.81 representing the bank's appeal cash bond to answer for petitioner's monetary award.

The bank filed a petition for certiorari^[7] with the Court of Appeals which was granted. In its assailed decision dated August 23, 2004, the Court of Appeals reversed the NLRC and declared petitioner's dismissal to be lawful. Petitioner's motion for reconsideration was denied, hence this petition raising the following issues:

1) THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN GIVING DUE COURSE TO RESPONDENT'S PETITION FOR CERTIORARI UNDER RULE 65 NOTWITHSTANDING THE FINALITY AND THE SUBSEQUENT ENTRY OF JUDGMENT OF THE DECISION OF THE NLRC.

2) EVEN ASSUMING THAT THE COURT OF APPEALS DID NOT ERR IN GIVING DUE COURSE TO THE SAID PETITION, IT NEVERTHELESS GRAVELY ABUSED ITS DISCRETION IN FINDING GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC.

3) AGAIN ASSUMING THAT THE COURT OF APPEALS DID NOT ERR IN GIVING DUE COURSE TO THE SAID PETITION, IT NEVERTHELESS GRAVELY ABUSED ITS DISCRETION IN REVIEWING THE PERCEIVED ERRORS OF JUDGMENT OF THE NLRC IN CONTRAVENTION WITH THE RULES AND ESTABLISHED JURISPRUDENCE.^[8]

The issues for resolution are (1) whether the Court of Appeals correctly disregarded the bank's failure to file on time its motion for reconsideration with the NLRC; and (2) whether petitioner was illegally dismissed.

Petitioner argues that the decision of the NLRC had become final and executory because of the bank's failure to seasonably file its motion for reconsideration; that there was no legal justification for the reopening thereof; that the NLRC did not commit grave abuse of discretion in holding that petitioner did not willfully and knowingly connive with Disuanco because it was the latter who, by himself, engineered the "kiting" operations using his managerial powers, discretion and strong personality; that the Court of Appeals supplanted the findings of the Labor Arbiter and the NLRC, which is outside the province of a petition for certiorari under Rule 65; and that while admitting that it was not departing from the NLRC's findings of fact because it was not proper to review the probative value of the parties' evidence, the Court of Appeals nevertheless reversed the said factual findings when it ruled that there was just cause for petitioner's termination, thus ruling that he could be dismissed for loss of trust and confidence.

On the other hand, the bank asserts that law and equity as well as a desire to render a just and equitable judgment not bound by a strict and rigid application of technical rules justified the Court of Appeals' action in giving due course to the petition for certiorari; that the delay in filing its motion for reconsideration with the NLRC was justifiable because its messenger, while on his way to file the motion, was called upon to locate his missing 3-year old son; that the NLRC's outright dismissal of the motion for reconsideration, especially because it raised substantial and meritorious issues, was uncalled for because there was no intent on the part of the bank to delay the administration of justice; that the Court of Appeals did not alter the established facts found by the NLRC but simply applied the law based on these facts; and that the Court of Appeals correctly ruled that the NLRC gravely abused its discretion in not finding just cause for petitioner's dismissal based on his own Affidavit stating that he was aware of the bank's policy prohibiting drawings against uncollected deposits but that he did nothing to prevent or report the same to the Head Office.

The petition lacks merit.

The seriousness of petitioner's infraction demanded the setting aside of strict rules of procedure as to allow the determination on the merits of whether he was lawfully dismissed. As held by this Court, the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases, because they must be decided according to justice and equity and the substantial merits of the controversy.^[9]

There is substantial evidence showing that there was valid cause for the bank to dismiss petitioner's employment for loss of trust and confidence. Petitioner was a bank accountant, which is a position of trust and confidence. The amount involved is significant, almost P4.5 million.

Petitioner admitted that he allowed his ID and password to be used in the "kiting" operations. This admission is evidence of the highest order and does not require further proof. It binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.^[10] Thus, as correctly found by the Court of Appeals, the following admissions in petitioner's affidavit showed the indispensability of his participation in the prohibited transactions, to wit:

6) x x x The check presented by the favored client-depositor is validated as "check deposit"; The branch manager or any of the bank officers will "release" or waive the "float days" of the check (the "float days" refer to the period of days within which a check is cleared for withdrawal by the drawee bank through the Central bank clearing house - for Manila checks, the "float days" is seven days, while Naga or local checks it is three days. The act of "releasing" the float days is by encoding into the computer the password, and the float days would be reduced into "0" day instead of reflecting the actual number of days for clearing. The encoding may only be done by two bank officers by inputting "over-ride 1" and "over-ride 2". Once the release of float days is done, the amount of the check deposited is ready for withdrawal by the process mentioned in letter (g) of the preceding paragraph.