

FIRST DIVISION

[G.R. NO. 158707, November 27, 2006]

**COMMUNITY RURAL BANK OF SAN ISIDRO (N.E.), INC.,
REPRESENTED BY MR. ABELARDO P. SAMSON, PRESIDENT-
GENERAL MANAGER, PETITIONER, VS. YSAGANI^[1] V. PAEZ,
RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision^[2] dated July 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 64027 which dismissed for lack of merit the petition for *certiorari* of Community Rural Bank of San Isidro (N.E.), Inc. (petitioner), and the CA Resolution^[3] dated June 2, 2003 which denied petitioner's Motion for Reconsideration.

The factual background of the case is as follows:

On March 1, 1983, Ysagani V. Paez (respondent) started working with petitioner.^[4] He was later promoted as Chief of the Loans Division. Sometime in February 1996, he was promoted to the position of Officer-In-Charge (OIC)-Manager of petitioner's extension office in San Isidro, Nueva Ecija.

On March 20, 1997, Angelito Santos (Santos), one of petitioner's client-depositors, deposited to his Current Account No. 61-00022 several checks amounting to P4,344,545.00.^[5] As of said date, he had a balance of P108,482.93.^[6] On the same day, despite the fact that the checks had not yet been cleared, Santos was allowed to instantly withdraw the amount of P4,344,545.00, leaving a balance of P108,482.93.^[7] Subsequently, the checks were dishonored for "account closed".^[8]

Twelve days later, in a Memorandum dated April 1, 1997, Abelardo P. Samson (Samson), petitioner's President and General Manager, required respondent to explain within forty-eight (48) hours why no administrative action should be taken against him for accepting a demand deposit of a client whose previous account was closed by one of the branch offices and allowing an unfunded check to be cleared.^[9]

In a Memorandum dated April 2, 1997, Samson required respondent to further explain within forty-eight (48) hours why the matter was not immediately reported to the Office of the President/General Manager or to the Head Office upon its occurrence.^[10]

In a Letter dated April 3, 1997, respondent, replying to the Memorandum dated April 1, 1997, explained that the client was just a walk-in depositor and he had no

knowledge that the client's account in one of the branch offices was already closed. He further stated that he does not allow unfunded checks to be cleared and he earlier instructed his staff not to allow withdrawal of unfunded checks unless the depositor has sufficient deposit for the withdrawal.^[11]

In a Letter dated April 4, 1997, respondent, replying to the Memorandum dated April 2, 1997, explained that Santos's transaction was handled solely by Joey M. Aligora (Aligora), the bookkeeper, without his permission and that he did not immediately tell management the incident because he was still investigating the matter. He also stated that he learned of the incident and proceeded to investigate the matter only when informed by Rogelio Vargas (Vargas), petitioner's Internal Auditor, on March 26, 1997.^[12]

On April 11, 1997, petitioner placed respondent under preventive suspension.^[13] While the suspension was initially for fifteen (15) days, it was extended to another sixty (60) days.^[14] In a Memorandum dated June 11, 1997, petitioner requested that respondent appear before the Board of Directors' Special Meeting scheduled on June 14, 1997.^[15] In a Letter dated June 14, 1997 addressed to the Board of Directors, respondent stressed that the transactions took place without his approval and he was not signing the daily proof sheets unless the statement of accounts on demand deposits were attached.^[16]

Jaime S. Vergel de Dios (Vergel de Dios), petitioner's External Auditor, was tasked to investigate the mishandled demand deposit account of Santos. In his Memorandum to the Board of Directors, he submitted the following observations:

2. The OIC, Mr. Ysagani Paez was comparatively new in this position, being his first appointment as officer of the bank. Before this, he was with the Loan department and his work orientation and experience was mainly in lending operation so that there was a radical shift from what he used to do.

A more experienced Manager would not have allowed his bookkeeper and cashier to transact business with the clients without his knowing what was going on. He could have overheard the frequent pleadings of Mr. Santos' sisters who generally attended to this type of transaction as Mr. Santos was allegedly out of town. The working area in the Extension Office is so small, but what happened then may not have registered with him as significant. He was probably more concerned with loan transactions, its processing and collection and attending meetings of the managers with the President.

3. According to the internal auditors, the posting in the general ledger was delayed for about a week. **In my interview of Mr. Paez he said that the proof sheet he recalled signing was March 7, 1997, so that he was about two weeks delayed in the review of the transactions. Since his work orientation or experience was in loans, the significance of entries or information such as the returned [sic] of checks, amount of checks being received and deposited daily, penalty charges being imposed**

on returned checks may have been overlooked or underestimated.

Mr. Paez could have inquired from his bookkeeper certain explanation for such entries and in the process discover or even discourage irregularities which may already be in the offing, or forewarn his employees in the violation of bank policies. (Emphasis supplied)^[17]

In a Letter dated July 7, 1997, respondent was given an opportunity to explain why the management should not dismiss him from employment for "acts and omissions which constitute gross dishonesty, negligence, and misconduct and/or serious breach of trust and confidence" in the mishandling of account of Santos^[18] which resulted in the bank loss. In his Letter-Explanation dated July 17, 1997, respondent reiterated that he had no participation in the mishandling of the account of Santos.^[19]

On August 13, 1997, petitioner's Board of Directors approved a Resolution terminating the employment of respondent, together with Aligora and Maricel B. Ferraris (Ferraris), the cashier, "for acts and omissions which constitute gross dishonesty, negligence and misconduct and/or serious breach of trust and confidence that resulted to great loss to the Rural Bank."^[20] On August 15, 1997, respondent received his letter of termination.^[21]

On September 11, 1997, respondent filed a complaint for illegal suspension and illegal dismissal with prayer for reinstatement, backwages and damages, docketed as NLRC-RAB-III Case No. 09-0274-97.^[22]

On September 24, 1999, the Labor Arbiter rendered his Decision holding that respondent is entitled to be paid his salary for three (3) months and six (6) days of his preventive suspension since his preventive suspension went beyond the allowed maximum period of thirty (30) days; that respondent's dismissal was illegal since the documentary evidence proved that the persons responsible for the consummation of Santos's transaction were Aligora and Ferraris; and that respondent's involvement in the transaction was never established.^[23] Thus, the dispositive portion of the Decision reads:

WHEREFORE, all the foregoing considered, judgment is hereby rendered declaring the dismissal of the complainant illegal. Respondent Community Rural Bank of San Isidro (N.E.), Inc. is ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and to pay complainant the following:

1. Backwages (illegal suspension) - - - - - P 39,064.00
2. Backwages (amounting to - - - - - 244,150.00
at the promulgation of the decision) until
actual reinstatement
- Total - - - - - P 283,214.00

All other claims are denied for lack of merit.

SO ORDERED.^[24]

Petitioner filed an appeal with the National Labor Relations Commission (NLRC), docketed as NLRC CA No. 022081-00.^[25] On November 29, 2000, the NLRC affirmed the Decision of the Labor Arbiter.^[26] The NLRC held that petitioner failed to prove the participation or involvement of respondent in Santos's transaction; that the only ones involved were Aligora, Ferraris and Ben Eligino (Eligino), the clearing clerk; that Internal Auditor Vargas, in his testimony before the Nueva Ecija Prosecutor's Office in the preliminary investigation in the criminal case,^[27] practically exonerated respondent and pointed to Aligora, Eligino and Ferraris as the only bank employees involved in the subject transaction; that respondent as OIC-Manager had no authority to approve/disapprove checks for payment since the Memorandum providing for the guidelines in the clearing and approval for payment of in-cleared checks was issued only on August 7, 1997 or several months after April 11, 1997 when respondent was placed on preventive suspension.

On January 3, 2001, petitioner filed a Motion for Reconsideration^[28] but it was denied by the NLRC in its Resolution dated January 24, 2001. ^[29]

Subsequently, petitioner filed a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 64027.^[30] On July 30, 2002, the CA rendered its Decision dismissing the petition for *certiorari* for lack of merit.^[31] The CA held that the NLRC's consideration of the stenographic notes on Internal Auditor Vargas's testimony in the preliminary investigation was not improper since there is no showing that petitioner objected to the admission of the stenographic notes; that petitioner has not established that the clearing and payment of checks, and the accomplishment of daily proof sheets were among respondent's duties when he assumed the position of OIC-Manager of petitioner's extension office in San Isidro, Nueva Ecija.^[32]

On August 20, 2002, petitioner filed a Motion for Reconsideration^[33] but it was denied by the CA in its Resolution dated June 2, 2003.^[34]

Hence, the present petition anchored on the following grounds:

1. The Court of Appeals committed serious errors of law and had ruled in a manner contrary to prevailing jurisprudence when it affirmed the decision of the NLRC, thus consequently preventing Petitioner Bank from exercising its management prerogative of dismissing Respondent, who clearly was liable for gross negligence of his duties and had breached the trust and confidence of Petitioner Bank.
2. The Court of Appeals erred in giving undue attention and probative value to the Petitioner Bank's internal auditor, Rogelio Vargas' testimony in the preliminary investigation (I.S. No. 4711 to 4712-97), entitled Community Rural Bank of San Isidro (N.E.) vs. Angelito Santos et al., considering that the same was an investigation of the existence of criminal liability as opposed to a determination of the existence (sic) gross negligence and loss or breach of trust as grounds to dismiss the Respondent.

3. The Honorable Court of Appeals erred in not considering the grossly negligent acts of Respondent while performing his duties as OIC/Manager of Respondent Bank which by themselves are sufficient for Petitioner Bank to lose its trust and confidence in respondent.^[35]

Anent the first ground, petitioner argues that after a determination of respondent's incompetence and untrustworthiness, petitioner's decision to dismiss him for gross negligence and/or loss of trust and confidence must be respected since it is a lawful exercise of its management prerogative, which should not be interfered with by judicial or quasi-judicial bodies.

As to the second ground, petitioner contends that the NLRC and CA should not have placed undue emphasis on Internal Auditor Vargas's testimony in the preliminary investigation of the criminal case since: (a) the issue in this case is respondent's dismissal from employment for a just cause under the Labor Code, not his criminal liability for the fraud committed upon the petitioner; (b) respondent merely filed a Supplement with the Labor Arbiter attaching the stenographic notes which did not include a certification that it was a certified true copy; and, (c) petitioner was not given an opportunity to contest the inclusion of the stenographic notes as part of the record.

On the third ground, petitioner maintains that respondent, as an OIC/ Manager, was a managerial employee and he held a position of trust and confidence such that his direct involvement in the fraud need not be proved to support his dismissal since it is enough that petitioner showed respondent's gross negligence in the conduct of his duties; that it was respondent's duty as OIC-Manager to go over the bank ledgers on a daily basis, perform occasional cross-credit checks with petitioner's other branches, accomplish the required daily proof sheets and supervise his subordinates; and that his negligence to perform the foregoing acts made it possible for his subordinates to commit fraud and resulted to a great loss of money to petitioner.

In his Comment respondent submits that the factual findings of the Labor Arbiter, as affirmed by the NLRC and CA, should not only be accorded respect but even finality, and thus binding upon the Court; that petitioner never objected to the introduction of the stenographic notes on Internal Auditor Vargas's testimony in the preliminary investigation; that at the time of Santos's transaction, respondent had no power to approve or disapprove check withdrawals since such authority was only granted to managers after respondent was placed under preventive suspension.

Parties filed their respective Memoranda in compliance with the Court's Resolution dated March 27, 2006.^[36]

The petition is partly meritorious.

The Labor Code provides that an employer may terminate the services of an employee for just cause and this must be supported by substantial evidence.^[37] The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as