

THIRD DIVISION

[G.R. NO. 159170, August 12, 2005]

**EQUITABLE PCIBANK AND WILFREDO VERGARA, PETITIONERS,
VS. GENEROSA A. CAGUIOA, RESPONDENT.**

DECISION

PANGANIBAN, J.:

Inasmuch as the factual findings of the Court of Appeals and the National Labor Relations Commission were contrary to those of the labor arbiter, this Court waded into the records of this case to resolve the conflict. This recourse was necessary to accord substantial justice to the parties.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, challenging the May 30, 2003 Decision^[2] and July 15, 2003 Resolution of the Court of Appeals (CA) in CA-GR SP No. 71507. The assailed Decision disposed thus:

"WHEREFORE, finding the instant petition not impressed with merit, the same is hereby **DENIED DUE COURSE**. Costs against petitioners."^[3]

The July 15, 2003 Resolution denied petitioners' Motion for Reconsideration.

The Facts

The antecedents as summarized by the CA are as follows:

"Senior Manager Generosa A. Caguioa filed this complaint for illegal dismissal, payment of salary, allowances, retirement benefits, 13th month pay, moral and exemplary damages, and actual damages on October 8, 2000 against Equitable PCI Bank. She indicated that she was hired in May 1963 and received a total monthly pay of P39,630.00 at the time of her dismissal on October 6, 2000.

"In her Position Paper, she alleged that, assigned at respondent's EDSA-Balintawak Branch, EDSA, Balintawak, Quezon City, she had served the respondent bank for 35 years when discharged. On February 3, 2000, George L. Go, respondent's Chairman of the Board, called her attention to the complaint of client Antonio Jarina regarding an "accounting activities," involving her participation, which cost him considerable damage. It was about bank checks, which were issued to Jarina in exchange for cash at a discounted rate -- all by means of his own capital. The "scheme failed," resulting in his loss of investments amounting to P4,325,051.65. The complainant explained on February 8, 2000,

vehemently denying any knowledge of the discounting activities. On June 1, 2000, she received another Memorandum dated May 29, 2000 from First Vice-president and Internal Auditor Jose G. Nuguid, directing her to explain and show cause why she "should not be administratively/financially dealt with the bank's Code of Conduct" in connection with the aforementioned incidents. She wrote her explanation on June 2, 2000. On September 15, 2000, respondent's Bankwide Evaluation Committee (BEC) issued a Decision Memo, finding her guilty of (sic) "having personally participated in the check discounting activity of Mr. Antonio Jarina, and therefrom, personally benefited/profited to the prejudice of the bank." She would be dismissed with automatic forfeiture of benefits. She appealed on September 21, 2000 to BEC and on October 3, 2000, the respondent denied her appeal and issued the termination letter dated October 5, 2000. She alleged further that from her dismissal on October 2000, respondent has refused to pay her salaries, wages and benefits; and by reason of her wanton, arbitrary and illegal dismissal, she suffered damages and incurred expenses, which should be assessed, in her favor. Documents marked as Annexes A to H-2 are attached to support her allegations.

"The respondents in their Position Paper asserted that on October 28, 2000, bank client Antonio Jarina lodged a complaint against herein complainant Generosa Caguioa, Ruth Amador and Arlene Pascual, accusing them of luring him to change his investment with the bank into another kind of investment which would (sic) him a higher or better yield. The scheme required Jarina's withdrawal of his deposits in the bank to be made use of (sic) in check discounting as facilitated by the complainant who was the Branch Manager of respondent Bank's branch in EDSA-Balintawak, Amador and Pascual, outside the respondent bank's operations. Jarina initially benefited from the "new transactions" but in August 1997, no further interest was credited into his account and his "principal" had not been returned to him. When George Go directed the complainant to explain, she pointed to Arlene Pascual as the culprit and claimed that Jarina picked on her as Ms. Pascual had already resigned and moved to the United States. Jarina followed up the status of his complaint with the manager of the bank's New York Branch, Eduardo Tee, who in turn traced out Evelyn Magadia who possessed documents, which could help in the investigation. Tee contacted Magadia and the latter agreed to turn over the documents that Jarina referred to. Magadia defended Arlene, saying that Arlene would not have acted on her own had it not been for the instigation of complainant Genie Caguioa and Ruth Amador. x x x. Magadia even declared that she liaised for Arlene Pascual in the check discounting transactions, and Arlene would sometimes instruct her to go to the Bank's New York branch in order to pick up and deliver envelopes containing cash to complainant Genie Caguioa in the Bank's branch in Marikina where the latter was branch manager. Magadia stated that the envelopes containing cash were the complainant's shares in the proceeds of the check discounting activity. After a thorough investigation, the respondent Bank found sufficient cause to dismiss the complainant for violation of the Code of Conduct, Class D 3 on offense on Loyalty and Class D on offense on Honesty. Since Arlene Pascual had already resigned and Ruth Amador retired prior to the Bank's knowledge

of Jarina's complaint, only the complainant was served a show-cause memorandum and ultimately discharged.

"In issuing his Decision dated February 27, 2000, the Labor Arbiter upheld the dismissal of private respondent Caguioa and ruled that *"the respondent Bank in a valid exercise of management prerogative terminated her employment, finding her to have violated its Code of Conduct, Class D on Loyalty and Class D on Honesty."*

"Not satisfied with the Decision, private respondent filed her *Memorandum on Appeal* contending that the Labor Arbiter erred in the appreciation of facts and in disregarding private respondent's objections to the evidence presented by herein petitioners. Petitioners submitted their Opposition, dated April 16, 2001 wherein they argued mainly that private respondent *"has failed to show any serious error upon which the appeal should be granted."*

"On August 30, 2001, public respondent came out with its Decision, the dispositive portion of which states:

"WHEREFORE, all the foregoing duly considered, the decision appealed from is hereby REVERSED and SET ASIDE. Complainant-appellant's dismissal is hereby declared illegal and invalid and, accordingly, her immediate reinstatement without loss of benefits and seniority rights is hereby ordered.

"Respondents-appellees are further ordered to pay unto the complainant-appellant all unpaid wages and other benefits as soon as the same shall have been duly computed by the Arbitration Branch of this Commission.

"Finally, the respondent-appellees are hereby ordered to pay the complainant-appellant the sum equivalent to 10% of the awarded money claims as Attorney's fees. For failure of the complainant-appellant, however to prove other damages, the same are deemed dismissed.

"SO ORDERED." [4]

Subsequently, petitioners elevated the matter to the CA.

Ruling of the Court of Appeals

The Court of Appeals found that the alleged revelations made by Evelyn Magadia were insufficient to justify the dismissal of Generosa A. Caguioa. It considered those revelations hearsay for failure of petitioners to produce Ms. Magadia's Sworn Statement.

The CA held that Caguioa had been "illegally dismissed from employment for lack of clear and convincing evidence which establish her direct participation in the alleged check discounting activity/transaction remotely detrimental to the business and interest of the petitioner bank." [5]

Hence, this Petition.^[6]

Issues

In their Memorandum, petitioners raise the following issues for our consideration:

"I

Whether or not the Court of Appeals gravely erred in not considering all of the evidence on record in violation of petitioners' right to due process and whether or not the totality of the evidence proves that the bank legally terminated the employment of respondent.

"II

Whether or not the Court of Appeals gravely erred in ruling that the information provided by Mrs. Magadia and the complaint of Mr. Jarina were hearsay."^[7]

The Court's Ruling

The Petition has merit.

First Issue:

Consideration of All the Evidence Presented

As a rule, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. However, the Court is not proscribed from determining and resolving factual issues where, as in the present case, (a) the findings and conclusions of the labor arbiter, on one hand, and the NLRC and the CA, on the other, are inconsistent on material and substantial points; (b) the findings of the NLRC and the CA are capricious and arbitrary;^[8] and (c) the CA's findings that are premised on a supposed absence of evidence are in fact contradicted by the evidence on record.^[9]

Due process requires that in reaching a decision, a tribunal must consider the entire evidence presented. Thus, it must (1) accord all contending parties the opportunity to be heard and (2) consider every piece of evidence presented in favor of each party.^[10] Based on this principle, we shall now examine the evidence on record.

Petitioner bank found that Caguioa was guilty of violations of its Code of Conduct,^[11] and that such violations warranted her dismissal from the service and constituted a just cause for terminating her employment under Article 282(c)^[12] of the Labor Code. Consequently, the Bankwide Evaluation Committee (BEC) decided to impose on her "the principal penalty of DISMISSAL FROM EMPLOYMENT with automatic forfeiture of benefits."^[13]

As the employer, petitioner bank has the burden of proving the legality of respondent's dismissal.^[14] The petitioners' case rises or falls on the strength of the

employer's evidence, not on the weakness of the employee's defense.^[15] The employer, however, needs only to adduce substantial evidence,^[16] which has been defined to be such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.^[17]

The records show that more than substantial evidence supports the labor arbiter's finding that respondent had direct participation in the check-discounting scheme, and that her dismissal was valid. Petitioners submitted to the labor arbiter the following relevant and material pieces of evidence:

1. The letter^[18] of Antonio Jarina to the bank, naming Caguioa as one of the three bank personnel who used his deposit/funds in "another kind of investment which would earn higher or better yield."
2. Affidavit^[19] of Jose L. Sibayan Jr., an audit examiner tasked to investigate the complaint, stating that Evelyn Magadia relayed to him her knowledge on the matter. In the custody of Magadia were certain documents which helped in his investigation. He saw these documents and supervised their photocopying after Magadia refused to part with the originals.
3. A schedule^[20] based on the bank records of Jarina and respondent which clearly shows that:

"x x x (a) deposits were made to respondent's bank account at or about the same dates as the deposits to Mr. Jarina's bank account; (b) with the exception of only one deposit, the amounts of the deposits to respondent's bank account tallied with the amounts that respondent received as her share in the profits as shown in Ms. Pascual's ledger; and (iii) the corresponding deposits to the respective bank accounts of Mr. Jarina and respondent generally reflected the 60-40 profit sharing arrangement under the unauthorized check discounting transactions."^[21]

4. September 26, 1997 letter^[22] of respondent addressed to Atty. Mosclares.

"x x x the letter enumerated nine (9) checks issued by Ms. Sto. Domingo to various persons, including four (4) checks issued to Mr. Jarina, which 'were rediscounted and remain unpaid' in the total amount of P7,804,726.16 representing the principal and interests. The letter shows that, as early as September 26, 1997, respondent was already involved in the unauthorized check discounting transactions involving Mr. Jarina and Ms. [Nora] Sto. Domingo."

5. January 28, 1998 letter^[23] of respondent addressed to Atty. Mosclares, which states:

"Sir, I am very sorry if I cannot be of help to you now. I really did my best to produced (sic) such amount, but I don't know if some of my clients lost their trust in me because of what happened to Nora. In fact I even go (sic) to the office of Mr. Uy to ask for his help but unfortunately he is out of the country. Anyway, I am sending the amount of P200,000.00 to really proved (sic) that I want to help