

THIRD DIVISION

[G.R. Nos. 97652-53, October 19, 1999]

**JOSE H. RUTAQUIO AND ERLINDA F. VILLAREAL, PETITIONERS
VS. THE HON. NATIONAL LABOR RELATIONS COMMISSION
(THIRD DIVISION), THE HON. LABOR ARBITER, AMBROCIO B.
SISON, RURAL BANK OF BALER, INC., AND FLORDELIZA S.
CARPIO, RESPONDENTS.**

DECISION

PURISIMA, J.:

At bar is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court assailing the Resolution of the National Labor Relations Commission in NLRC Case Nos. RAB-IV-10-2874-89 and RAB-IV-10-2878-89, dated July 11, 1990, and the Resolution, dated February 15, 1991, denying Petitioners' Motion for Reconsideration.

The facts that matter are as follows:

Petitioners Jose H. Rutaquio and Erlinda F. Villareal are Savings Bookkeeper and Cashier, respectively, of the respondent Rural Bank of Baler, Inc., the respondent herein.

On September 15, 1989, M.Y. Mateo & Company, Certified Public Accountants of respondent bank, recommended the reprimand of the employees, Jose Rutaquio and Erlinda Villareal, who were found guilty of negligence in the performance of their duties and responsibilities, to wit:

"1. After a reconciliation of the cash account, cash in the custody of the Cashier exceeded her accountability per books by P7,730.65.

2. At the time of the examination, recording in the books of account was behind by about a week as the last posting was August 31, 1989. The daily proofsheets covering the period from September 1 to 8, 1989 were prepared and up-dated during the examination to determine the exact accountability of the Cashier.

3. It should be pointed out at this juncture that a week's delay in the recording of transactions in the books of account and a shortage or overage in cash accountability regardless of amount constituted negligence on the part of the employees concerned."^[1]

Acting thereupon, on September 29, 1989, Flordeliza Carpio, President and Manager of the Bank, issued Board Resolution No. 89-35 recommending disciplinary action against Erlinda Villareal and Jose Rutaquio. They were required to submit their formal resignation effective immediately upon receipt of the letter.^[2]

On October 1, 1989, the employees sent a letter to the Manager questioning their illegal dismissal, stating that they would resign only after vindicating their names before the proper dispenser of justice, theorizing that the imputation of negligence was malicious.^[3]

On October 3, 1989, the President replied thus:

"In the case of Mr. Rutaquio: the Bank was fined by the Central Bank in an amount of approximately P35,000.00 for late financial reports; books of account of the bank remain unbalanced, and lately, even after being aware that the new management intends to dismiss him, entries in the books of account were late.

In the case of Mrs. Villareal: she could not account for a P10,000.00 check and the fact that she paid them the sum when the new management took over is no mitigation. In the cash count made last month, there was an average of over P7,000.00.

When a small bank with a paid-up capital of only P500,000.00 has only one bookkeeper and only one cashier with such unreliability, the viability thereof is in imminent danger. Moreover, you have always been acting in an insolent manner towards the new management which is anathema to the smooth operation of the bank.

You are dismissed from the Bank as of the of last month."^[4]

On October 5, 1989, the employees presented an Answer to the Notice of Dismissal and Request for Hearing, contending:

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"As to the statement of Capital Required and Capital Accounts-CBP Form -7-19-07 from June to December 1987 mentioned by the Central Bank, in its letter of July 25, 1987, it is worth mentioning that the Rural Bank of Baler, Inc., had never prepared and submitted the same until a form was furnished by the Central Bank, thru (sic) Director Jesse Domingo in 1988, hence the incumbent bookkeeper could not be held liable for failure to prepare and submit said statement of Capital Required and Capital Accounts, for there is no available record in the Bank to show that said report had been prepared and submitted before I (Jose H. Rutaquio) assumed office as General Bookkeeper in May 1987.

With respect to the Ten Thousand Pesos (P10,000.00) check, which was lost, the incident happened during that time when there was panic withdrawal from the depositors. And after discovering that the check was in fact lost, all necessary actions were made to safeguard the interest of the Bank. But after sometime the amount was charged to my (Erlinda F. Villareal) account. The full amount, however, was recovered after Mr. Alberto Ong issued Solidbank Check No. CA 496704, dated February 14, 1989 in favor of the Rural Bank of Baler, Inc.

As to the overage amounting to Seven Thousand Seven Hundred Thirty Pesos and 65/100 (P7,730.65) during the Cash Audit made by Mr. Bartolome I. Conde in the presence of Ms. Flordeliza S. Carpio,

President/Manager of the Bank on September 8, 1989, at about 2:30 P.M. without any written authority from the Central Bank to audit the Rural Bank of Baler, Inc., the cash audit was undertaken even if the bank transaction was still going on. Hence, the overage of Seven Thousand Seven Hundred Thirty Pesos and 65/100 (P7,730.65) has been recorded, which may be explained as follows:

a) Under Savings Deposit Number 3760, the amount of Eight Thousand Pesos (P8,000.00) for deposit was received, however the said deposit was accounted the following banking day dated September 11, 1989 and therefore the cash on hand exceeded the recorded cash on hand.

b) On the same day, Savings Deposit Number 2181, withdrew the amount of Two Hundred Seventy Pesos (P270.00). The said withdrawal had been paid-up but accounted and recorded on September 15, 1989.

Finally, Section 5 of Rule XIV of the Omnibus Rules Implementing the Labor Code on termination of employment, requires the employer to give the worker ample opportunity to be heard and defend himself with the assistance of his counsel or representative.

In view of all the foregoing, we respectfully request for a hearing and be given the opportunity to prove that the Bank has no just cause to dismiss us and granting arguendo that the Bank believes there is any, the dismissal should be made only after due process, is afforded us, as provided under Section 1, Rule XIV of the Omnibus Rules Implementing the Labor Code on termination of employment.”^[5]

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On October 13, 1989, Jose Rutaquio brought a Complaint, docketed as NLRC Case No. RB-IV-10-2878-89 before the Arbitration Branch, Region No. IV, for illegal Dismissal and Damages in the amount of One Hundred Thousand (P100,000.00) Pesos.

On November 7, 1989, Erlinda F. Villareal and Jose Rutaquio filed their Position Papers with Rutaquio’s Position paper praying:

“Wherefore, premises considered it is most respectfully prayed unto this Honorable Commission, that after hearing, judgment be rendered in favor of the complainant against respondent, declaring illegal and unlawful the dismissal of herein complainant by respondent, granting and awarding to said complainant, the following:

a) His salary from October 1, 1989 until the case is finally terminated;

b) His monthly allowance from October 1, 1989 until the case is finally terminated;

c) The money value of his earned leave;

d) His separation pay;

- e) Payment for damages in the amount of P100,000.00
- f) Attorney's fee in the amount of P30,000.00; and
- g) Other reliefs which are just and equitable under the premises.”^[6]

So, also, on November 14, 1989, a Certification was issued by P/Sgt. Miguel R. Barribal, Jr., INP relating to the Police Blotter, alleging that:

“xxx he was threatened by Manuel Suaverdez and Gregorio Suaverdez on or about 072030 January 89 during a conference held at Rural Bank of Baler Incorporated at Recto Street this municipality. This incident happened after said Jose Rutaquio has explained in the said conference the present financial statement of the said Rural Bank. Likewise Gregorio Suaverdez uttered defamatory words and expressions against Jose Rutaquio, to wit: “PUTANG-INA MO. PARA KANG MAY-ARI NG BANGKO KUNG MAGSALITA”. Gregorio Suaverdez asked Danilo Natividad to get his gun from his wife (Vilma Suaverdez), and he also said “KUNG GUSTO MO TAPUSIN KA NA NAMIN”. More so, Manuel Suaverdez and Gregorio Suaverdez also uttered the following: “PAG PINATAY KA NAMIN, ANG WITNESS MO LAMANG AY SI EX-MAYOR PIMENTEL” xxx^[7]

On December 21, 1989, Flordeliza S. Carpio, with the assistance of her counsel, filed a Revised Position Paper stating:

"The respondents are engaged in banking business. Confidence and trust are the principal consideration in the selection and hiring of employees. In the same manner, loss of confidence and breach of trust should also be the principal consideration in the removal or dismissal of the employees.

Respondents have enumerated the irregularities, incompetence, disobedience, negligence, misbehavior and misconduct of complainant. All these facts are inimical to the employer's interest. In consonance with the ruling of the Supreme Court in *San Miguel Corporation vs. NLRC*, 142, (sic) SCRA 376, an employer has the right to dismiss an employee whose continuance in office is inimical to the employer's interests.

The respondents have lost confidence in complainant when he continuously neglected his duties on account of which the respondent bank was penalized twice in the total amount of P32,890.00. The right of the employer to dismiss the bookkeeper based on loss of confidence due to incompetence, serious irregularities grave misconduct cannot be precluded. Such is the ruling of the Supreme Court in *Metro Drug Corp. vs. NLRC*, 143 SCRA 132.

xxx It was only after his refusal to take advantage of the magnanimity of the bank that he was finally considered resigned at the end of business hour on September 29, 1989. xxx”^[8]

On February 8, 1990, Jose Rutaquio filed his Comment to the Respondent's Revised Position Paper.