

SECOND DIVISION

[G.R. No. 98456, June 14, 1996]

**COMSAVINGS BANK, PETITIONER, VS. THE HON. NATIONAL
LABOR RELATIONS COMMISSION, THIRD DIVISION,
HONORABLE LABOR ARBITER JOAQUIN S. TANODRA, IN HIS
CAPACITY AS NLRC LABOR ARBITER, RICARDO S. PORTUGUEZ
AND OSMUNDO L. CAPARAS, RESPONDENTS.**

D E C I S I O N

TORRES, JR., J.:

As a remedy, certiorari is extra ordinem, it is out of the ordinary course, hence, it is a prerogative writ, "never issued except in the exercise of judicial discretion,"^[1] on a justiciable issue.

When may such "judicial discretion" be exercised?

This is the issue at bar.

Petitioner COMSAVINGS BANK comes to us by way of certiorari pursuant to Rule 65 of the Revised Rules of Court assailing the Resolution dated November 29, 1990 of the Third Division of the National Labor Relations Commission in RAB-IV-8-2525-88 entitled "Ricardo S. Portuguez, Osmundo L. Caparas, complainants-appellees - versus -COMSAVINGS BANK, respondent-appellant," the dispositive portion of which reads:^[2]

"WHEREFORE, the decision appealed from is affirmed with modification as to award of moral damages which is hereby accordingly reduced to P100,000.00 for complainant Portuguez and P50,000.00 for complainant Caparas.

SO ORDERED"

The case at bar stemmed from the following antecedents:

Private respondents Ricardo S. Portuguez (Portuguez, for brevity) and Osmundo L. Caparas (Caparas, for brevity) were first employed by petitioner's predecessor-in-interest, Royal Savings Bank, sometime in 1971. Both respondents rose from the proverbial bottom. Respondent Portuguez started as utility clerk and promoted to bookkeeper, then Per-Pro and later to supervisor. In 1976, he was appointed Branch Manager of Gen. Trias Branch in Cavite. Respondent Caparas on the other hand, started as bookkeeper, then Acting Per-Pro^[*] and he later became full Per-Pro in June 1, 1977.

On September 19, 1984, petitioner COMSAVINGS BANK acquired the assets of Royal Savings Bank "lock; stock and barrel". Private respondents Portuguesez and Caparas were retained with official designation as Manager, job level S4 and Pro-Manager, job level S1, Gen. Trias Branch, respectively.

On May 2, 1988, Internal Auditors Jocelyn Aiim and Mafe M. Defensor found that the branch has a cash-in-vault (CIV) shortage of ten thousand (P 10,000.00) pesos representing an unposted withdrawal made by respondent Portuguesez thru respondent Caparas on April 29, 1988.

On May 6, 1988, COMSAVINGS BANK Vice-President Conrado Oliveros sent a memorandum to respondent Portuguesez requesting for an explanation why he made withdrawals directly from cash-in-vault and instructed the cash custodian to post the same on the following banking day^[3] On the same date, respondent Caparas was directed to explain why he followed the order of his superior allowing withdrawal to be taken out directly from cash-in-vault in violation of existing policies and procedures.^[4]

On May 9, 1988, respondent Portuguesez submitted his explanation manifesting that it was an overnight transaction and his balance was sufficient enough to cover the withdrawals.^[5]

On May 11, 1988, respondent Portuguesez was directed to file comment within 24 hours on the allegations of respondent Caparas that, "(1) you instructed him not to debit the amount of P 10,000.00 from your savings account on April 29, 1988 not until your MBTC check which was returned and redeposited on April 29, 1988 was cleared; (2) you issued a post-dated MBTC check simultaneous with your signing of withdrawal slip and instructed him to post both the withdrawal and the check on May 2, 1988; and (3) you instructed him that anytime the auditors come, all shall be entered to prove that no money was lost and showed a balance transaction."^[6]

On May 12, 1988, respondent Portuguesez filed his comment thereto.^[7]

On July 4, 1988, the signing authorities of the respondents were suspended.^[8]

On July 18, 1988, respondent Portuguesez received his walking papers terminating his services for loss of confidence in view of the following violations, to wit:^[9]

"(1) There was a temporary borrowing by the Manager (Mr. Portuguesez) because the withdrawal from CIV was not posted outright to the savings deposit ledger of the depositor. It was not an overnight transaction as alleged because it was done prior to the cut-off time.

(2) There was an abuse of the privilege of overnight transactions on the part of the Manager. There was a deliberate effort to take advantage of our rules since it was being done weekly. Such attitude does not speak well of the moral scruples of an officer who is bound to protect the bank's interest, not to prejudice it.

(3) Negligence by the Manager in implementing basic internal control measures such as non-observance of dual control in the handling of key and cash safe combination by the Cash Custodian.

(4) It was also disclosed that Mr. Portuguez gave instructions that his outstanding time deposit with the branch shall not be subjected to withholding tax contrary to the provision of the National Internal Revenue Code.

(5) There was a violation of a policy constitutive of an acceptance of secondly endorsed checks in excess of approved limits."

On the other hand, the employment of respondent Caparas was terminated for loss of confidence due to the following violations, to wit:[10]

"1. Following instructions of Mr. Portuguez by allowing overnight transactions without informing higher authorities of such violation. Such transactions would not have been possible without your cooperation and authorization which is a clear disregard of the Bank's internal control measures. In your own handwriting executed on May 6, 1988, you have unequivocally and clearly admitted to management the commission of this particular violation on April 29, 1988 in which you indispensably cooperated.

2. Refusal to consent to a daily cash count of Cash-In-Vault.

3. Non-observance of dual control in handling the key and cash safe combination.

4. Administrative and professional incompetence."

Hence, on August 22, 1988, respondents filed separate complaints for "illegal dismissal with damages" docketed as NLRC Case No. RB-IV 8-2525-88 against petitioner before the National Labor Relations Commission (NLRC, for brevity), Region IV, Quezon City.[11]

On October 21, 1988, petitioner filed its position paper.[12]

On August 15, 1989, respondents filed their memorandum.[13]

On September 11, 1989, Labor Arbiter Joaquin A. Tanodra rendered a decision in favor of the respondents and against herein petitioner, the dispositive portion of which reads:[14]

"PREMISES CONSIDERED, WHEREFORE, judgment is hereby rendered as follows:

1) Directing the reinstatement of complainants Ricardo S. Portuguez and Osmimdo L. Caparas with full backwages and without loss of seniority rights and other privileges;

2) To pay, by way of moral damages, THREE HUNDRED THOUSAND (P300,000. 00) PESOS to complainant Portuguese and ONE HUNDRED THOUSAND (P 100,000.00) PESOS to complainant Caparas; and

3) To pay, by way of attorney's fees, ten percent of the monetary award hereto granted.

SO ORDERED."

Dissatisfied, petitioner filed an appeal before the Arbitration Branch of the NLRC.

On September 28, 1989, petitioner filed its Memorandum on appeal.^[15]

On December 9, 1989, respondents filed their Opposition/Reply on the appeal.^[16]

On November 29, 1990, the Third Division of the NLRC rendered the assailed decision affirming with modification the appealed judgment of the Labor Arbiter, the pertinent portion of which reads:^[17]

"After a careful review of the records, We find no error in the questioned decision except as to the award of moral damages.

Rightly so, the transaction in question falls within the category of overnight transaction tolerable in the banking industry of which we find no reason why complainant Portuguese could not avail of, more so, as in obtaining circumstances of the case where said complainant was pressed for time to meet a prospective client of the bank x x x.

xxx xxx xxx

Equally important to note is the fact that the Ad Hoc Committee itself, on the alleged temporary use of bank funds which complainant can draw on weekends and still maintain his outstanding balance, admitted that they have no hard evidence to support. They merely relied on suspicion and speculation. (p. 163, Rollo, Report of Ad Hoc Committee).

It is further of interest to note that complainant Portuguese was cited by Assistant Vice-President Romulo M. Verata (sic) for attaining an increase of P2,754 (sic)^[**] in making Gen. Trias Branch the second performer bankwide and from registering the highest growth with 68.8% for the period January 1987 to April 6, 1987. In like manner, complainant Caparas was recipient of appreciation Memo from Vice-President and General Manager Jose M. Damian, Jr. "for your having attended to your job and responsibility last Monday, November 14, 1977, inspite of the physical inconvenience that you had to go through. Such diligence and attention to duty is highly commendable and is worthy of emulation." These citations stand tall as proof of complainant's concern for the interest of the bank.