

THIRD DIVISION

[G.R. No. 109033, August 22, 1996]

**CHINA BANKING CORPORATION, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND VICTORINO C. CRUZ,
RESPONDENTS.**

R E S O L U T I O N

PANGANIBAN, J.:

Challenged in this petition for certiorari under Rule 65 of the Rules of Court is the Decision of the National Labor Relations Commission^[1] promulgated on November 25, 1992 and the subsequent Resolution promulgated on January 21, 1993 denying petitioner's motion for reconsideration. Said Decision affirmed *in toto* the decision of Labor Arbiter Pablo C. Espiritu, Jr. dated May 24, 1990, the dispositive portion of which reads as follows:^[2]

"WHEREFORE, the complaint for illegal suspension, illegal dismissal, and unfair labor practice is DISMISSED for lack of merit but respondent is ordered to pay TWENTY THOUSAND (P20,000.00) PESOS to complainant by way of financial assistance, without cost to both parties."

The respondent Commission ruled that the dismissal of private respondent was justified, but it nonetheless also upheld the grant of financial assistance, citing as authority the case of *Philippine Long Distance Telephone Company vs. National Labor Relations Commission*.^[3]

Before us, petitioner raises the sole issue of:^[4]

"WHETHER OR NOT THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE LABOR ARBITER'S AWARD OF FINANCIAL ASSISTANCE IN FAVOR OF PRIVATE RESPONDENT WHO WAS FOUND TO HAVE BEEN DISMISSED FOR CAUSE."

The Solicitor General filed his Comment dated July 30, 1993 praying "that the petition be granted.- On the other hand, private respondent in his Comment dated March 22, 1993 asks for the dismissal of the petition.

The petition is meritorious. There is no doubt that, as held by the Labor Arbiter and affirmed by the respondent NLRC, "x x x complainant was validly dismissed by respondent Bank x x x in conformity with Art. 282, par. A and B, to wit:

'Art 282. Termination by employer. -- An employer may terminate an employment for any of the following just causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his

work;

(b) Gross and habitual neglect by the employee of his duties."

As the private respondent did not contest the decision of the Labor Arbiter before the NLRC, nor the Decision of the respondent Commission before this Court through a petition for certiorari, no affirmative relief can be sought by him; the sole issue before this Court being raised by petitioner disputing the award of P20,000.00 as financial assistance.

We agree with the Solicitor General that the grant of financial assistance to the private respondent is unjustified.

Said the Solicitor General:^[5]

"There is no doubt that private respondent is guilty of 'serious misconduct or willful disobedience of lawful orders of his employer,' although the NLRC has watered it down to 'gross negligence.'

By disregarding a company rule, private respondent had made it possible for a co-employee to defraud petitioner in the amount of P1,717,508.64 - certainly not a picayune sum. His reason that he did it at the behest of Hilario Garcia and that Garcia alone benefited from the funds is highly incredible. It is simply unbelievable that he would risk his untainted record and long years of service with petitioner merely to accommodate Garcia's request. Although collusion was not proven, it is not far-fetched to assume that both private respondent and Hilario Garcia shared the proceeds from the defraudation of petitioner's funds.

The fact that private respondent has worked with petitioner for more than twenty-one (21) years should not be considered in his favor. Instead, it should be taken against him as it reflects a regrettable lack of loyalty that he should have nurtured and strengthened instead of betrayed. If it is regarded as a justification for moderating the penalty of dismissal, it will in effect be rewarding betrayal of trust built over the years, the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables."

Where the employee is separated for cause and such dismissal is decreed by the NLRC, the offender is not entitled to separation pay as a rule. While it is true that there are certain exceptions based on equity, private respondent's case is not one of them.

Respondent Commission's reliance on *Philippine Long Distance Telephone vs. NLRC* is misplaced. Even the portion of our decision therein quoted by the NLRC as follows:^[6]

"We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. x x x"