CHANROBLES PUBLISHING COMPANY

**SUPREME COURT**
**THIRD DIVISION**

**ALLIED BANKING CORPORATION,**
***Petitioner*,**

***-versus-***

**G.R. No. L-70608**
**December 22, 1987**

**RICARDO C. CASTRO, CECILIO T. SENO, FEDERICO O. BORROMEO, in their capacity as COMMISSIONERS OF NATIONAL LABOR RELATIONS COMMISSION (Second Division), DIVINA RANA and DIANA A. SURATOS,**
***Respondents*.**
**x----------x**

**D E C I S I O N**

**GUTIERREZ, JR., *J.*:**

Private respondents Divina Rana and Diana Suratos were bank tellers of petitioner Allied Banking Corporation's branch office at Cagayan de Oro City.

Divina Rana started her employment as teller with General Banking Corporation on July 30, 1976. When this bank's management and operation were assumed by Allied Bank, Rana was absorbed into the

work force on May 26, 1977 in Metro Manila. In April 1981, she was transferred to the Cagayan de Oro Branch.

Diana Suratos was hired as a probationary employee of the petitioner bank on March 16, 1979 and became a regular employee in April 1980.

On November 11, 1982, both were terminated from employment after the petitioner bank conducted a formal investigation and found them guilty of the following offenses:

> "1) Incurring a series of shortages;
>
> "2) Incurring a long string of overages;
>
> "3) Violation of procedures requiring verification of drawer's signature and approval of authorized officers prior to payment of checks presented for encashment over the counter (copy of the procedure is marked as Annex "A," "A-1" and "A-2" hereof); and
>
> "4) Failure to observe instructions of superiors to report to the Central Bank Cash Units." (Rollo, pp. 95-96)

Rana and Suratos filed a complaint for "illegal termination, reinstatement with backwages and damages" against Allied Bank with the Regional Arbitration Branch No. X, Cagayan de Oro City, National Labor Relations Commission, Ministry of Labor and Employment.

After the parties submitted their respective position papers, Executive Labor Arbiter Ildefonso G. Agbuya rendered a decision in favor of the complainants. The dispositive portion of the decision reads:

> "IN VIEW OF THE FOREGOING, Complainants Divina Rana and Diana Suratos for having committed above-mentioned and admitted infractions are hereby meted the penalty of suspension from employment without pay equivalent to one month. Respondent Allied Banking Corporation is hereby ordered to reinstate immediately Complainants Rana and Suratos to their former positions without loss of seniority and

> pay their backwages and all appurtenant privileges after serving the one month suspension period and overtime pay rendered at three hours a day within the period covered as above-discussed. Respondent Danilo de la Cruz and Leonardo Agodon are absolved from any liability because they merely acted as Bank officers without bad faith." (pp. 103-104, Rollo)

On appeal, the National Labor Relations Commission modified the labor arbiter's decision in a Resolution as follows:

> "WHEREFORE, the appealed Decision should be, as it is hereby, modified as follows:
>
> > "IN VIEW OF THE FOREGOING, Complainants Divina Rana and Diana Suratos for having committed above-mentioned and admitted infractions are hereby meted the penalty of suspension from employment without pay equivalent to a period of one month from November 11 up to December 10, 1981, inclusive. Respondent Allied Banking Corporation is hereby ordered to reinstate immediately complainants Rana and Suratos to their former positions without loss of seniority rights and other privileges and to pay their backwages from December 11, 1982 until their actual reinstatement.
>
> "The award on overtime pay is hereby Set Aside." (p. 150, Rollo)

A motion for reconsideration of the decision was denied.

The Bank filed this original action for *certiorari* and prohibition with application for a writ of preliminary injunction against the NLRC's resolution. The petition was initially dismissed in a minute resolution dated May 8, 1985. A motion for reconsideration was likewise denied in the resolution dated September 16, 1985.

Acting on the manifestation and motion for reconsideration of the September 16, 1985 resolution, the Court's Second Division issued a resolution dated October 21, 1985, to wit:

> "Considering the manifestation and motion for reconsideration by counsel for petitioner dated October 2, 1985 praying that the resolution of September 16, 1985 which denied the motion of counsel for petitioner for reconsideration of the resolution of May 8, 1985 which dismissed the petition for *certiorari* be reconsidered and petitioner's said motion for reconsideration be resolved after the petitioner's reply to private respondent's comment and the public respondent's comment to the aforesaid motion for reconsideration have been filed, the Court Resolved to require the respondents to file a REPLY to said manifestation and motion for reconsideration within ten (10) days from notice." (p. 249, Rollo)

On May 14, 1986, we issued another resolution to the effect that:

x x x

> "Acting on the aforesaid manifestation and motion for reconsideration by counsel for petitioner dated October 2, 1985, as well as the comments of the private and public respondents thereon, the aforesaid reply by the Solicitor General, and the rejoinder to said reply by counsel for petitioner, the Court Resolved: (a) to SET ASIDE the resolutions of May 8, 1985 dismissing the petition and September 16, 1985 denying the petitioner's motion for reconsideration of said resolution; (b) to give DUE COURSE to the petition; and (c) to require the parties to file their respective MEMORANDA within twenty (20) days from notice." (p. 279, Rollo)

With the reorganization of the Court into three Divisions, this case is now assigned to the Third Division.

It is not disputed that the private respondents committed the infractions charged against them. With respect to Divina Rana, she committed the following infractions as follows:

"A. Shortages

*Dates Incurred*

| | | | |
|---|---|---|---|
| 1. | March 8, 1982 | 7. | April 24, 1982 |
| 2. | March 11, 1982 | 8. | June 1, 1982 |
| 3. | March 13, 1982 | 9. | June 15, 1982 |
| 4. | March 15, 1982 | 10. | June 22, 1982 |
| 5. | March 23, 1982 | 11. | June 24, 1982 |
| 6. | April 10, 1982 | 12. | September 20, 1982 |

"B. Overages

*Dates Incurred*

| | | | |
|---|---|---|---|
| 1. | March 1, 1982 | 3. | May 11, 1982 |
| 2. | March 17, 1982. | 4. | June 3, 1982 |

"C. Allowing encashment of checks over the counter without verification of the drawer's signature and without approval of authorized officers.

*Date Committed*

1. March 6, 1982
2. May 11, 1982

"D. Non-compliance with instruction of superiors to report to Central Bank Cash Units.

*Date Committed*

March 6, 1982" (p. 40, Rollo).

With respect to Diana Suratos, the offenses she was charged with were committed as follows:

"A. Shortages

Date Incurred

1. February 3, 1982
2. February 5, 1982
3. February 13, 1982
4. March 1, 1982
5. March 5, 1982
6. March 19, 1982
7. April 15, 1982
8. May 10, 1982
9. May 21, 1982
10. June 1, 1982
11. June 14, 1982

"B. Overages

Date Incurred

1. February 29, 1982
2. May 22, 1982
3. June 1, 1982
4. June 11, 1982
5. June 24, 1982

C. Allowing encashment of checks over the counter without verification of drawer's signature and without approval of authorized officers.

Date Committed

1. February 10, 1982
2. March 8, 1982
3. March 8, 1982
4. March 9, 1982
5. March 9, 1982

"D. Non-compliance with instruction of superiors to report to Central Bank Cash Units.

Date Committed

March 6, 1982" (Rollo, pp. 40-41)

The issue is not the existence or non-existence of the above infractions but on the proper penalty for these violations. The infractions are admitted.

The National Labor Relations Commission ordered that the private respondents only be suspended without pay equivalent to a period of one month from November 11 up to December 10, 1981, inclusive. The NLRC justified its ruling by adopting the findings of the Labor Arbiter, to wit:

> "The penalty of termination imposed to herein Complainant is not commensurate with the infractions committed. We believe that at most Complainants should be suspended by way of punishment. Why did we make such a conclusion? We took into consideration the circumstances surrounding the complainants' employment in the year 1982 where most of their infractions committed made basis of their termination. Prior to 1982 there were four employees doing tellering work with Respondent at Cagayan de Oro Branch. Upon the resignation of the two above-mentioned employees only herein Complainants were left to perform the duties as tellers with the same volume of work, if not more, as handled before in 1981. Definitely with the two remaining tellers (herein Complainants) who handled the tellering work in the bank there was a change of pace, effort and efficiency in their performance which inevitably led to the overages and shortages and the encashment of checks without following the usual procedure. Complainants have to double their efforts in the performance of duties as tellers to accommodate the same, but probably more, transactions and clients of herein Respondent bank. Why Respondent Bank failed to augment the depleted number of tellers knowing that Bank transactions do not increase and normally increase is beyond our comprehension. . . . What was the result of a situation wherein there were only two tellers doing the tellering work normally for four subsequently to six would mean chances of committing shortages and overages, rendering of overtime work and in some instances allow checks to be encashed without following proper procedures. Complainants could not be totally blamed and branded as inefficient and negligent, because of contributing factors of being over burdened in the performance of their duties. There is a limit to human endeavor that once you reach the peak inevitably one is likely to commit slight error or infraction similar to what has been incurred to by herein Complainants.

"We want to treat deeper the aspect of allowing encashment of checks without the proper verification of drawer's signature and without signature of authorized bank officers. From the records it appears procedurally when a check is presented for encashment to a teller, the teller refers the check to a signature verifier then it is given to the bank officer for its signature that everything is in order and to be returned to the teller for encashment. From the circumstances cited by Complainants in their position paper and in their explanation during the investigation it was the duty of a signature verifier, if there is one, to study the specimen of the drawer and gives it to a bank officer for signature and before a check should be returned to the teller everything presumably is in order. But in the case of Complainant Rana the checks were returned to her even if there was no signature of authorized bank officer likewise in the case of Complainant Suratos. This is what happened to Complainants that upon the return of the checks, which were supposedly verified and signed they presumed were in order and because of the volume of transaction did not notice that not all the procedures were followed the checks were encashed. Why were the checks returned to the teller despite lacking in certain requirements? The situation therefore again could not be possibly entirely complainants' fault, but definitely they were negligent to a certain degree by force of circumstances prevailing due to lack of sufficient personnel. On the matter of Complainants' failure to report to the Central Bank Cash Unit for instruction this can again be justified that due to the volume of work that they could not immediately leave the bank without finishing all bank transactions required of them that when they realized it the lecture being conducted by the Central Bank was already finished. . . . Finally, by way of evaluating whether overages and shortages are to be considered as serious we took into consideration the provision of the CBA particularly Section 3 — Tellers Allowance —

"'Each teller shall be given a yearly allowance to Six Hundred Pesos (P600.00) from which shall be deducted the shortages she may incur during the year. The balance of the allowance after deduction of shortages shall be given to the teller;

> However if no shortage is incurred, the full amount of the allowance shall be received by the teller, and the same shall be paid not later than July 31, of each year. (Article XIII)"

> "This particular provision of the CBA shows that among the hazards of the tellers is to incur shortages and overages up to a certain limit and the same serves as an incentive to tellers who will not incur shortages and overages the said allowance shall be given to the employee. This very provision therefore is a clear indication that such infractions are allowable provided that it should not go beyond the limit provided, but to reiterate for the last time the shortages and overages were inevitable infractions of Complainants due to volume of work they handled at that time." (Rollo, pp. 146-149)

What is the proper penalty for the private respondents who admitted infractions while doing their jobs as bank tellers of the petitioner?

The petitioner contends that the repeated acts of misconduct justified the private respondents' dismissal and the forfeiture of their right to security of tenure. It argues that it has the perfect right to dismiss its erring employees if only as a measure of real protection against acts inimical to its interest.

A bank teller is entrusted with considerable sums of money. This nature of a teller's job is not only obvious but we have emphasized it in a leading case on termination of employer-employee relations. "Handling of bank funds is a serious matter. The teller as trustee is expected to possess a high degree of fidelity to trust. A cardinal essential in that job is utmost diligence and care in the handling of cash. A teller cannot afford to relax vigilance in the performance of his duties." (Galsim vs. Philippine National Bank, 29 SCRA 293).

We have also ruled that:

> "The relation of employer and employee, specially where the employee has access to the employer's property in the form of articles and merchandise for sale, necessarily involves trust and confidence." (Dole Philippines, Inc. vs. National Labor Relations Commission, 123 SCRA 673 citing Phil. Education

Co., Inc. vs. Union of Phil. Education Employees and CIR, 107 Phil. 1003)

The repeated and numerous infractions committed by the private respondents in handling the monies entrusted to them as tellers cannot be considered minor. Taking into account the nature of a teller's job, the infractions are too numerous to be ignored or treated lightly. In National Service Corporation vs. Leogardo, Jr. (130 SCRA 502), we stated that:

x x x

> "The public and private respondents considered these circumstances singly and separately and arrived at the conclusion that they are not sufficient to justify private respondent's termination. We should consider the different acts of misconduct committed by the private respondent in their totality and not independent from each other. Fitness for continued employment cannot be compartmentalized into tight little cubicles as aspects of character, conduct, and ability separate and independent of each other. A series of irregularities when put together may constitute serious misconduct, which under Article 283 of the Labor Code, is a just cause for termination." (at p. 509)

Anent the argument that shortages and overages are part of the hazards of the trade and in fact recognized under the Collective Bargaining Agreement, there is no showing that the Bank and its employees agreed to consider as normal, infractions of such proportions as the private respondents committed. Respondent Divina Rana committed a total of 12 shortages from March 8, 1982 to September 20, 1982, five (5) of which were in the month of March 1982, and four (4) overages from March 1, 1982 to June 3, 1982 while respondent Diana Suratos committed eleven (11) shortages from February 3, 1982 to June 14, 1982 and five (5) overages from February 29, 1982 to June 24, 1982.

We agree with the petitioner that if it allows shortages, it would in effect be a willing tool in promoting inefficiency and laxity among the people it entrusts with the handling of depositors' monies. Upon

noticing that laxity is tolerated, employees would be tempted to take liberties with funds which do not really belong to the bank but are merely deposited with it.

There are other facts overlooked by the National Labor Relations Commission which justify the dismissal of the private respondents. We agree with the Solicitor General, to wit:

> "It appears from the records that the incidents in question were the 'last of the straws that broke the camel's back' because prior to said incidents, private respondents committed similar infractions, namely:
>
> Respondent Divina Rana:
>
> *A. Shortages on:*
>
> 1. August 7, 1981
> 2. October 7, 1981
> 3. May 12, 1981
> 4. September 30, 1981
>
> *B. Overages on*
>
> 1. August 24, 1981
> 2. August 26, 1981
> 3. August 27, 1981
>
> Respondent Diana Suratos:
>
> *A. Shortages:*
>
> 1. August 12, 1981
> 2. November 16, 1981
> 3. November 21, 1981
> B. Overages
> 1. September 22, 1981
> 2. November 15, 1981
> 3. December 7, 1981

> which petitioner's officers were considerate enough to forgive them." (pp. 201-202: 210 Records)
>
> "The Labor Arbiter's justification that private respondents should be given leeway for their infractions because they could not cope up with the volume of transactions, is not entirely supported by evidence. Sometime in April 1982, a certain Marilyn Ambat was tasked to help private respondents in their tellering work, most specially during peak days (tsn. pp. 178-180, Records), thus volume of work could not have been the root cause of the infractions. Private respondent Divina Rana explaining why she incurred shortages or overages pointed out that the same were 'due to her counting errors and that she couldn't help committing mistakes.' The same holds true for private respondent Diana Suratos as indicated in her explanatory letters." (Rollo, pp. 305-307).

Moreover, the private respondents' acts of allowing encashment of checks over the counter without verification of the drawer's signature and without approval of authorized officers cannot be considered minor infractions. The procedures in the encashment of checks over the counter are adopted by banks for the protection of their depositors as well as their own funds. Hence, the private respondent's repeated negligent acts as regards this procedure substantially affect the bank's business and are inimical to the bank's interest and that of its depositors.

Considering these findings, we sustain the petitioner's view that the National Labor Relations Commission committed a reversible error when it only meted out a penalty of one month suspension instead of dismissal to the private respondents. The repeated acts of misconduct and willful breach of trust forfeited the respondents' right to security of tenure. (Phil. Long Distance Telephone vs. National Labor Relations Commission, 122 SCRA 618). In the case of San Miguel Corporation vs. National Labor Relations Commission (115 SCRA 329), we said:

x x x

> "Under Article 283 of the Labor Code, an employer may terminate an employee if the employee is guilty of serious misconduct and of willful breach of trust.
>
> "'An employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer and those continuance in the service of the latter is patently inimical to his interests. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.' (Manila Trading & Supply Co. v Zulueta, 69 Phil. 485, 486-487 and other cases.)"

In Galsim vs. Philippine National Bank (supra), we stated that "(s)urely it would be most unfair to compel the bank to continue employing Mrs. Galsim. Reinstatement under the circumstances is neither sound in reason nor just in principle. It is irreconcilable with trust and confidence. That confidence has been lost." (at pp. 302-303).

We note that the decision has been partially executed. By virtue of a writ of execution dated May 29, 1985, the petitioner paid the amount of P82,940.00 which is equivalent to thirty months salaries of the private respondents. This payment was however, conditioned upon the final outcome of this petition. Thus, in their Manifestation dated June 24, 1985, submitted to the National Labor Relations Commission Executive Labor Arbiter, Region 10, the petitioner stated:

> "COMES NOW respondent bank, through undersigned counsel, and to this Honorable Office, respectfully avers that:
>
> > "Conformably to the subsisting Writ of Execution issued in the above-entitled case and dated 29 May 1985, but without prejudice to the prayers made in respondents' pending Motion to Quash dated 11 June 1985 and the urgent Omnibus Motion and/or Opposition to Writ of Execution dated 19 June 1985, as well as to the final outcome of the appeal interposed in the above-entitled case which is now pending before the Honorable Supreme

> Court, respondent bank hereby submits and delivers its Check No. 788793 in the amount of P82,940.00 bearing instant date, in trust and to be disposed of only after final disposition/resolution of said pending case before the Supreme Court." (Rollo, p. 251)

In his "Reply to Private Respondents' Comment," the petitioner states that notwithstanding its manifestation, the Executive Labor Arbiter issued an Order dated June 24, 1985 ordering the disbursing officer to encash the check for delivery in favor of the private respondents as partial settlement of the case.

The petitioner contends that it was forced to make such payment because of the arbitrary and whimsical acts of the Labor Arbiter, the sheriff, and the private respondents' counsel. The respondents do not rebut these allegations.

The Solicitor General is the lawyer for the Government and its various departments and instrumentalities. Nonetheless, he is correct in not sustaining the acts of public officials when they commit grave error and he instead, pleads justice for the private party.

There can be no question from the records that the private respondents committed violations which, because of the nature of their jobs, are appropriately penalized by dismissal. There is nothing, however, to prevent the employer from making, ex gratia and on a voluntary basis, payments of separation pay to the private respondents in amounts to which they would have been entitled under happier circumstances. In that event, the "advanced payment" erroneously ordered by the Labor Arbiter may be set off against the respondents' termination pay and only the balance, if any, will have to be returned to the petitioner. This arrangement would be in keeping with the spirit of harmony and compassion that workers and employers should show to one another.

**WHEREFORE**, the instant Petition is **GRANTED**. The questioned Resolutions of the public respondents are **REVERSED** and **SET ASIDE**. The private respondents are ordered to return to the petitioner the P82,940.00 deposited in trust but erroneously paid to them without prejudice to any ex gratia payments which the

petitioner may voluntarily make as stated above. A copy of this decision is furnished the Secretary of Labor and Employment for remedial measures against serious error or grave abuse of discretion similar to that committed by the Labor Arbiter and the Sheriff in this case.

**SO ORDERED.**

**Fernan, *J., (Chairman)*, Feliciano, Bidin and Cortes, *JJ.*, concur.**

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