

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**CITIBANK, N.A.,
*Petitioner,***

-versus-

**G.R. No. 111222
January 18, 1995**

**DR. JOSE C. GATCHALIAN, in his
capacity as Voluntary Arbitrator,
CITIBANK PHILIPPINES EMPLOYEES
UNION (CPEU) and EMY LLONILLO,
*Respondents.***

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DECISION

PUNO, J.:

Petitioner Citibank N.A. prays for the reversal of the Decision of Voluntary Arbitrator Dr. Jose C. Gatchalian reinstating respondent Emerita “Emy” Llonillo to her former position as clerk-typist/maker without backwages.

Respondent Llonillo, together with Teresita Supnad, her co-employee and Florence Verendia, an employee of Asian-Pacific Broadcasting Company, Inc. (APBCI), were implicated in a scheme to defraud petitioner bank in the amount of P740,000.00. The administrative

investigation conducted by petitioner bank, with the assistance of the PNP Crime Laboratory, revealed the following:

Petitioner bank received thirty-one (31) applications from alleged APBCI employees^[1] for the issuance of Citibank credit cards, popularly known as Mastercard.

A Citibank employee verified by phone the data which appeared on the application forms. It was Florence Verendia, as secretary of the APBCI General Manager, who answered the check calls. The applications were then approved and the corresponding new and unsigned credit cards were issued.

Petitioner bank's policy is for new and unsigned credit cards to be released only to the cardholders concerned or their duly authorized representatives. However, a Citibank employee may himself take delivery of new and unsigned credit cards after accomplishing a Card Pull-Out Request Form wherein the employee assumes the responsibility of delivering the same to the cardholder concerned.

Teresita Supnad, an employee of petitioner bank and Florence Verendia, took delivery of nineteen (19) credit cards issued in the name of the said alleged APBCI credit applicants.

On the other hand, on five (5) separate occasions, respondent Llonillo personally picked up the newly approved and unsigned credit cards issued to the other seven (7) alleged APBCI employee and delivered them to Verendia.

In July 1992, petitioner bank discovered that the credit card applications of the alleged APBCI employees were fictitious. Per report of the PNP-Crime Laboratory, Supnad and Verendia falsified the signature of the alleged applicants.^[2] After getting the credit cards, the two used them to purchase goods and avail of services from accredited commercial establishments worth more than P200,000.00.

Petitioner bank required respondent Llonillo to explain. In her reply, Llonillo admitted she personally picked up seven (7) credit cards issued to Anjenette Caballa, Miriam Ramiro, Alen Malic, Caroline

Ramiro, Cecilia Ibañez, Lalaine Perez and Marife Bacuetes. She allegedly wanted to help the bank deliver “fast, competent and problem-free service to clients.” She disclaimed knowledge that the APBCI applicants were fictitious. She also denied participation in the fraudulent use of said credit cards.

Petitioner bank then formed a committee to investigate. Respondent Llonillo and the President of the Citibank Philippines Employees Union (of which respondent was a member) were invited for a conference. Respondent revealed that on five (5) occasions,^[3] she was asked by Verendia to take delivery of newly approved and unsigned credit cards issued to some of the latter’s alleged officemates, namely: Anjenette Caballa, Miriam Ramiro, Allen Malic, Caroline Ramiro, Cecilia Ibañez, Lalaine Perez and Marife Bacuetes.^[4] On said occasions, Verendia informed her by telephone she was on the way to the bank to pick up some of the newly approved credit cards issued to her alleged co-employees at APBCI. Each time, she acceded to Verendia’s request and delivered the newly approved and unsigned credit cards to the latter without knowing that the cardholders were fictitious. In every case, respondent signed the Card Pull-Out Request Form, acknowledging receipt of the credit cards and taking responsibility for their delivery to the cardholder concerned. Respondent further disclosed that Verendia was introduced to her by a mutual friend.

On November 19, 1992, the committee recommended the termination of respondent’s employment with the bank for loss of trust and confidence and gross negligence. Petitioner bank adopted the committee’s recommendation and notified respondent of her immediate dismissal.^[5] The bank also terminated the services of Supnad. In addition, it filed a case for estafa through falsification of private/commercial documents against both Supnad and Verendia.

Pursuant to their existing Collective Bargaining Agreement, petitioner bank and respondent union referred Llonillo’s dismissal to the Grievance Machinery but the latter failed to resolve the controversy. As a next step, the parties submitted the case for resolution to voluntary arbitrator Dr. Jose C. Gatchalian.

During the arbitration, a term of reference (stipulation of facts)^[6] was agreed upon by the parties. Petitioner bank then presented its evidence. When it was the turn of the union to adduce evidence, the union officers and counsel refused to reveal the purpose of their request to subpoena as a witness one of petitioner bank's officers. The subpoena was not issued^[7] and respondent refused to adduce evidence.

On the basis of the record and the evidence presented by petitioner bank, voluntary arbitrator Dr. Gatchalian rendered a decision 8 ordering the reinstatement of respondent Llonillo without payment of backwages.

Hence this petition for *certiorari* where petitioner contends:

THE DECISION OF THE VOLUNTARY ARBITRATOR IS PATENTLY IN CONTRAVENTION OF APPLICABLE LAWS AND DECISIONS OF THIS HONORABLE COURT.

THE DECISION OF THE VOLUNTARY ARBITRATOR IS NOT SUPPORTED BY, NAY, IGNORED, THE EVIDENCE ON RECORD.

THE DECISION OF THE VOLUNTARY ARBITRATOR CONSTITUTES GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION ON HIS PART.

We find for the petitioner.

In ordering the reinstatement of respondent Llonillo, the voluntary arbitrator ruled that the law^[9] requires that an employee's negligence, to be a valid ground for dismissal, must be both gross and habitual. He did not find the negligence of respondent Llonillo as within this category.

Respondent arbitrator's ruling disregards the fact that Llonillo was dismissed on two (2) grounds, viz.: loss of confidence and gross negligence. Petitioner's loss of confidence was anchored on its suspicion that Llonillo conspired with Supnad and Verendia in the fraud. On the other hand, its finding of gross negligence was

grounded on Llonillo's act of carelessly delivering seven (7) newly approved and unsigned Mastercards to Verendia and the latter's messenger. Thus, petitioner bank's Notice of Termination to respondent Llonillo stated:

“In any event, even assuming that you (respondent Llonillo) were not connivance with Florence (Verendia) and Tess (Supnad), the bank finds your deliberate action of releasing 7 unsigned Mastercards to complete strangers, without even asking receipt from them, as gross negligence on your part. As you know by know, because you released said 7 unsigned Mastercards to Florence and Tess, the two were able to falsify, and did falsify the signatures of the cardholders therein (on the spaces labeled “Authorized Signature”) and fraudulently used the same to buy goods and services from the bank's accredited establishments, the total value of which is at least P201,795.34. In this regard, the bank finds the statement you gave by way of explanation, that you did not notice the provisions of the Card Pull-Out Requests, you ought to have known/realized that it was totally negligent for anyone to deliver unsigned Mastercards to total strangers.”

We have carefully examined the records and we find no substantial evidence that would clearly and convincingly prove that respondent Llonillo conspired with Verendia and Supnad in defrauding petitioner bank over P200,000.00. The Report submitted by the PNP Crime Laboratory^[10] revealed that it was Supnad and Verendia who falsified the signatures of the fictitious cardholders and fraudulently used the same in purchasing goods and services from accredited commercial establishments. Respondent Llonillo's participation was limited to picking-up seven (7) of the newly-approved and unused credit cards from the bank's releasing officer and turning them over to Verendia.^[11]

It was precisely on the basis of the above findings that only Verendia and Supnad (excluding Llonillo) were charged with estafa through falsification of private/commercial documents. The alleged close association of respondent Llonillo to her co-employee Supnad, even if true, does not establish her complicity in the scheme to defraud the

bank. By itself and without more, it is insufficient to implicate her in the fraud committed by Supnad and Verendia.

Be that as it may, we find that respondent arbitrator gravely abused his discretion in finding that Llonillo did not commit gross negligence in the performance of her duty.

Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.^[12]

The evidence on record succinctly established the gross negligence of respondent Llonillo. She admitted that the first time she was asked by Verendia to pick up one of the newly approved and unused credit cards, she immediately acceded. Yet at that time, she had not personally met nor previously seen Verendia. When asked how she came to know to whom she would give the card, respondent Llonillo responded that Verendia described herself over the phone and that was how she was able to identify Verendia when she first met her. Thus, on the basis of a mere description over the telephone, respondent Llonillo delivered the credit cards to Verendia.

The succeeding occasions when she delivered the other newly approved and unused credit cards to Verendia also revealed respondent Llonillo's gross lack of care. Again, she admitted that Verendia would call her up at the office to say she was enroute to the bank to get some of the newly approved and unused credit cards. Under the pretext that Verendia had difficulty in finding a parking space within the bank's premises, Verendia would request her to get the credit cards instead. Respondent Llonillo accede to the requests. She got the new and unused credit cards and gave them to Verendia at the mezzanine floor of the bank. It did not strike respondent Llonillo as strange that while Verendia allegedly found difficulty in finding a parking space within the bank premises, yet she was always able to meet her at the mezzanine floor of the bank to get the credit cards.

Respondent Llonillo's gross negligence also showed when she delivered the credit card issued to Marife Bacuetes, another fictitious

APBCI employee. She admitted that she gave the card to Verendia's messenger, a person whom she had not seen before but who merely represented to her that he was the messenger sent by Verendia to pick up the card. When queried about the identity of the said messenger, respondent replied that she did not ask for the messenger's name. Neither did she ask the alleged messenger or Verendia herself to sign a receipt evidencing their acceptance of the credit cards.

All of the above acts and omissions of respondent Llonillo were in patent violation of petitioner bank's policy that an employee may take delivery of newly approved and unused credit cards issued in another's name, but in doing so, he/she assumes the responsibility of delivering the credit card to the cardholder concerned or to the latter's duly authorized representative.

Respondent Llonillo claims as a defense that even if she did not pick up the seven (7) newly approved and unused credit cards and deliver the same to Verendia, still, the latter could have gotten hold of the same by herself. Respondent stresses that Verendia herself and bank employee Supnad were able to personally pick up the other credit cards issued to fictitious APBCI employees. The possibility is beside the point. It cannot obliterate the truth that she committed gross negligence in the delivery of the seven (7) newly approved and unused credit cards to Verendia and her messenger.

Neither are we impressed with respondent Llonillo's claim that she was singled out as negligent in her taking delivery of the seven unused credit cards. The bank's releasing officer acted well within the bank's rules when it released the subject credit cards to respondent Llonillo. As previously noted, the bank allows, as an exception, any of its employees to take delivery of newly approved and unused credit cards but in doing so, the said employee undertakes to deliver the same to the cardholder concerned and assumes responsibility for its fraudulent use. Respondent Llonillo failed in this undertaking.

We also rule that respondent Llonillo's negligence is both gross and habitual. It was proved that she picked up the newly approved credit cards on five (5) separate occasions and delivered the same to Verendia and the latter's messenger. Certainly, these repetitive acts and omissions bespeak of habituality.

Finally, respondent Llonillo's employment service for twenty-two (22) years would not, by itself, mitigate her negligence, especially in view of the substantial loss incurred by petitioner bank. As correctly pointed out by respondent voluntary arbitrator:

“The Union's claim for compassionate justice on Emy's 22 years of service and as first offender merit scant consideration. The longer an employe(e) stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct, and the code of discipline of the company.”

IN VIEW WHEREOF, the appealed Decision of Voluntary Arbitrator Dr. Jose C. Gatchalian is set aside. Respondent Emerita “Emy” Llonillo is found guilty of gross negligence and is hereby dismissed from service. Accordingly, the Temporary Restraining Order issued by this Court in its Resolution, dated August 18, 1993, is made permanent. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Regalado and Mendoza, JJ., concur.

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- [1] Namely: Liceralde, Rogelio, B.; Berendia, Lorence, V.; Ramiro, Flora, V.; Padilla, Nelson, N.; De Raguin, Edmundo, P.; Erendiya, Ma. Florense, V.; Villanueva, Alice, V.; Sto. Domingo, Amelia, E.; Victorendia, Flor, M.; Caneose, Rence, A.; Ibañez, Jocelyn, C.; Ramiro, Santos, V.; Cruz, Pama, D.; Serrano, Mylene, B.; Maglaque, Flordeliza, I.; Caballa, Anjenette, B.; Ramiro, Angeles, V.; Ramiro, Miriam Leah, F.; Malic, Allen, R.; Bacuetes, Marife, B.; Ramiro, Caroline, V.; Romero, Pamela, S.; Ibañez, Cecilia, C.; Perez, Lalaine, R. and Manlapat, Cynthia, V.
- [2] As per the Report of the PNP Crime Laboratory, a handwriting analysis requested by the bank, comparing the penmanship of Supnad and Verendia with the handwriting appearing on the fictitious application forms, showed a distinct similarity.
- [3] Specifically, on May 6, 15, 18, 27 and June 15, all of 1992.
- [4] In connection with the credit card issued to Bacuetes Llonillo asked one of the bank's messenger to get the card from the releasing personnel. The card was then given to her.
- [5] Annex “H”, Rollo, pp. 51-53.

- [6] Annex “K”, Rollo, pp. 87-90.
- [7] Section 2, Rule 5 of the Procedural Guidelines in Voluntary Arbitration provides:
“Section 2. Compulsory Powers. — The Voluntary Arbitrator or Panel of Voluntary Arbitrators shall have the power to require any person to attend hearings as a witness. They shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof have been demonstrated to the Arbitrators.”
- [8] Annex “A”, Rollo, pp. 28-36.
- [9] Article 282 (b), Labor Code.
- [10] Annex “B”, Rollo, pp. 37-44. The agency made a study of the handwriting of Supnad, Verendia and Llonillo and compared them with the penmanship or handwriting appearing on the fictitious credit card application forms.
- [11] *id.*, pp. 43-44.
- [12] 65 C.J.S. 539-541.