

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**CITYTRUST FINANCE CORPORATION
doing business as FNCB FINANCE,
*Petitioner,***

-versus-

**G.R. No. L-75740
January 15, 1988**

**NATIONAL LABOR RELATIONS
COMMISSION AND MARCIAL A.
VIDAL,
*Respondents.***

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DECISION

GANCAYCO, J.:

In the herein Petition for *Certiorari* with Application for Preliminary Injunction and/or Restraining Order, the petitioner seeks the annulment of the resolutions of the public respondent in NLRC-RAB II Case No. 0214-82 dated June 4, 1986 and July 29, 1986.

The facts of the case as stated in the questioned resolution of June 4, 1986 which are borne by the records are as follows:

“This case was certified for compulsory arbitration on December 16, 1982 for the issues of illegal dismissal and

separation pay, non-payment of 13th month pay, housing allowance, vacation and sick leave benefits, and unpaid salaries. The complaint was first filed on November 3, 1982 at the MOLE Ilagan District Labor Office at Ilagan, Isabela and it was amended on January 17, 1983 to include complainant's claim for damages. The case was scheduled for hearing on its merits twenty times. Complainant was represented by Atty. Florentino Abadilla while respondents were represented by Atty. Roberto D. Romanillos, Atty. Tranquilino Gale, and/or Atty. Ramon O. Gonzaga, Jr.

'Complainant testified and presented documentary evidence in his desire to substantiate his claims. Among other things, he declared that he was first hired by respondent on February 24, 1976: that since then he served in different capacities — as Credit Investigator/Collector, Dealer Coordinator, Assistant Credit Control Officer, Assistant Manager in the Cabanatuan Branch, Credit Officer and at the time of his dismissal, Officer-In-Charge of respondent's Santiago Extension Office. He further disclosed that from January 6, 1982, he started to receive a salary of P2,531.00 and that in recognition of his meritorious performance, he was also a recipient of a 'Reward Bonus' of P1,419.00 on February 15, 1982. With respect to his dismissal, he explained that sometime in July 1982, respondent hired the services of Atty. Salome Canas as External Legal Counsel; that she was assigned to assist complainant in the collection operations and foreclosure of delinquent accounts; that said Atty. Canas allegedly misappropriated for herself amounts she collected and to cover up for her misbehavior, she made baseless and fictitious reports to respondents against complainant which were apparently readily accepted by higher management as complainant was never given a chance to be heard. He presented as Exhibit A the termination letter to him October 26, 1982 by respondent Stephen S. Andaya, FNCB Finance Vice-President. From the Exhibit, he explained that the causes of his dismissal appearing therein like the release of the real estate (sic) mortgage which he signed last March 2,

1982 over a property located at Cauayan, Isabela, was not taken up in the investigation; that he noted upon the go-signal of his direct superior, Manager Jun Juanino and in fact Juanino who was furnished a copy of the release of real estate (sic) mortgage had no adverse action regarding the matter. Then, with respect to the third paragraph of the investigation report which called his attention to the fact that in spite of instruction he reported and showed up at the Santiago Office on September 6, 1982 and approved a petty cash expenditure, he declared that the approval of the petty cash was made before he received the long distance instruction of Mr. Andaya that he was temporarily under preventive suspension. He averred that while he was verbally informed of his suspension on September 6, 1982, he received by mail the memorandum of suspension dated September 27, 1982 by M.A. Marcelo — Exhibit B — stating therein that his suspension was effective September 28, 1982. However, he did not report to Office during the period September 6-28, 1982 in compliance with the verbal message of Andaya. He recalled that he duly answered the memorandum on September 30, 1982 — Exhibit F and F-1 explaining lengthily his actions. Among other things, he said that the appointment of Buenviaje was with the verbal approval of Manager Juanino and this was also a practice in Cabanatuan considering that if a legal Sheriff is utilized, the Sheriff would be paid more or less P1,000.00 and the amount paid to Buenviaje was only P500.00 and this was duly audited. Then, with regards to the allegation of Atty. Canas that the P3,000.00 attorney's fee paid to her was returned without having been reflected in the company records, he swore that he had no knowledge about it for what he knows is that Atty. Canas collected P3,309.00 and not P3,000.00 and she never gave this to complainant. On the P25,000.00 as payment of one unit Lambda Colt Galant and another P25,000.00 as down payment for a ten-wheeler Isuzu Cargo Truck, the P25,000.00 payment of the Colt Galant was actually reflected in the books of the company with official receipt which was in turn deposited at the depository bank as

evidenced by Exhibit E, E-1 to E-4. However, he swore that the alleged another P25,000.00 down payment for a ten-wheeler Isuzu Cargo Truck is non-existent. He supported this as he submitted as rebuttal evidence among other documents Exhibits R, R-1 and R-2, an affidavit of Doctor Rolando Dacuycuy which in effect withdrew his statement appearing in Exhibit 6 of respondent and states that in reality he only paid P25,000.00 and not P50,000.00. Complainant likewise presented Exhibit J which is an affidavit of Buenviaje to attest to the foolishness of Atty. Canas and Exhibits and L to further strengthen his position that it is in fact Atty. Canas who collected amounts for respondent FNCR Finance without remitting the same.

‘Complainant also claims for non-payment of his two months year-end bonus for 1982, non-payment of his housing allowance of P600.00 a month since September 1982 and non-payment of his vacation and sick leave for 1982.

‘Respondents in turn presented evidence in their desire to offset the claims of complainant. In their position paper, they presented that respondent Stephen Andaya is not a real party-in-interest for he merely acted as the agent of the respondent company being its Senior Vice-President and hence, he should not be held liable in dismissing herein complainant. They accepted the fact that complainant was hired on February 24, 1976 and that from a mere Credit Investigator/Collector he rose from the ranks and became a managerial employee when on January 6, 1982, he was appointed Officer-In-Charge of the company operations in Isabela, fully clothed with all the duties and responsibilities of a managerial employee; that as such, he was appraised of the nature and extent of his responsibilities and it was impressed upon him that he was holding a sensitive position requiring him to conduct himself in a manner that would reflect well on the dependability and quality service of respondent to its clientele. They countered that barely a few months after

complainant's appointment as Officer-In-Charge, they already received reports of malpractices and breach of operation; that they did not act on the reports immediately to give the benefit of the doubt to complainant, in the hope that as he is given a longer period in his job, he would show his worth and correct the complaints about him. They presented as evidence letter-complaint of Jaime G. Castillo, an employee, who complained about complainant's unjustified and dictatorial manner. They further disclosed that complainant committed a series of serious misconduct in the performance of his duties which served as basis for the company to lose its trust and confidence in him. They specified that complainant unlawfully shared in the attorney's fee of the company's external lawyer, Atty. Salome Canas as evidenced by the letter-reports and/or affidavits of the latter — Exhibits 3 to 5. In addition to these, they revealed that complainant was directly involved in the anomalous foreclosure and sale of mortgaged properties as evidenced by the affidavit of one Rolando Dacuycuy — Exhibit 6. It further alleged that complainant also released a real estate (sic) security without authority and which is in complete violation of existing company policies and guidelines; that in view of the foregoing, higher management conducted a thorough investigation and when complainant's written explanation was found unsatisfactorily (sic), he was terminated in a letter memorandum — Exhibit 7.

'Respondent presented as witness Jose B. Tomas, its Assistant Vice-President who had the supervision and control over Cabanatuan Branch as well as Isabela Extension Office where complainant was Officer-In-Charge. He testified and identified respondent's Exhibits 1 to 7. Mario Basilio, another Assistant Vice-President who declared to be a member of the internal audit and was responsible for the audit conducted in Santiago also testified. He identified Exhibits 8 to 10 of respondent. Among other things, Basilio explained that vacation/sick leave credits of employees cannot be converted to cash

pursuant to company policy and that complainant had been placed under preventive suspension in September so he was not entitled to any housing allowance. He further disclosed that complainant was offered a check in the amount of P1,526.54 — Exhibit 10 — which is the net amount due him as 13th month pay for 1982 after some deductions but that complainant refused to accept the said check.”

Thus by the said resolution public respondent affirmed in toto the decision of the Executive Labor Arbiter of November 22, 1984, the dispositive part of which reads as follows:

“WHEREFORE, IN VIEW OF ALL THE FOREGOING, a DECISION should be, as it is hereby entered, in the above-entitled case DISMISSING the claim of complainant for housing allowance, for lack of merit but ORDERING respondent FN CB FINANCE, within ten (10) calendar days from receipt hereof to reinstate complainant MARCIAL VIDAL to his former position without loss of seniority rights and to pay him, the following:

1. SIXTY-EIGHT THOUSAND THREE HUNDRED THIRTY-SEVEN PESOS (P68,337.00) as full backwages for the period September 1982 to November 1984;
2. FIVE HUNDRED ONE PESOS & 20/100 (P501.20) as incentive leave pay for 1982;
3. ONE THOUSAND ONE HUNDRED TWENTY-SIX PESOS & 54/100 (P1,126.54 as 13th month pay; and
4. FIVE THOUSAND PESOS (P5,000.00) as moral damages.

THUS, a total of SEVENTY-FIVE THOUSAND THREE HUNDRED SIXTY FOUR PESOS & 74/100 (P75,364.74) plus SEVEN THOUSAND FIVE HUNDRED THIRTY-SIX PESOS & 47/100 (P7,536.47) to his lawyer, Florentino Abadilla as attorney's fee, the sum being ten percent (10%) of the total

award or a TOTAL of EIGHTY-TWO THOUSAND NINE HUNDRED ONE PESOS & 21/100 (P82,901.21) with legal interest of 12% per annum to start upon the finality of this decision.”

On September 29, 1986, the Court without giving due course to the petition required respondents to comment thereon within ten (10) days from notice and issued a temporary restraining order against the enforcement of the questioned resolutions.

Petitioner contends that public respondent issued said resolutions with grave abuse of discretion amounting to lack of jurisdiction and in grave violation of petitioner’s right to procedural due process.

At the time private respondent was dismissed from the service for loss of confidence he was a managerial employee of petitioner. On September 27, 1982, petitioner served on private respondent a memorandum requiring him to explain within three (3) days some alleged irregularities in the performance of his duties such as the appointment of special sheriff for the repossession efforts of petitioner and payment of cash vouchers to said sheriff whose appointment was unauthorized, his alleged sharing of the attorney’s fees collected by Atty. Salome Canas from petitioner, and the alleged sale to Dr. Rolando Dacuycuy of one (1) unit Lambda, Colt Galant for P25,000.00 which is reflected in the books, whereby another P25,000.00 was delivered by Dr. Dacuycuy to private respondent as down payment for a ten-wheeler Isuzu cargo truck which however does not appear in the books.^[1]

On September 30, 1982, private respondent submitted his written explanation.^[2] In a letter of October 26, 1982 petitioner wrote private respondent that it is not satisfied with his explanation and that furthermore private respondent released a real estate mortgage on March 2, 1982 over a property located at Cauayan, Isabela in violation of the company policy requiring previous approval of the credit committee at the head office. Thus he was informed that for lack of trust and confidence his employment was terminated effective immediately.^[3]

A review of the records of this case shows that public respondent did not commit any grave abuse of discretion in affirming the decision of the Labor Arbiter. The imputation against private respondent that he shared in the attorney's fees of Atty. Salome Canas has not been substantiated. As aptly observed by the Labor Arbiter, petitioner failed to present said witness during the investigation. By the same token, Dr. Dacuycuy was not made to testify to establish the alleged anomalous sale of the Colt Galant and Isuzu truck to him. On the contrary what appears in the record is that Dr. Dacuycuy retracted his previous affidavit attributing said irregularity to private respondent. Neither was then Manager Jun Juanino produced by private respondent who allegedly authorized the release of the mortgaged property subject of the charge against private respondent.

The hearing of the case was conducted for over one year and was set for about twenty (20) times. Both parties were given all opportunity to adduce evidence. Private respondent presented rebuttal evidence while petitioner reserved the right to present its sur-rebuttal evidence. Instead, petitioner Dacuycuy but it was overruled because of the objection of the private respondent's counsel.

The Court is not persuaded that petitioner was not afforded due process when it failed to cross-examine witness Dr. Dacuycuy. When petitioner was allowed to submit sur-rebuttal evidence and failed to do so, the Labor Arbiter correctly found that there was a waiver on the part of the petitioner. Thus the Labor Arbiter held:

“Respondent was unable to substantiate very well its allegations and it failed to submit sur-rebuttal evidence to strengthen its position because even as the parties agreed to submit affidavits and counter affidavits within an equal period of time, and respondent's move for an extension of time to file its opposition to the rebuttal affidavits of complainant was granted, respondents failed to counter or comment on the rebuttal evidence and instead they moved to cross-examine complainant's rebuttal witnesses and to defer the admission of such evidences. Said motion was vigorously opposed by complainant through counsel with the circumstances mentioned above as grounds. The same was found to

meritorious and hence, the respondents were estopped to cross-examine the affiants in the rebuttal affidavits.”

No doubt petitioner was afforded due process. It was given all opportunity to be heard and to adduce its evidence. Even if it failed to cross examine an adverse witness, public respondent or the labor arbiter could very well evaluate the evidentiary value of the retraction of said witness as it did in this case.

Loss of confidence is a valid ground for dismissing an employee and proof beyond reasonable doubt of the employee’s misconduct is not required to dismiss him on this charge. It is sufficient if there is ‘some basis’ for such loss of confidence or if the employer has reasonable ground to believe or to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.^[4]

In this case, petitioner has not established nor presented sufficient basis for the dismissal of private respondent on the ground of loss of confidence. Thus the finding of public respondent that private respondent was illegally dismissed is well-taken.

However, in this case there is no doubt that the relationship of employer to employee is so strained and ruptured as to preclude a harmonious working relationship should reinstatement of private respondent be decreed. Instead private respondent should be afforded the right to separation pay so that he can be spared the agony of having to work anew with petitioner under an atmosphere of antipathy and antagonism and the petitioner does not have to endure the continued services of private respondent in whom it has lost confidence.^[5]

WHEREFORE, the appealed Resolution is hereby modified in that private respondent is not to be reinstated but is entitled to back wages for three (3) years, and separation pay equivalent to one (1) month for every year of service, P5,000.00 for moral damages with costs against petitioner.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz and Paras, JJ., concur.

- [1] Annex 2, Petition, pages 71-72, Rollo.
- [2] Supra, pages 73-74, Rollo.
- [3] Annex 22, Supra, page 75, Rollo.
- [4] Nevans vs. Court of Industrial Relations, 23 SCRA 1321; National Organization of Laborers and Employees vs. MRR, 21 SCRA 191; Galsim vs. PNB, 29 SCRA 293; Reyes vs. Zamora, 90 SCRA 92; San Miguel Corp. vs. Deputy Minister of Labor and Employment, G.R. No. 61232-33, Dec. 29, 1983.
- [5] Article 284, Labor Code; Panay Railways Inc. vs. National Labor Relations Commission, 137 SCRA 480; Flexo Manufacturing Corp. vs. NLRC, 135 SCRA 145; Lepanto Consolidated Mining Co. vs. Hon. Labor Arbiter, G.R. Nos. 67002-03, 136 SCRA 256; Medical Doctors Inc. vs. NLRC, 130 SCRA 1.