

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**RIZALINA G. GALSIM and her husband
BENIGNO C. GALSIM,**
Plaintiffs-Appellants,

-versus-

**G.R. No. L-23921
August 29, 1969**

PHILIPPINE NATIONAL BANK,
Defendant-Appellee.

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DECISION

SANCHEZ, J.:

Rizalina G. Galsim, a dismissed employee of the Philippine National Bank (PNB for short), sued for reinstatement, recovery of back salaries and damages.^[1] The Court of First Instance of Manila, after trial, dismissed the complaint, with costs against her. We are now to resolve plaintiffs' appeal.

Concededly, plaintiff Rizalina G. Galsim was PNB's paying teller with a monthly salary of P300 until December 11, 1952 when her dismissal became effective.

The case stemmed from facts that follow:

On December 11, 1952 between 9:15 and 9:20 in the morning, one Deogracias Pauco, a receiving teller at PNB's Cage 19, approached his co-employee, paying teller Rizalina Galsim, inside her Cage 12. Mrs. Galsim thought she heard Pauco borrowing P10. Her answer was that she only had P2 with her. Upon hearing this, Pauco told her in Tagalog: "Hindi, P10,000 00" (No, P10,000.00). Without inquiring into Pauco's purpose, Mrs. Galsim took one bundle of P100 bills amounting to P10,000.00 and handed it to him. She just presumed that Pauco would use the money for exchange requested by customers. After ten or fifteen minutes waiting for Pauco to deliver to her P10,000 in smaller denominations, she went to Pauco's cage. She did not find him there. Another teller told her that Pauco might have merely stepped out. Mrs. Galsim then checked Pauco's time card at the bundy clock. She discovered to her dismay that he did not time in on that day. Alarmed, she decided to report the matter to Mr. Syquia, an assistant bank cashier. Syquia, however, was very busy. Mrs. Galsim did not report to Mr. Maramba, also an assistant cashier, her excuse being that Mr. Syquia would be more understanding. She was not able to talk to Mr. Syquia until past 11:00 o'clock that morning. Informed of the incident, Syquia sent an employee and a bank guard to the house of Pauco.

Shortly after 1:00 o'clock p.m., Mrs. Galsim met Pauco at a drinking fountain in the bank's premises. Galsim asked Pauco in Tagalog: "Pau, saan mo dinala?" (Pau, where did you take it?). Pauco angrily answered: "Bakit, mayroon ba akong kinuha sa iyo?" (Why, did I take anything from you?). She then pleaded tearfully: "Pauco, bakit mo ako ginaganyan?" (Pauco, why are you doing that to me?). Pauco shot back: "Bakit, ano ang ginawa ko sa iyo? Bakit gaganyanin kita?" (Why, what have I done to you? Why should I do that to you?). With that, he turned his back and left.

It was thus that Mrs. Galsim incurred a shortage of P10,000 in her cash accountability for that day. Because of this, PNB Vice-President Juan D. Quintos suspended both Galsim and Pauco on the same day, December 11. The National Bureau of Investigation (NBI) was called in.

That same afternoon of December 11, PNB Auditor Conrado P. Sevilla conducted an investigation. The next day, December 12, he made a

report of his findings to the PNB board of directors. He opined that Mrs. Galsim was guilty of gross negligence and violation of existing regulations. Bases therefor were her delay in reporting the matter to her superiors and her failure to make Pauco sign a receipt, the usual supporting Teller's Account Ticket, PNB General Form No. 34-B, required under existing bank regulations, considering the fact that she did not get in due time the corresponding cash in small denominations in exchange. Auditor Sevilla also mentioned that in a written testimony Pauco denied having received the P10,000 in P100 bills from Mrs. Galsim. Further, Auditor Sevilla said that there was an exchange teller for the purpose of effecting exchanges of money. His recommendation: the two tellers, Galsim and Pauco, be immediately suspended from the service and that civil and/or criminal action be taken against either or both, as may be warranted by the NBI findings.

On October 1, 1953, the NBI came out with its report of the investigation. The NBI noted that Mrs. Galsim's version was the truth and that Pauco was solely to blame. The NBI detailed the information coming from three informants whose identities were not divulged that on the same day, December 11, 1952, Pauco; lost the P10,000 in a rigged-up black jack game in a house at Governor Forbes Street, Sampaloc, Manila. The NBI found that Pauco "really did 'borrow' the P10,000.00" from Mrs. Galsim. It recommended that Pauco be separated from the service without prejudice to whatever steps the PNB may deem proper to take for the recovery of the P10,000, and that Mrs. Galsim be reinstated.

A third separate investigation was conducted by PNB Vice- President Leon Ancheta. He filed his memorandum with the PNB board of directors on May 24, 1954. His conclusions were that Mrs. Galsim contravened existing regulations and practices in the tellers' division by delivering to Pauco P10,000 without requiring the accomplishment and delivery of PNB General Forms 33-B and 34-B, and that it was not customary for a paying teller to deliver cash to a receiving teller whose principal function was to receive deposits from depositors. Ancheta's recommendation was to dismiss, effective as of the date of suspension, not only Pauco but also Mrs. Galsim for the latter's gross negligence and violation of existing rules which made the loss possible.

Then came PNB board of directors' Resolution 668 of June 21, 1954. The board recognized that Mrs. Galsim acted in good faith; that the lending of cash by one teller to another was a prevailing practice sanctioned by the bank; but that Mrs. Galsim's fault consisted in that she failed to have PNB Forms 33-B and 34-B accomplished as evidence of the transfer of funds required by standing regulations; that such failure on her part unquestionable constituted negligence, and that she was not relieved from liability for the loss of the P10,000. The PNB board thus dismissed Pauco from the service and required Mrs. Galsim to resign. It also directed the PNB Legal Department to file civil suit to recover the P10,000 against Galsim and/or Pauco and their sureties, if any, and to study the feasibility of filing a criminal action against Pauco. Vice-President Leon Ancheta wrote Mrs. Galsim on July 1, 1954. There, he informed Mrs. Galsim of Resolution 668, and requested her to submit her letter of resignation effective as of the date of her suspension, without prejudice to any civil action to the bank might deem proper. Mrs. Galsim did not comply.

On September 24, 1954, PNB sued Mrs. Galsim and her husband Benigno C. Galsim to recover the amount of P10,000.^[2] On January 12, 1955, judgment was rendered by the Court of First Instance of Manila exonerating Mrs. Galsim from liability for the loss of the P10,000 in question. PNB's appeal to the Court of Appeals^[3] resulted in affirmance on May 26, 1956 of the trial courts decision. The Court of Appeals judgment has since become final.

Meanwhile on April 25, 1955, following a preliminary investigation, Assistant City Fiscal Arsenio Alcantara of Manila lodged with the Court of First Instance of the city a criminal information for qualified theft against Mrs. Galsim and Pauco.^[4] After the Court of Appeals' judgment heretofore mentioned was rendered, Mrs. Galsim moved in the trial court to have the criminal case against her dismissed. Rejected, she lodged a petition for *certiorari*, prohibition and mandamus with preliminary injunction in the Court of Appeals.^[5] On November 28, 1956, the Court of Appeals directed the trial court to dismiss the criminal case against Mrs. Galsim upon the ground that the matter of the latter's responsibility for the loss of the P10,000 was a question finally passed upon and resolved in her favor; and that,

accordingly, the civil case raised a prejudicial question. Pursuant to this judgment, the trial court dismissed the criminal case on January 8, 1957.^[6]

Efforts at reinstatement exerted by plaintiff Rizalina G. Galsim were futile. Hence, the present suit adverted to at the start of this opinion.

Is Rizalina G. Galsim entitled to be reinstated to her position as paying teller? Her claim is that her dismissal was unwarranted, capricious and arbitrary.

1. As a PNB employee, Mrs. Galsim is not subject to the Civil Service Law. Her position in the bank cannot be said to be a public office.^[7] Under Section 23 of PNB's charter, Act 2612 (as amended by Acts 2724 and 2938), the bank's board of directors concededly has the right to choose its employees. Because, it is not shackled by civil service limitations. This right is commonly referred to as the employer's right to hire and fire.^[8] Said Section 23 reads in part:

“Sec. 23. Other officers and employees, appointment and removal — Salaries — Non-applicability of the Civil Service Law. — All the other officers and employees of the bank shall be appointed and removed by the Board of Directors, on recommendation of the President. Said officers and employees shall not be subject to the Civil Service Law, and their duties and compensation shall be fixed by the President with the approval of the board of directors;”

Of course, the employer's prerogative to dismiss employees hired without a definite period may be with or without cause.^[9] But if the manner in which such right is exercised is abusive, the employer stands to answer to the dismissed employee for damages.^[10] An employer may charge an employee with a crime connected with the employee's duties and dismiss him. It has been held, however, that an employee's subsequent acquittal does not automatically entitle him to reinstatement. His dismissal would still be proper if evidence is sufficient to show that the employee has been guilty of a breach of trust or that the employer has ample reason to distrust him,^[11] or that the employee is “guilty of acts inimical to the interests of his employer and justifying loss of confidence in him,”^[12] An acquittal in a criminal

case is not at all inconsistent with loss of confidence. A quote from *Philippine Education Co., Inc. vs. Union of Philippine Education Employees (NLU)*, L-13778, April 29, 1960, will illustrate this point. Thus —

“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. If said merchandise are lost and said loss is reasonably attributed to said employee, and he is charged with theft, even if he is acquitted of the charge on reasonable doubt, when the employer has lost its confidence in him, it would be highly unfair to require said employer to continue employing him or to reinstate him, for in that case, the former might find it necessary for its protection to employ another person to watch and keep an eye on him. In the present case, Carpio was refused reinstatement not because of any union affiliation or activity or because the company has been guilty of any unfair labor practice. As already stated, Carpio was convicted in the Municipal Court and although he was acquitted on reasonable doubt in the Court of First Instance, the company had ample reason to distrust him. Under the circumstances, we cannot in conscience require the company to reemploy or reinstate him.”^[13]

To be stressed then is that for a dismissal for loss of confidence to be warranted, there should naturally be some basis therefor.^[14]

2. Bearing in mind PNB’s right to dismiss employees, a sequential question that crops up is whether or not good ground exists for a valid dismissal of plaintiff Rizalina G. Galsim.

In our approach to this problem, we are not to be shackled by the final judgment in the civil case for recovery arising out of the loss of P10,000. To be emphasized is that the issue in the civil case filed by PNB against Mrs. Galsim is whether or not the latter should be made to pay to the bank the amount of P10,000, not her reinstatement — which plaintiff Galsim herself concedes was not in issue therein.^[15] And, the Court of Appeals, in finding that Mrs. Galsim was not liable for the payment of P10,000 noted that —

“Anyway, the use of PNB Forms Nos. 33-B and 34-B Exhs. C & C-1) was undoubtedly prescribed to avoid that the receiver might deny the taking of the money. We realize that the use of said PNB forms was most practical to prove satisfactorily any delivery of money, yet, in the case at bar it is of no sequence because the result of the investigation of the National Bureau of Investigation convincingly showed, even to the satisfaction of the Board of Directors of the Bank, that really Deogracias Pauco actually received P10,000.00 in a pack of P100 bills from Rizalina G. Galsim, which money the former lost in a gambling game.”^[16]

This brings us to a determination of whether or not basis for loss of confidence exists to justify dismissal of Mrs. Galsim. Of interest here is Board of Directors of the Philippine National Bank vs. Court of Appeals, supra. There, this Court directed reinstatement of Oscar Mella because he was dismissed without due process. We left open the question of disciplinary action which was not litigated therein. This Court in the Mella case made it abundantly clear that: “The position of a paying teller does not involve any confidence apart from the fact that he handles the bank ‘s funds and deals with its customers. Consequently, the loss of confidence to be a ground of dismissal necessarily is in connection with the handling of the bank’s fund and his dealings with the bank’s customers.”^[17] And, plaintiff Galsim herein — a paying teller — handles the bank’s funds and deals with its customers.

A paying teller in the PNB is entrusted with considerable sums of money. Proof of this is that at the start of banking business on December 11, 1952, the date of the incident, Mrs. Galsim had a working amount of P86,684.43 for which she was accountable. Handling of bank funds is a serious matter. A teller’s relationship with the bank is necessarily one of trust and confidence. 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.

Let us take a look at the facts. That morning of December 11, Pauco approached Mrs. Galsim. She thought he was borrowing money. She told him that she only had P2. But then Pauco made it plain to her that he needed P10,000. She gave him the P10,000 without as much as inquiring into Pauco's purpose. Of course, she said that she presumed that Pauco would use the money "for exchange as requested by customers."^[18] But the NBI found that Pauco "really did 'borrow' the P10,000.00."

Nor can Mrs. Galsim give as reason that money in P100 bills was in exchange for smaller denominations. Common sense dictates that if such were the purpose, considering the big amount of money involved, she should have required from Pauco right then and there to produce the equivalent. But she did not. She did not even take the precaution to immediately follow Pauco to his cage to get back the corresponding amount in exchange. Failing to receive from Pauco the money in exchange upon delivery by her to him of P10,000, prudence required of her at least to get some evidence that the money was with Pauco. Not that she was unfamiliar with what was to be done. The bank provided PNB General Forms 33-B and 34-B precisely to make sure that transfers of money from teller to teller could properly be traced.

Besides, the money was taken almost immediately after the start of banking hours. She knew that a big sum, P10,000, was involved. She should have been on guard. Business had just begun. These facts should have opened her eyes to make her inquire from Pauco why he needed that much amount of money. She knew that Pauco was a receiving teller whose principal function was to receive deposits from bank depositors. She should have known, too, that there was at the time an exchange teller in the bank whose duty was to exchange money. That she did not inquire from Pauco the why and wherefore of the P10,000 is a lapse, a costly lapse indeed. In reality, there was no need for her to turn over such a large sum. Because, in the course of business, Pauco would be receiving deposits from time to time which he could use for exchange purposes.

Her failure to obtain receipt from Pauco has had its harmful consequences. That gave Pauco a chance to say, when confronted shortly after delivery of the money, that he had not gone to the bank

except at past 10:00 o'clock in the morning to ask permission from assistant cashier Maramba not to enter office that day; and that he did not receive the said amount of P10,000 from Mrs. Galsim. It emboldened Pauco to pocket the P10,000. Pauco could not have had the temerity of appropriating the money, carrying it away and gambling with it. The reason being that Pauco would have known that had the receipt been signed, there would exist conclusive evidence against him. The loss could have been averted.

Surely, 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. And justifiably, because by giving the money in violation of bank rules, she actually did cause prejudice to the bank. That act was inimical to the interests of the bank. No one may begrudge the bank in its well-grounded belief that an unfortunate situation such as that which happened on December 11 may in the future be repeated if her services were retained.

These are reasons potent enough to bar plaintiff Galsim's demand for reinstatement.

We accordingly vote to affirm the judgment under review.

Costs against plaintiffs-appellants. So ordered.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur. Reyes, J., is on official leave.

[1] Civil Case 42755, Court of First Instance of Manila, entitled "Rizalina G. Galsim and her husband Benigno C. Galsim, Plaintiffs, vs. Philippine National Bank, Defendant."

[2] Civil Case 24145, Court of First Instance of Manila, entitled "Philippine National Bank, Plaintiff, vs. Rizalina G. Galsim and Benigno C. Galsim, Defendants."

[3] CA-G.R. 14714-R.

- [4] Criminal Case 31114, Court of First Instance of Manila, entitled “People of the Philippines, Plaintiff, vs. Mrs. Rizalina G. Galsim and Deogracias Pauco, Accused.”
- [5] CA-G.R. 18208-R, Court of Appeals, entitled “Rizalina G. Galsim, Petitioner, vs. Hon. Fidel Ibañez, Judge of the Sala or Branch No. IX of the Court of First Instance of Manila; Philippine National Bank; and the Fiscal of the City of Manila Respondents.”
- [6] The Court of First Instance of Manila, in the criminal case for qualified theft, found Deogracias Pauco guilty thereof. On appeal, the Court of Appeals, on October 24, 1963, affirmed the conviction with modification only as to penalty (CA-G.R. 03096-Cr.).
- [7] Board of Directors of the Philippine National Bank vs. Court of Appeals (1961), 2 SCRA 561, 567.
- [8] Gutierrez vs. Bachrach Motor Co., Inc. 105 Phil. 9, 21.
- [9] Philippine Refining Co., Inc. vs. Garcia (1966), 18 SCRA 107, 111.
- [10] Id., at p. 112.
- [11] National Labor Union, Inc. vs. Standard Vacuum Oil Company, 73 Phil. 279, 282. See also: Gatmaitan vs. Manila Railroad Co. (1967) 21 SCRA 191, 193.
- [12] National Organization of Laborers and Employees (NOLE) vs. Roldan, 95 Phil. 727, 733.
- [13] Italics supplied.
- [14] See: Corpus vs. Cuaderno, L-23721, March 31, 1965.
- [15] Plaintiffs’ brief, pp. 110-111.
- [16] Except for the word “actually,” emphasis has been supplied.
- [17] At p. 566; Italics supplied.
- [18] NBI Report, Exh. C-1, Folder of Exhibits, p. 10.