

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**CARMENCITA G. VISPERAS,  
*Petitioner,***

***-versus-***

**G.R. No. L-51299  
December 29, 1982**

**HON. AMADO GAT. INCIONG, Deputy  
Minister of the Ministry of Labor and  
BANCO FILIPINO SAVINGS AND  
MORTGAGE BANK,  
*Respondents.***

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**DECISION**

**MELENCIO-HERRERA, J.:**

This is a Petition for Review on *Certiorari* of the Decision of respondent Deputy Minister of Labor in NLRC Case No. RBIV-12151-77, entitled Carmencita G. Visperas vs. Banco Filipino Savings and Mortgage Bank, giving due course to the bank's application for clearance to dismiss complainant, petitioner herein.

The records show that, on February 19, 1977, an incident occurred in the second floor premises of Banco Filipino (respondent Bank) at its Mandaluyong Branch, between two of its tellers, namely: Carmencita Visperas (petitioner) and Cesar Ramirez.

At around 11:00 a.m. of that day Orlindo Bartolome, another bank employee, requested petitioner to prepare a debit memo for a dollar check received five days before, or, on February 14, 1977. Normally, the debit memo should have been prepared on the same day of the transaction, pursuant to bank practice. The petitioner did, as requested, and had it cleared by Mrs. Ofelia Cruz, bank supervisor, who was having lunch with Cesar Ramirez and two other employees. The petitioner inquired who the teller was who had failed to prepare the debit memo. Ramirez admitted that there was a debit memo prepared but he left it unposted because at that time the bank was operating off-line and that he left the said debit memo with a bookkeeper in the afternoon shift, which remained unposted. To this, the petitioner commented, “tarantado.” In their respective Affidavits executed on April 18, 1977 and June 28, 1977,<sup>[1]</sup> petitioner and Ramirez admitted that the comment was made in a joking manner. The petitioner went back to her work and Ramirez just kept quiet and finished his meal hurriedly.

Thirty minutes later, Ramirez approached petitioner’s desk and told her he resented her having revealed his mistakes and use of the word “tarantado” in front of their supervisor. Petitioner made no apology although she said that the word is her ordinary expression. Other employees also poked fun at the incident with their respective comments. Mrs. Cruz admonished everyone saying, “Pssst tama na yan.” They momentarily stopped. Ramirez, however, sat opposite the petitioner with dagger looks. This incensed the petitioner who then remarked: “Alam ko matapang ka mangyari security guard ka dati.” Ramirez considered it an insult and Ramirez slapped petitioner on the right side of her head hitting her right ear and her eyeglasses. The latter retaliated by throwing a stapler without however hitting him. Before Ramirez could slap her again, cooler heads intervened.

After the incident, Mr. Pedrito Ledesma, the Branch manager, asked the petitioner and Ramirez to submit written explanations. Other employees, who witnessed the incident were also asked to submit their own statements. After consultation with Mrs. Cruz, Mr. Ledesma called the petitioner and Ramirez and suggested that they resign. Ramirez, who was on probationary status, resigned, while the petitioner was a regular employee since January 18, 1974, did not.

The petitioner received a letter of termination effective March 16, 1977, “for violation of company rules and regulations on office relationship”, together with a copy of the Bank’s application for clearance to dismiss, filed on March 15, 1977 with the Regional Office, Ministry of Labor.<sup>[2]</sup>

The petitioner filed a Opposition to the application for clearance to dismiss.

On July 25, 1977, Labor Arbiter Ruben Aquino rendered a decision upholding the right of respondent Bank to terminate the services of the petitioner on the ground that she had violated company rules and regulations on office relationship, but inasmuch as the clearance application was not filed at least ten days prior to the intended date of dismissal, the respondent Bank was ordered to pay one-half-month salary for every year of petitioner’s service, as severance pay.<sup>[3]</sup>

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter, finding that the acts complained of did not justify the termination of the petitioner and directed a thirty-day suspension without pay as a disciplinary measure. It also ordered the reinstatement of petitioner to her previous position without loss of seniority rights and back salaries beginning thirty days after she was out of work until the date of her actual reinstatement.<sup>[4]</sup>

Respondent Bank appealed to the Office of the Minister of Labor. On March 14, 1979 Deputy Minister Amado G. Inciong reversed the decision of the NLRC and reinstated the Labor Arbiter’s decision granting respondent Bank’s clearance application to terminate.<sup>[5]</sup>

Petitioner received a copy of the decision on March 21, 1979 and filed a Motion for Reconsideration on March 30, 1979, which was denied by respondent Inciong. Petitioner received the Order of denial on July 20, 1979.<sup>[6]</sup>

On August 27, 1979, petitioner availed of the present recourse.

We uphold the view of the NLRC that petitioner’s dismissal is unwarranted for being too severe a penalty.

The Bank rules and regulations that petitioner is alleged to have violated read as follows:

“Willful refusal by a staff member to carry out official verbal or written orders or instructions of his supervisors or officers shall constitute sufficient grounds for dismissal.

Although misunderstandings cannot be entirely eliminated in a work group as large as ours, shouting at one another and physical violence is never justifiable and will be subject to disciplinary action. Any disrespect, discourtesy, insult or use of foul language towards the bank’s clients and depositors or towards any officer, supervisor, or staff member shall be sufficient ground for dismissal from the service.”<sup>[7]</sup>

The verbal order which petitioner allegedly wilfully refused to carry out is the admonition of her supervisor Mrs. Cruz, “Pssst tama na yan.” Petitioner’s remark uttered thereafter to Ramirez, however, that “Alam ko matapang ka mangyari security guard ka dati,”<sup>[8]</sup> was not a “willful refusal” to heed the supervisor’s order to stop talking. It was merely a reaction by the petitioner to the annoying presence of Ramirez, who was visibly angry, in front of her desk. It cannot be characterized as a wrongful and perverse mental attitude rendering the employee’s act inconsistent with proper subordination.<sup>[9]</sup>

Upon hearing the remark, Ramirez thought that petitioner was belittling his humble background, so he slapped her. Petitioner’s act in throwing the stapler (which she denies) was merely in retaliation for the physical violence upon her person and self-respect.

By uttering the word “tarantado”, respondent Bank alleged that this violated the rule against insulting or using foul language towards a fellow staff member. As stated by the petitioner in her Affidavit, however, she meant it only as a joke,<sup>[10]</sup> besides the fact that it is her usual expression. In his Affidavit, Ramirez also admitted that he took it as a joke at first but on second thought resented the expression.<sup>[11]</sup>

Besides, respondent Bank’s rules also provide that:

“In the implementation of penalties, the past performance, job dedication and proven, loyalty to the bank of a staff member shall be given due recognition and consideration.”<sup>[12]</sup>

Petitioner has served respondent Bank for three years with apparently a good record since two months before the unfortunate incident she was promoted from junior teller to regular teller. In addition, she has rendered the most overtime work among the tellers and was awarded excellence in attendance. The continuance of her service would not be inimical to the interest of the bank. In fact, the incident, in a way, discloses petitioner’s dedication to the job, for, upon finding that there was an error committed in connection with the work, she called the attention of the person concerned in order to avoid a repetition.<sup>[13]</sup>

Pointedly applicable to the issues at hand is the ruling enunciated in Mercury Drug Co., Inc. vs. Court of Industrial Relations:

“Even if it were conceded that private respondent Dayao verbally quarrelled with the former president of their employees’ association in the presence of manager Mariano Que and that both ignored the latter’s admonition for them to stop quarrelling; at most the same was discourtesy which was not intended considering the origin of their quarrel — the failure of Ranin, former president of the labor union, to fight for overtime pay for services rendered on Sundays and holidays. Such discourtesy, at most, merits merely a reprimand or admonition but not outright dismissal, since it did not involve the efficiency nor honesty of private respondent Dayao. The fact that Dayao had been in the service for five years and ten months, during which period of time he was promoted from driver to delivery man, to checker and finally to assistant chief checker in the Checking Department with a salary of P225.00 a month demonstrates his efficiency, competence and trustworthiness.”<sup>[14]</sup>

As in the above case, dismissal herein is too harsh a penalty, A penalty less punitive should have been proper. We are in accord with the decision of the NLRC that a thirty-day suspension without pay is a commensurate disciplinary measure.

There is another point. Respondent Bank's application for clearance to dismiss was filed with the Ministry of Labor only on March 15, 1977, or the same day that petitioner received the letter of termination. The Rules and Regulations implementing the Labor Code provided that said application should be filed at least ten days before the intended dismissal and a dismissal without prior clearance is conclusively presumed to be without a just cause.<sup>[15]</sup>

In fine, the Court finds that respondent Deputy Minister committed grave abuse of discretion when he set aside the Decision of the NLRC and affirmed the Order of the Labor Arbiter. Petitioner is entitled to reinstatement with back wages from the termination of her 30-day suspension up to the equivalent of three years.<sup>[16]</sup>

**WHEREFORE**, the Decision of respondent Deputy Minister Amado G. Inciong affirming the Decision of Labor Arbiter Ruben B. Aquino is hereby **REVERSED** and the Decision of the National Labor Relations Commission, Second Division, is hereby **AFFIRMED**.

Respondent Bank is ordered to reinstate the petitioner, Carmencita G. Visperas, to her previous position, without loss of seniority rights, and with back wages from April 16, 1977 to April 15, 1980 (equivalent to 3 years).

No pronouncement as to costs.

**SO ORDERED.**

**Teehankee, C.J., (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.**

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- [1] Annex "D" & "E", Petition.  
[2] p. 47, Rollo.  
[3] p. 53, *ibid.*  
[4] p. 72, *ibid.*  
[5] p. 24, *ibid.*  
[6] No. IV of Petition; p. 7, *ibid.*  
[7] pp. 13-15, *ibid.*  
[8] pp. 54 & 55, *ibid.*

- [9] Batangas Laguna Tayabas Bus Co. vs. Court of Appeals, 71 SCRA 470 (1976).  
[10] p. 35, Rollo.  
[11] p. 39, *ibid.*  
[12] p. 16, *ibid.*  
[13] Affidavit of Carmencita G. Visperas; p. 35, *ibid.*  
[14] 56 SCRA 694, 708 (1974).  
[15] Secs. 2 & 3, Rule XIV.  
[16] Pepito vs. Secretary of Labor, 96 SCRA 454 (1980).

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