



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

G.R. No. 179648

Present:

- versus -

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

MARY SHEILA ARCOBILLAS,
Respondent.

Promulgated:

AUG 07 2013

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DECISION

DEL CASTILLO, *J.:*

“The rule is well-settled that the filing of a [M]otion for [R]econsideration is an indispensable condition to the filing of a special civil action for certiorari x x x.”¹

Before us is a Petition for Review on *Certiorari*² assailing the November 15, 2006 Decision³ of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 00326, which dismissed the Petition for *Certiorari* filed therewith and affirmed with modification the August 31, 2004 Decision⁴ of the National Labor Relations Commission (NLRC) in that it ordered petitioner Philippine National Bank (PNB) to shoulder 40% of the financial losses it sustained due to the inadvertent act of misposting committed by its teller, respondent Mary Sheila Arcobillas (Arcobillas), who was ordered to pay the remaining 60%. *Mesa*

¹ *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743, 751 (2002).

² *Rollo*, pp. 9-21.

³ CA *rollo*, pp. 132-139; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

⁴ *Id.* at 40-49; penned by Commissioner Edgardo M. Enerlan and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

Factual Antecedents

On May 15, 1998, the PNB Foreign Currency Denomination-Savings Account (FCD-S/A) No. 305703555-1 of Avelina Nomad-Spoor (Nomad-Spoor) was credited with US\$138.00. However, instead of posting its peso equivalent of ₱5,517.10, Arcobillas, the assigned administrative teller at PNB Bacolod-Lacson branch, erroneously posted US\$5,517.10, resulting in an overcredit of US\$5,379.10. Said amount was later withdrawn by Nomad-Spoor on May 29, 1998 and June 8, 1998 to the damage of PNB in the amount of ₱214,641.23.

The misposting was discovered only about seven months later. After investigation by PNB's Inspection and Investigation Unit Arcobillas was administratively charged with neglect of duty.⁵

In her Affidavit⁶ executed on May 5, 1999, Arcobillas admitted her mistake, apologized for it, and stated that she did not benefit from the unintentional misposting. She narrated that she erroneously posted US\$5,517.10, instead of ₱5,517.10, which figure represents the peso value of US\$138.00. She honestly believed that the US\$5,517.10 was correct because when added to the other on-line dollar transaction of US\$1,004.60 the result was US\$6,521.70, which tallied with the teller's machine reading. Arcobillas further explained that the heavy workload that day, a Friday coinciding with payroll day, plagued with intermittent power interruptions, brought on a severe headache which greatly affected her work performance.

On February 24, 2000, PNB's Administrative Adjudication Panel found Arcobillas guilty of gross neglect of duty and meted upon her the penalty of forced resignation with benefits, to take effect immediately upon her receipt thereof. Upon denial of her plea for reconsideration, Arcobillas instituted a Complaint⁷ for illegal dismissal with money claims against PNB, PNB's Senior Manager Reynald A. Rey and Senior Vice-President Rosauro C. Macalagay.

Ruling of the Labor Arbiter

In a Decision⁸ dated December 27, 2002, the Labor Arbiter found no sufficient evidence to establish gross and habitual negligence. The Labor Arbiter noted (1) Arcobillas's performance rating of "Very Satisfactory" (VS) from January 1994 to December 1997 and her promotion to Bank Teller III in December 1995 despite having been suspended for one month in October 1995

⁵ Id. at 16-17.

⁶ Id. at 18-19.

⁷ Id. at 15.

⁸ Id. at 20-30; penned by Labor Arbiter Ma. Wilma M. Kalaw.

due to the similar infraction of misposting; (2) her garnering a VS rating from January-June 1998 and July-December 1999 despite the pendency of the administrative charge that led to her eventual dismissal; and, (3) that the misposting was committed without malice, bad faith or dishonest motive. The Labor Arbiter also pointed out that the resulting damage could not be solely attributed to Arcobillas. The Bank Accountant, Financial Management Specialist, and those comprising the branch accounting unit failed to observe the bank's internal control measures of validating and verifying the bank's daily transactions. Had they done so, the said misposting could have been discovered at the earliest opportunity. Hence, the decretal portion of the Labor Arbiter's Decision:

WHEREFORE, in view of the foregoing considerations, respondents PHILIPPINE NATIONAL BANK, REYNALD A. REY and ROSAURO C. MACALAGAY are hereby directed to reinstate complainant MARY SHEILA ARCOBILLAS to her former position without loss of seniority rights plus payment of full backwages inclusive of allowances and other benefits [or] their monetary equivalent from March 16, 2000 to date of promulgation of this Decision; 13th month pay for the year 1999, unpaid salaries for the period February 2000 to March 15, 2000 in the amount of FIVE HUNDRED SIXTY FOUR THOUSAND SEVEN HUNDRED SEVENTY FOUR PESOS and 72/100 (₱564,774.72) plus ten percent (10%) thereof [₱56,477.47] as attorney's fees x x x or in the total amount of SIX HUNDRED TWENTY ONE THOUSAND TWO HUNDRED FIFTY TWO PESOS and 19/100 (₱621,252.19).

SO ORDERED.⁹

Ruling of the National Labor Relations Commission

PNB appealed to the NLRC and argued in its Memorandum on Appeal¹⁰ that malice, bad faith or dishonest motive is not a requirement before an employer could validly dismiss its employee on the ground of neglect of duty. It posited that Arcobillas's admission of her negligence and her prior commission of the same infraction of misposting justify her termination from employment for gross and habitual neglect of duty. It argued that the Labor Arbiter's reliance on Arcobillas's performance rating is misplaced because her dismissal is not grounded on loss of trust and confidence.

On August 31, 2004, the NLRC rendered a Decision¹¹ affirming with modification the Labor Arbiter's Decision. While it concurred with the Labor Arbiter's ruling that there was no sufficient ground to dismiss Arcobillas since the misposting was not deliberately done and hence does not constitute gross and habitual neglect, it nevertheless declared her not entirely faultless and free from

⁹ Id. at 30.

¹⁰ Id. at 31-38.

¹¹ Id. at 40-49.

any penalty less punitive than termination. The NLRC thus pronounced Arcobillas, as well as those other employees who were remiss in validating/verifying the bank's transactions, equally liable for the financial losses suffered by PNB. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION. As a form of penalty the financial losses of respondents in the amount of ₱214,641.23 should be equally shouldered by complainant and by those who are directly responsible in the validation/verification of complainant's transaction as teller. The misposting done by complainant found by respondent to be gross neglect of duty shall be considered as a final warning that commission of [a] similar offense in the future shall be treated as gross and habitual neglect of duty.

All [other] aspects of the decision are hereby affirmed.

SO ORDERED.¹²

PNB received a copy of the said Decision on October 14, 2004.¹³ Without filing a Motion for Reconsideration, PNB filed a Motion for Extension of Time to File Petition for *Certiorari*¹⁴ until December 23, 2004. On said date, PNB filed its Petition for *Certiorari*¹⁵ before the CA. Subsequently on May 25, 2005, the NLRC issued an Entry of Final Judgment declaring its August 31, 2004 Decision final and executory as of October 19, 2004.¹⁶

Ruling of the Court of Appeals

Despite the non-filing of a Motion for Reconsideration with the NLRC, the CA took cognizance of PNB's Petition for *Certiorari*. Nevertheless, it dismissed the same in a Decision¹⁷ dated November 15, 2006. It agreed with the findings of both the Labor Arbiter and the NLRC that Arcobillas's negligence cannot be considered gross and habitual as to warrant her dismissal from employment. First, Arcobillas exercised ordinary diligence in her work when she checked and tallied her on-line dollar transactions with the teller's machine reading. Second, Arcobillas's heavy workload and severe headache mitigated the mistake committed. Third, the misposting was an isolated act of negligence and was not committed repeatedly as to constitute habit. The CA likewise sustained the monetary awards as computed by the Labor Arbiter but modified the NLRC Decision in that it made PNB shoulder 40% of the loss it sustained and Arcobillas to pay the remaining 60% instead of Arcobillas being equally liable with PNB's

¹² Id. at 49.

¹³ See PNB's Motion for Extension of Time to File Petition for *Certiorari* filed before the CA, id. at 2-3.

¹⁴ Id. at 2-4.

¹⁵ Id. at 5-14.

¹⁶ Id. at 115.

¹⁷ Id. at 132-139.

other employees tasked to validate the teller's transactions. The CA reasoned that PNB is just as negligent in its selection and supervision of employees for it has the fiduciary duty to insure that its employees exercise the highest standard of integrity in the performance of their duties. The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition for certiorari is **DISMISSED**. The assailed Decision dated August 31, 2004 of the National Labor Relations Commission, Fourth Division is hereby **AFFIRMED with MODIFICATION** in that, the financial loss in the amount of ₱214,641.23 be shared as follows: petitioner must shoulder 40% or ₱85,856.49 while private respondent shoulders 60% or ₱128,784.73 thereof to be paid through regular payroll deductions spread out [over] three (3) years.

All aspects of the decision are hereby **AFFIRMED**.

SO ORDERED.¹⁸

PNB filed a Motion for Reconsideration¹⁹ while Arcobillas, a Motion for Partial Reconsideration.²⁰ Both, were, however, denied by the CA in a Resolution²¹ dated August 17, 2007.

Issues

Hence, PNB filed this Petition for Review on *Certiorari* raising the following issues:

1. Whether x x x private respondent's dismissal on the ground of habitual negligence was justified under Article 282 of the Labor Code.
2. Whether x x x the Court of Appeals can correct the evaluation of the evidence by, or the factual findings of the NLRC in a petition for *certiorari*.
3. Whether x x x the Court of Appeals can delve on an issue that was not raised by the parties.²²

The Parties' Arguments

Aside from insisting that Arcobillas's dismissal on the ground of gross and habitual negligence is justified, PNB argues that the CA exceeded its authority by delving on factual findings when it modified the distribution of PNB's financial

¹⁸ Id. at 139. Emphases in the original.

¹⁹ Id. at 154-157.

²⁰ Id. at 140-153.

²¹ Id. at 179-180.

²² *Rollo*, p. 13.

losses between it and Arcobillas in a 60-40 ratio, an issue which was not even raised by the parties.

On the other hand, Arcobillas, in her Comment,²³ prays that: 1) the distribution of financial loss as decreed by the CA be set aside; 2) PNB be directed to pay the monetary awards granted her by virtue of the NLRC Decision dated August 31, 2004 which has long become final and executory; 3) PNB be ordered to pay her the salaries and benefits unjustly withheld before her illegal dismissal, to wit: unpaid salaries for February 2000 – March 15, 2000, anniversary bonus as of July 21, 1999, millennium bonus due since December 23, 1999, teller's incentive allowance for 1999 and for January 1 – March 15, 2000, hospitalization benefit due in January 2000 and 13th month pay for the year 1999; and, 4) PNB be directed to adjust her longevity pay.

Our Ruling

The assailed CA Decision must be vacated and set aside.

PNB's failure to file a Motion for Reconsideration with the NLRC before filing its Petition for Certiorari before the CA is a fatal infirmity.

At the outset, the Court notes that after PNB received a copy of the August 31, 2004 Decision of the NLRC on October 14, 2004, it did not file any Motion for Reconsideration such that the said Decision became final and executory on October 19, 2004. Instead, PNB went directly to the CA to assail the NLRC Decision through a Petition for *Certiorari* under Rule 65 of the Rules of Court which the said court took cognizance of.

The Court recognizes that “[t]he finality of the NLRC’s [D]ecision does not preclude the filing of a [P]etition for [C]ertiorari under Rule 65 of the Rules of Court. That the NLRC issues an entry of judgment after the lapse of ten (10) days from the parties’ receipt of its [D]ecision will only give rise to the prevailing party’s right to move for the execution thereof but will not prevent the CA from taking cognizance of a [P]etition for [C]ertiorari on jurisdictional and due process considerations.”²⁴ However, it is a well-established rule that “a [M]otion for [R]econsideration is an indispensable condition before an aggrieved party can resort to the special civil action for *certiorari* x x x. The rationale for the rule is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have committed before resort to courts of justice can be had. Of

²³ Id. at 51-94.

²⁴ *Sarona v. National Labor Relations Commission*, G.R. No. 185280, January 18, 2012, 663 SCRA 394, 413.

course, the rule is not absolute and jurisprudence has laid down exceptions when the filing of a [P]etition for [C]ertiorari is proper notwithstanding the failure to file a [M]otion for [R]econsideration,”²⁵ such as “(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a [M]otion for [R]econsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relied by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and, (i) where the issue raised is one purely of law or where public interest is involved.”²⁶ Here, PNB did not at all allege to which of the above-mentioned exceptions this case falls. Neither did it present any plausible justification for dispensing with the requirement of a prior Motion for Reconsideration before the NLRC.

Despite this, the CA still took cognizance of PNB’s Petition for *Certiorari* and ignored this significant flaw. It bears to stress that the filing of a Motion for Reconsideration is not a mere technicality of procedure.²⁷ It is a jurisdictional and mandatory requirement which must be strictly complied with.²⁸ Thus, PNB’s “failure to file a [M]otion for [R]econsideration with the NLRC before availing [itself] of the special civil action for *certiorari* is a fatal infirmity.”²⁹ In view thereof, the CA erred in entertaining the Petition for *Certiorari* filed before it. It follows, therefore, that the proceedings before it and its assailed Decision are considered null and void.³⁰ Hence, the final and executory Decision of the NLRC dated August 31, 2004 stands.

*There was no sufficient basis to hold
Arcobillas administratively liable for
gross and habitual neglect of duty.*

Even assuming that the CA could validly entertain PNB’s Petition, no sufficient basis exists for the said court to overturn or at the least, modify the NLRC Decision.

²⁵ *Republic v. Pantranco North Express, Inc. (PNEI)*, G.R. No. 178593, February 15, 2012, 666 SCRA 199, 205.

²⁶ *Abraham v. National Labor Relations Commission*, 406 Phil. 310, 316 (2001).

²⁷ *Republic v. Pantranco North Express, Inc. (PNEI)*, *supra* at 207.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *AAG Trucking v. Yuag*, G.R. No. 195033, October 12, 2011, 659 SCRA 91, 104.

Taking into consideration the circumstances attendant to Arcobillas's infraction, the NLRC correctly affirmed the Labor Arbiter's finding that there was no sufficient basis to hold her guilty of gross and habitual neglect of duty which would justify her termination from employment. To warrant removal from service, the negligence should be gross and habitual.³¹ Although it was her second time to commit misposting (*i.e.*, the first misposting was in 1995 while the second misposting was committed in 1998), Arcobillas's act cannot be considered as gross as to warrant her termination from employment. Gross neglect of duty "denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty."³² It "refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected."³³ As aptly held by the labor tribunals, the misposting was not deliberately done as to constitute as gross negligence. Rather, it was a case of simple neglect brought about by carelessness which, as satisfactorily explained by Arcobillas, was the effect of her heavy workload that day and the headache she was experiencing.

As to the modification made by the CA, it may be recalled that it ordered PNB and Arcobillas to share the financial losses of ₱214,641.23 in a 40-60 ratio. It ruled that PNB is partly liable for its loss for being negligent in the selection and supervision of its employees, applying the ruling made by this Court in *The Consolidated Bank & Trust Corp. v. Court of Appeals*³⁴ and *Philippine Bank of Commerce v. Court of Appeals*.³⁵ In the said cases, the banks were made to shoulder part of the loss suffered by its clients due to the negligence of its employees under the principle of *respondeat superior* or command responsibility. The Court ruled that the banks have a fiduciary relationship with its client and must be answerable for any breach in their contractual duties to its clients.

We, however, find that the CA erred in applying the ruling in these cases since they involve different sets of facts and are not decisive of the instant case. In both the cited cases, the banks, through their employees, were negligent, and this caused damage to their clients. These differ from the instant case in that the resulting damage here was caused to PNB and not to its clients. And as PNB certainly has the right to expect diligence from its employees³⁶ and has the prerogative to discipline them for acts inimical to its interests, the NLRC is justified in allocating the loss suffered by it among those employees who proved to be negligent in their respective duties.

³¹ *Union Motor Corporation v. National Labor Relations Commission*, 487 Phil. 197, 209 (2004).

³² *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 721 (2001).

³³ *Golangco v. Atty. Fung*, 535 Phil. 331, 341 (2006).

³⁴ 457 Phil. 688 (2003).

³⁵ 336 Phil. 667 (1997).

³⁶ *Judy Philipines, Inc. v. National Labor Relations Commission*, 352 Phil. 593, 606 (1998).

With respect to Arcobillas's claims for unpaid salaries and other benefits, suffice it to state that the monetary awards granted by the Labor Arbiter as affirmed by the NLRC are already final and binding due to her failure to file an appeal to question these awards. Her contention that she is entitled to affirmative relief since she raised these issues in her Comment to PNB's Petition for *Certiorari* and Memorandum before the CA cannot lie in consonance with our earlier pronouncement that all proceedings before the CA are considered null and void. Moreover, it has been held that "[a]n appellee who is not an appellant may assign errors in [her] brief where [her] purpose is to maintain the judgment, but [she] cannot seek modification or reversal of the judgment or claim affirmative relief unless [she] has also appealed."³⁷ Thus, we cannot grant her any affirmative relief. The monetary awards to which she is entitled are only confined to those contained in the dispositive portion of the Labor Arbiter's Decision as affirmed by the NLRC, as follows: 1) full backwages inclusive of allowances and other benefits or their monetary equivalent from March 16, 2000 to date of promulgation of this Decision; 2) 13th month pay for the year 1999; 3) unpaid salaries for the period February 2000 to March 15, 2000; and 4) 10% attorney's fee.

Finally, we note that the NLRC Decision declared that the financial loss be equally shouldered by Arcobillas and "by those who are directly responsible in the validation/verification of [Arcobillas's] transaction as teller."³⁸ Considering, however, that these other employees were not made parties to this case, then this Decision cannot be enforced with regard to them. In short, this Decision is enforceable only with respect to Arcobillas.

WHEREFORE, the Court of Appeals' Decision dated November 15, 2006 and the Resolution dated August 17, 2007 in CA-G.R. CEB-SP No. 00326 are **VACATED** and **SET ASIDE**. The final and executory Decision dated August 31, 2004 of the National Labor Relations Commission **STANDS**.

SO ORDERED.



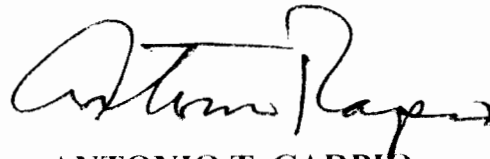
MARIANO C. DEL CASTILLO

Associate Justice

³⁷ *Corinthian Gardens Association, Inc. v. Tanjanco*, G.R. No. 160795, June 27, 2008, 556 SCRA 154, 166.

³⁸ CA rollo, p. 49.

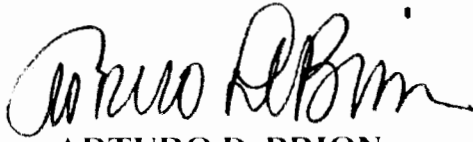
WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



ARTURO D. BRION

Associate Justice



JOSE PORTUGAL PEREZ

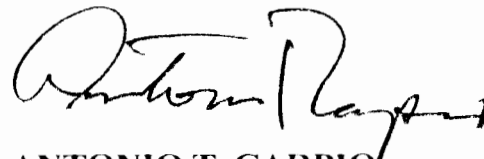
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice