



Republic of the Philippines
Supreme Court
Manila

EN BANC

MARIA THERESA
GUTIERREZ,

Petitioner,

G. G.R. No. 200628

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA,** JJ.

- versus -

COMMISSION ON AUDIT AND
AUDITOR NARCISA DJ
JOAQUIN,

Respondents.

Promulgated:

January 13, 2015

X-----X

DECISION

LEONEN, J.:

A cashier who is found to have been negligent in keeping the funds in his or her custody cannot be relieved from his or her accountability for amounts lost through robbery.

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the June 5, 2008 withholding order and the Commission on Audit's

* On leave.

** No part.

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January 31, 2012 decision holding Maria Theresa G. Gutierrez (Gutierrez) liable for the ₱10,105,687.25 that was lost through robbery.

Gutierrez is a Cash Collecting Officer, with the designation of Cashier III at National Food Authority-National Capital Region, National District Office (NFA-NCR, NDO).¹ On May 30, 2008, she had collections amounting to ₱9,390,834.00, covered by Official Receipt Nos. 0420975 to 0421246.² On that day, she placed the collections in a wooden cabinet.³

The next day, Gutierrez's collections amounted to ₱1,505,625.00.⁴ Of that amount, ₱714,852.75 and an undeposited amount of ₱0.50 from March 2008 were placed in a wooden cabinet.⁵ The rest was placed in the safety vault.⁶

The total undeposited collection as of March 31, 2008 was ₱10,896,459.50. Of that amount, ₱10,105,687.25 was placed in the "pearless" boxes⁷ in a wooden cabinet and ₱790,772.25 was placed in the safety vault.⁸

On June 1, 2008, at about 1:35 a.m., armed men in military uniforms with Philippine National Police-Security Agencies and Guards Supervision Division (PNP-SAGSD) identifications entered the NFA-NCR, NDO.⁹ The armed men disarmed NFA-NCR, NDO's security guards and took Gutierrez's undeposited collections.¹⁰ Lockheed Detective and Watchman Agency, Inc. was NFA-NCR, NDO's contracted security agency.¹¹

The security guards on duty executed their respective affidavits. Based on their affidavits, armed men entered the NFA-NCR, NDO compound after they had been disarmed, threatened, and tied up.¹² The security guards immediately reported the incident to the Valenzuela Police Station,¹³ where an investigation report¹⁴ was issued consistent with the security guards' narrations in their affidavits.¹⁵

¹ *Rollo*, pp. 26 and 125.

² *Id.* at 26.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Peerless boxes are movable boxes that can be used for archival or storage purposes. In the affidavit by Maria Theresa Gutierrez submitted to the Commission on Audit and found on page 33 of the *rollo*, the term used for these boxes was "pearless' boxes."

⁸ *Rollo*, p. 27.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 27–28.

¹³ *Id.* at 28.

¹⁴ The investigation report was dated June 1, 2008.

¹⁵ *Rollo*, pp. 28, 94–95.

On June 3, 2008, the Commission on Audit, National Food Authority-NCR, North District Office, Malanday, Valenzuela City, through State Auditor Narcisa DJ Joaquin (State Auditor Joaquin), issued a demand letter to Gutierrez.¹⁶ Gutierrez was informed that she must immediately produce the missing funds amounting to ₱10,105,686.75.¹⁷ She was also ordered to submit within 72 hours a written explanation why such shortage occurred.¹⁸

On June 5, 2008, the Commission on Audit, through State Auditor Joaquin, issued a withholding order, addressed to Roberto S. Musngi (Musngi), Manager of National Food Authority, North District Office.¹⁹ Musngi was informed that upon examination of Gutierrez's account on June 1, 2008, it was established that there was a ₱10,105,686.75 shortage in Gutierrez's accountabilities.²⁰ Pursuant to Section 37 of Presidential Decree No. 1445, Musngi was directed to withhold Gutierrez's salaries and other emoluments so these could be applied to the satisfaction of the shortage.²¹

In response to the June 3, 2008 demand letter of the Commission on Audit, Gutierrez executed an affidavit dated June 6, 2008 wherein she narrated that she had been serving as National Food Authority's Cash Collecting Officer since 1985.²² Her office was located at the far end of the National Food Authority building.²³ That was where the "pearless" boxes and the cabinet where she kept her collections could be found.²⁴ Quoted below is her explanation for using "pearless" boxes to keep her collections:

6. That because of the volume of money I accept every day, which averages from 4 to 6 million pesos every day depending on the seasons, most of my time inside the office is spent to counting, bundling by different denominations the money. To emphasize the point, the money that I am accepting from remittances and payments are of different denominations, from twenty five centavo (Php0.25) coins to one thousand peso (Php1,000.00) bills. The coins alone would amount in the average of Twelve thousand pesos (Php12,000.00). I could literally say that from the time I timed in the office at about 6:30 a.m. up to the time I timed out at about 6:30 p.m., my only rest from my work is to [be] going to the ladies room and the break during lunch time.

....

8. That when the rice crises came up on April 2008, volume of work including the amount of money that comes into my office almost doubled. That because of the heavy operations in our office I had an average collection starting April 2008 of 6 to 9 Million Pesos every day of

¹⁶ Id. at 32.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 17 and 123.

²⁰ Id. at 17, 28, and 123.

²¹ Id. at 17 and 123.

²² Id. at 33.

²³ Id.

²⁴ Id.

every denomination, with coins averaging from 12 to 16 thousand pesos that needs to be counted, receipted, bundled, balanced, reported and kept.

9. That it is almost automatic that when I enter my office what comes to my mind is to count the money and bundle them by the hundreds and prepare receipts for the payments and remittances until the time to leave at about 6:30 p.m. I would also cause the deposit of the money collected the day before to Land Bank. But there were even times that because of the volume of the money, bank representatives could not sort out all the smaller bills (P20s and P50s) being picked up from our office as the Armor van should be in the bank at 3:00 p.m. Thus, there would be arrangements in the bank that the counting would continue inside their office, which oftentimes lasts until late night.

10. That since April 2008 or the start of the heavy operations, I have been putting some of the money in the “pearless” box, because of the volume, which I have to carry and keep safe at the cabinet inside. I have six (6) pearless boxes in the office.

....

13. That since May 30, 2008 is a Friday, banks are closed the following day and the money collected on said date would have remained in my office until the next banking day.

....

18. It was very unfortunate that the money accepted on May 30, 2008 and the collection in the night before the robbery were left in the pearless box inside the cabinet and not inside the vault. But with the volume of money, the vault has not enough space to accommodate all of it.

19. And with the amount of work that I am doing every day from 6:30 in the morning up to 6:30 p.m., more or less, where my only rest is literally going to the ladies room, and with the safe location of my office, it did not come to my mind that this incident would come.

20. That I have nothing to do with what happened in the incident of June 1, 2008 at 1:30 in the morning and I am not in control now to produce those missing funds taken by the robbers.²⁵

On June 10, 2008, Gutierrez requested relief from money accountability for the loss of the collections.²⁶ The letter was addressed to State Auditor Joaquin.

In the letter dated June 26, 2008 addressed to State Auditor Joaquin, Gutierrez appealed the withholding order issued on June 5, 2008.²⁷ She prayed that her salaries and emoluments be given to her while the robbery incident was still under investigation.²⁸ She was a widow who had three (3)

²⁵ Id. at 33–35.

²⁶ Id. at 28 and 60.

²⁷ Id. at 87, 124, and 126.

²⁸ Id. at 87.

dependents and an 85-year-old mother residing with her in need of medical attention.²⁹ She had no other source of income to support herself, her dependents, and her mother.³⁰

On June 26, 2008, State Auditor Joaquin denied Gutierrez's appeal of the withholding order.³¹ State Auditor Joaquin informed Gutierrez that there was already a prima facie case for malversation against her under Article 217 of the Revised Penal Code.³²

On July 11, 2008, Gutierrez filed a notice of appeal of State Auditor Joaquin's withholding order dated June 5, 2008.³³

On July 21, 2008, Atty. Saturnino R. Rola, Jr., Director of the National Food Authority, Enforcement, Investigation and Prosecution Department, submitted a memorandum addressed to the Administrator, Jessup P. Navarro.³⁴ He found that the security agency was solidarily liable with security guard Romeo Casta for the amount lost.³⁵ He also found that Gutierrez, by keeping her collections in unsecured "pearless" boxes and not in a vault, was grossly negligent in safekeeping her collections.³⁶ He recommended that Gutierrez be administratively charged with dishonesty, gross neglect of duty, conduct prejudicial to the best interest of the service, and violation of reasonable office rules and regulations without prejudice to the filing of appropriate criminal charges.³⁷ He also recommended the restitution of the amount lost from Lockheed Detective and Watchman Agency, Inc. Further, he recommended the ban of security guard Romeo Casta from deployment in any National Food Authority installations.³⁸

Similar incidents of robbery at different National Food Authority offices involving Lockheed Detective and Watchman Agency, Inc. were reported between 2006 and 2008.³⁹

On September 11, 2008, Commission on Audit Director IV Tito S. Nabua (Director Nabua) issued a decision denying Gutierrez's appeal⁴⁰ and expressing his agreement with the issuance of the withholding order.⁴¹ The robbery incident was acknowledged in the decision.⁴² However, Gutierrez's

²⁹ Id.

³⁰ Id.

³¹ Id. at 18 and 124.

³² Id. at 18.

³³ Id. at 21 and 45.

³⁴ Id. at 88–93.

³⁵ Id. at 91.

³⁶ Id. at 92.

³⁷ Id. at 93.

³⁸ Id.

³⁹ Id. at 96–107.

⁴⁰ Id. at 19–20 and 124.

⁴¹ Id. at 19–20.

⁴² Id.

alleged act of negligence in the performance of her duties could not be set aside.⁴³ Her failure to follow safekeeping procedures showed lack of due care on her part.⁴⁴ Aside from Article 217 of the Revised Penal Code, the liabilities of an accountable officer are found in Section 105 of Presidential Decree No. 1445.⁴⁵

Gutierrez filed a motion for reconsideration of the September 11, 2008 decision of Director Nabua on the ground that he did not give her a chance to file a memorandum of appeal before submission of the case for resolution.⁴⁶ According to Gutierrez, this was a violation of the rules and of her right to due process.⁴⁷ She also cited reversible error in upholding State Auditor Joaquin's order despite lack of factual and legal bases as ground for her motion.⁴⁸

On January 31, 2012, the Commission on Audit denied her request for relief from money accountability.⁴⁹ Its ruling is reproduced as follows:

WHEREFORE, premises considered, this Commission **DENIES** the herein request for relief from money accountability, there being positive showing of fault or negligence on the part of Ms. Maria Theresa G. Gutierrez in the safekeeping and custody of subject government funds.

Accordingly, Ms. Gutierrez shall be liable to pay to the NFA the missing amount of ₱10,105,687.25. This is without prejudice to the right of the NFA-NCR, NDO to proceed against Lockheed Detective and Watchman Agency, Inc. for the indemnification of the loss as security services provider to the NFA-NCR, NDO, Valenzuela City.⁵⁰

The Commission on Audit found that Gutierrez was negligent in safekeeping her collections.⁵¹ Placement of collections in a "pearless" box instead of in the safety vault, especially given the volume of collections, constituted gross negligence on her part.⁵² Her 20-year service aggravated her negligence.⁵³ It should have made her more "security-conscious."⁵⁴

The Commission on Audit also found that the security guards' failure to secure National Food Authority's premises was a violation of the contract

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id. at 21.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ *Rollo*, pp. 26–31. The decision was signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

⁵⁰ Id. at 30.

⁵¹ Id. at 29.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

between National Food Authority and Lockheed Detective and Watchman Agency, Inc.⁵⁵

We decide whether Gutierrez's due process rights were violated when the Commission on Audit decided her appeal without requiring her to file an appeal memorandum. We also decide whether Gutierrez is liable for the amounts lost through a robbery.

Petitioner emphasizes that she was first assisted by counsel only when she filed a notice of appeal. Respondent auditor had already issued the withholding order dated June 5, 2008 and letter dated June 26, 2008 before petitioner was assisted by counsel.

Petitioner argues that her right to due process was violated when a decision was rendered against her without giving her a chance to file an appeal memorandum in accordance with Section 5 of Rule V of the Revised Rules of Procedure of the Commission on Audit. The appeal memorandum was her chance to raise issues against respondent auditor's orders to prove her case and to submit evidence to support her defense.⁵⁶

Petitioner's right to due process was further violated when her motion for reconsideration was resolved by the Commission on Audit instead of by Director Nabua. This prevented her from filing a petition for review of Director Nabua's decision before the Commission on Audit.⁵⁷

Petitioner cites Article IX(A), Section 7 of the Constitution to support her argument that she has a right to present her side in a memorandum.⁵⁸ It provides:

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. **A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself.** Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

Petitioner argues that aside from the right to be heard, administrative due process also requires the right to present evidence and for such evidence to be considered by the deciding tribunal.⁵⁹

⁵⁵ Id. at 30.

⁵⁶ Id. at 128.

⁵⁷ Id.

⁵⁸ Id. at 129.

Lastly, petitioner points out that the cause of the shortage was the robbery incident, which was a result of the negligence of the security guards and not her negligence.⁶⁰ The vault that was assigned to her did not have enough space to accommodate her collections.⁶¹

On the other hand, respondents argue that petitioner was not deprived of due process when she was not given the opportunity to file an appeal memorandum. Her affidavit was a sufficient platform to raise her defenses.⁶² Moreover, the presence of a counsel is not required in administrative proceedings.⁶³

Respondents also argue that petitioner cannot ask the Director or the Auditor to allow her to file an appeal memorandum since it is the Commission on Audit that has the exclusive jurisdiction over requests for relief from accountability in excess of ₱500,000.00.⁶⁴ This, according to respondent, is based on Commission on Audit Resolution No. 93-605 dated August 3, 1993.⁶⁵

Finally, respondents argue that the circumstances show that petitioner fell short of the demands of her position as cashier.⁶⁶ What she could have done was to request additional vaults if the vaults in her possession were not enough to accommodate all her collections.⁶⁷

We rule for respondents.

I

Petitioner's due process rights were not violated

Petitioner argues that she was assisted by counsel only after a withholding order had already been issued. She also argued that the Commission on Audit Director's issuance of a decision on her appeal without requiring her to file an appeal memorandum was a violation of her due process rights.

⁵⁹ Id.

⁶⁰ Id. at 132–133.

⁶¹ Id. at 131.

⁶² Id. at 147–148.

⁶³ Id. at 148.

⁶⁴ Id. at 149–150.

⁶⁵ Id. at 149.

⁶⁶ Id. at 152–153.

⁶⁷ Id. at 153.

Petitioner's arguments are not tenable.

The right to counsel under Section 12(1) of Article III of the Constitution applies in criminal proceedings, but not in administrative proceedings. It is a right given to persons accused of an offense during criminal investigation.⁶⁸ Any proceeding conducted by an administrative body is not part of the criminal investigation or prosecution.⁶⁹

Thus, this court said in *Remolona v. Civil Service Commission*:⁷⁰

While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of the respondent's capacity to represent himself, and no duty rests on such body to furnish the person being investigated with counsel. In an administrative proceeding, a respondent has the option of engaging the services of counsel or not. This is clear from the provisions of Section 32, Article VII of Republic Act No. 2260 (otherwise known as the Civil Service Act) and Section 39, paragraph 2, Rule XIV (on discipline) of the Omnibus Rules Implementing Book V of Executive Order No. 292 (otherwise known as the Administrative Code of 1987). Thus, the right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measure against erring public officers and employees, with the purpose of maintaining the dignity of government service. As such, the hearing conducted by the investigating authority is not part of a criminal prosecution.⁷¹

While the purpose of criminal proceedings is to determine if a person suspected of committing an offense has indeed committed an offense, the purpose of an administrative proceeding is to determine if a person in public office has violated the trust reposed in him or her by the public. In a criminal proceeding, if a person is found guilty of an offense, the corresponding punishment is imposed primarily to protect the public from being exposed to and correct his or her deviant behavior. In an administrative proceeding, if a person is found administratively liable, the corresponding penalty is imposed primarily to preserve public trust and protect the integrity of public service.⁷²

Petitioner is not being accused of or investigated for a crime. The Commission on Audit's withholding order and its denial of petitioner's request for relief from shortage were issued after it had made a finding that

⁶⁸ *Lumiqued v. Exevea*, 346 Phil. 807, 821–822 (1997) [Per J. Romero, En Banc].

⁶⁹ *Remolona v. Civil Service Commission*, 414 Phil. 590 (2001) [Per J. Puno, En Banc].

⁷⁰ *Id.*

⁷¹ *Id.* at 599.

⁷² *See also Encinas v. Agustin*, G.R. No. 187317, April 11, 2013, 696 SCRA 240, 268 [Per C.J. Sereno, En Banc].

the money entrusted to petitioner was lost. A finding of criminal liability was not the reason for the Commission on Audit's issuances. The Commission on Audit has no jurisdiction to investigate a crime or to make a finding of criminal liability. Any proceeding conducted prior to these issuances was for the purpose of determining if petitioner's salaries should be withheld or if petitioner should be relieved from her liability as a cashier.

Petitioner argues that Rule V, Section 5 of the Revised Rules of Procedure of the Commission on Audit⁷³ requires that she be given an opportunity to file an appeal memorandum before the case is submitted for decision. Section 5 is cited as follows:

Section 5. APPEAL MEMORANDUM AND REPLY – Upon receipt of the records of the case, the Director shall issue an Order requiring the appellant to file an appeal memorandum within twenty (20) days from receipt of the order. The appellant shall serve a copy of his appeal memorandum to the Auditor or appellee who may reply thereto within the same period of time. With the filing of the appeal memorandum and reply or lapse of the period within which to file them, the appeal shall be deemed submitted for decision.

Petitioner also argues that her due process rights were violated when the Commission on Audit decided her motion for reconsideration of the Commission on Audit Director's decision dated September 11, 2008, and denied her request for relief from accountability without her filing a memorandum or a petition for review. She cites Article IX(A), Section 7 of the Constitution:

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. *A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself.* Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

Petitioner's due process rights were not violated when the Commission on Audit Director had failed to require her to submit an appeal memorandum before he decided her appeal of the State Auditor's issuance of a withholding order. There was also no violation of due process rights when the Commission on Audit issued its January 31, 2012 decision denying her request for relief from accountability, without a petition for review of the

⁷³ BOC Memorandum Circular No. 32-98 (1997), otherwise known as the REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT.

Commission on Audit Director’s decision. The right to appeal is not part of due process.⁷⁴ Neither is it a natural right.⁷⁵

Moreover, petitioner’s relief from accountability may be decided by the Commission on Audit at the first instance. Based on Commission on Audit Resolution No. 93-605,⁷⁶ only the Commission on Audit may approve requests for relief from accountabilities amounting to more than ₱500,000.00. Thus:

Now, therefore, pursuant to Article IX-D, Section 2(2) of the Constitution, Section 73 of PD 1445 and in conformity with Section 378 of the Local Government Code, the Commission Proper hereby resolves, as it does hereby resolve, to authorize the following COA Officials to act on requests for relief from property and/or money accountability in the amounts indicated hereunder, except in cases of questions of law, without prejudice to the usual appeal that may be taken therefrom to the Commission Proper, pursuant to Section 48 of PD 1445.

Approving COA Official	Total Amount of Money or Cost of Property Involved
Corporate and National Unit Auditor Provincial and City Auditor	not exceeding ₱50,000
Director/Officer-in-Charge of Central and Regional Offices	in excess of ₱50,000 up to ₱100,000
Assistant Commissioner	in excess of ₱100,000 up to ₱200,000
COA Chairman	in excess of ₱200,000 up to ₱500,000
Commission Proper	above ₱500,000

The lost accountability involved in this case amounts to ₱10,105,687.75.

In any case, we determine if petitioner’s due process rights were violated in the course of the proceedings before the Commission on Audit.

This court in *Ang Tibay v. Court of Industrial Relations*⁷⁷ ruled that administrative due process requires only the following:

⁷⁴ See *Quileste v. People*, 599 Phil. 117, 122 (2009) [Per J. Nachura, Third Division]; See also *La Campana Development Corporation v. Development Bank of the Philippines*, 598 Phil. 612 (2009) [Per J. Chico-Nazario, Third Division].
⁷⁵ Id.
⁷⁶ The resolution was dated August 3, 1993.
⁷⁷ *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

- (a) The party should be allowed to present his or her own case and submit supporting evidence;
- (b) The deciding tribunal must consider the party's evidence;
- (c) There is evidence to support the tribunal's decision;
- (d) The evidence supporting the tribunal's decision must be substantial or such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion";⁷⁸
- (e) The tribunal's decision was based on the evidence presented or the records of the case disclosed to the parties;
- (f) The tribunal's decision must be based on the judges' independent consideration of the facts and law governing the case; and
- (g) The tribunal's decision must be rendered such that the issues of the case and the reasons for the decisions are known to the parties.⁷⁹

In sum, due process in administrative proceedings does not necessarily require a trial type of hearing. Neither does it require an exchange of pleadings between or among the parties. Due process is satisfied if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions. This court explained in *Ledesma v. Court of Appeals*:⁸⁰

Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.

. . . .

Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.⁸¹

Petitioner's arguments and the issues she raised are sufficiently expressed in her affidavit submitted to the Commission on Audit, her motion for reconsideration of the Commission on Audit Director's decision, and her petition and memorandum submitted to this court. Even though petitioner was not able to file an appeal memorandum, she was able to state her substantive defenses in the pleadings she filed before the Commission on Audit and this court. According to petitioner, the money that was lost

⁷⁸ Id. at 642.

⁷⁹ Id. at 642–644.

⁸⁰ *Ledesma v. Court of Appeals*, 565 Phil. 731 (2007) [Per J. Tinga, Second Division].

⁸¹ Id. at 740–741.

through robbery was not a result of her negligence. She kept the money in “pearless” boxes for practical and not for malicious reasons.

The decisions of the State Auditor, the Commission on Audit Director, and the Commission on Audit had considered these facts and defenses before they made conclusions against petitioner. Therefore, petitioner cannot say that her due process rights were violated for the lack of order to file an appeal memorandum.

II

Relief from cashier’s liability cannot be granted if the cashier was negligent in keeping funds under his or her custody

As a cashier for the National Food Authority, petitioner qualified as an accountable officer under Presidential Decree No. 1445. Accountable officers are government officers whose duties require them to possess or be in custody of government funds or properties.⁸² They are in charge of the safekeeping of the funds or properties under their custody.⁸³

Presidential Decree No. 1445 makes cashiers liable for the value of the money or property in their custody in case they were lost because of negligence or unlawful deposit, use, or application. Thus:

Section 105. Measure of liability of accountable officers.

(1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. We shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property, whether or not it be at the time in his actual custody.

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

Imposing liability on cashiers for lost money or property in their custody means that the value of the money or property becomes their debt.

⁸² Pres. Decree No. 1445 (1978), sec. 101.

⁸³ Pres. Decree No. 1445 (1978), sec. 101.

The Commission on Audit has the power to withhold payment of money due to persons indebted to the government. Section 37 of Presidential Decree No. 1445 provides:

Section 37. *Retention of money for satisfaction of indebtedness to government.* When any person is indebted to any government agency, the Commission may direct the proper officer to withhold the payment of any money due such person or his estate to be applied in satisfaction of the indebtedness.

Petitioner does not deny that the money for which she was accountable as a cashier was lost through robbery. She also did not deny that she kept the greater portion of the amount lost, not in the vault, but in boxes, for practical reasons. She was not motivated by malice when she kept the money that was in her possession in the boxes.

Without going to the issue of the existence of negligence, the Commission on Audit may already issue a withholding order for petitioner's salaries and emoluments because of this. Petitioner's act of keeping the money in boxes instead of in the vault can be subsumed under "unlawful deposit" that may cause a cashier to incur liability in case the unlawfully deposited money was lost.

A similar case, *Leano v. Domingo*,⁸⁴ showed that the safety of money cannot be ensured when it is deposited in enclosures other than the safety vault. *Leano* also involves a government cashier whose money accountability was lost through robbery. As in this case, the cashier did not keep her money accountabilities in the vault. Requesting this court to review the Commission on Audit's denial of her request for accountability, Leano argued that she had no other choice but to use a steel cabinet to keep her money accountabilities because the former cashier did not entrust to her the safety vault's combination. This court upheld the Commission on Audit's decision to deny Leano's request for relief from accountabilities and found her to be negligent in handling her money accountabilities:

[I]t is evident that petitioner fell short of the demands inherent in her position. As aptly argued by the Solicitor General, an exercise of proper diligence expected of her position would have compelled petitioner to request an immediate change of the combination of the safe. However, the record is bare of any showing that petitioner had, at least, exerted any effort to have the combination changed, content with the fact that, according to her, the former cashier also used the steel cabinet as depository of the funds.

In addition, it was found that the use of the steel cabinet was not a wise and prudent decision. The steel cabinet, even when locked, at times could be pulled open, thus it can be surmised that even

⁸⁴ G.R. No. 84378, July 4, 1991, 198 SCRA 800 [Per J. Paras, En Banc].

without the use of a key, the robbery could be committed once the culprits succeed in entering the room (Progress Report of the Police dated February 28, 1985). Moreover, the original key of the steel cabinet was left inside a small wooden box placed near the steel cabinet; it is therefore highly possible that the said steel cabinet was opened with the use of its original key (Police Alarm Report).⁸⁵

Hence, keeping National Food Authority collections outside the vault constituted negligence on the part of petitioner.

The test of negligence is stated in *Picart v. Smith, Jr.*:⁸⁶

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.⁸⁷

“The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The Law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.”⁸⁸

Petitioner is negligent because she failed to use “that reasonable care and caution which an ordinarily prudent person would have used in the same situation.”⁸⁹ A cashier in her position would have used the vault to keep her collections. Petitioner failed to do this. Her negligence is made more pronounced by the fact that the collections kept in the vault were not taken by the robbers.

Petitioner insists that the space in the vault was not enough to accommodate all her collections. However, she admitted that she had been receiving relatively large collections in the past three (3) months prior to the robbery. She should have requested an additional vault wherein she could safely keep her collections. She could also have set aside time to deposit her collections for the day considering the amount of cash she had been collecting, in order to prevent its accumulation. This could have ensured that the vault’s space would be sufficient to keep any remaining collection after the deposit. This could also have prevented her collections from accumulating to an amount that rendered any loss through untoward incidents such as robbery significant. Petitioner failed to even allege that

⁸⁵ Id. at 804–805.

⁸⁶ 37 Phil. 809 (1918) [Per J. Street, En Banc].

⁸⁷ Id. at 813.

⁸⁸ *Leano v. Domingo*, G.R. No. 84378, July 4, 1991, 198 SCRA 800, 804 [Per J. Paras, En Banc].

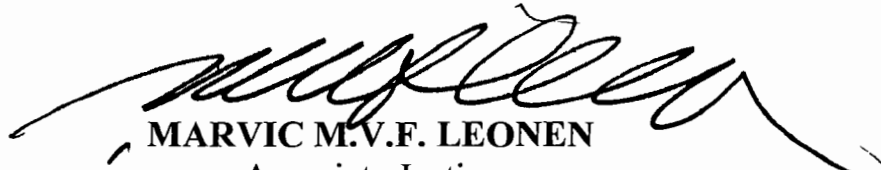
⁸⁹ Id.

she exerted effort to obtain additional vaults or to set aside time to deposit her collections to the bank.

For these reasons, petitioner cannot be relieved from liability. A person who is negligent in keeping the funds cannot be relieved from liability.⁹⁰


WHEREFORE, the petition is **DENIED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

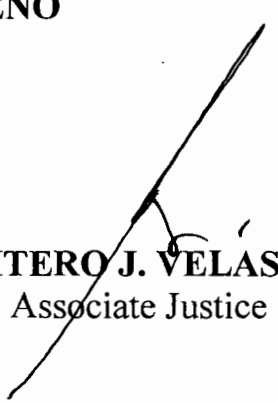
WE CONCUR:




MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice




PRESBITERO J. VELASCO, JR.
Associate Justice




TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice



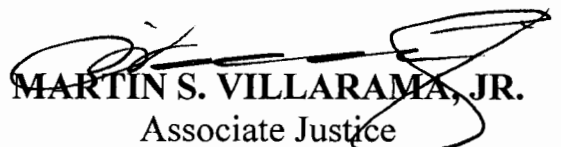
DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice

⁹⁰ Id.


JOSE PORTUGAL REREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

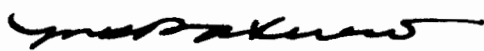

BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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.


MARIA LOURDES P. A. SERENO
Chief Justice