



**Republic of the Philippines**  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**PHILIPPINE SAVINGS BANK,**  
 Petitioner,

**G.R. No. 202049**

**Present:**

PERALTA, C.J., *Chairperson,*  
 CAGUIOA, *Working Chairperson,*  
 REYES, J. JR.,  
 LAZARO-JAVIER, and  
 LOPEZ, JJ.

- versus -

**HAZEL THEA F. GENOVE,**  
 Respondent.

**Promulgated:**

**JUN 15 2020**

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**DECISION**

**REYES, J. JR., J.:**

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court are: 1) the Decision<sup>2</sup> dated August 8, 2011, which reversed and set aside the Resolutions dated May 21, 2007,<sup>3</sup> and August 24, 2007,<sup>4</sup> respectively issued by the National Labor Relations Commission (NLRC) in NLRC Case No. V-000730-06 (RAB VII-02-0324-05); and 2) the Resolution<sup>5</sup> dated May 11, 2012, denying the Philippine Savings Bank's (petitioner's) motion for reconsideration, both of which were promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 03070 entitled "*Hazel*

1 *Rollo*, pp. 9-46.

2 Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando (now Members of the Court), concurring; *id.* at 48-56.

3 Penned by Commissioner Aurelio D. Menzon, with Presiding Commissioner Violeta O. Bantug and Commissioner Oscar S. Uy, concurring; *id.* at 213-217.

4 *Id.* at 263-265.

5 Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando (now Members of the Court), concurring; *id.* at 58-59.

*Thea F. Genove v. Philippine Savings Bank, Jaime Araneta and Priscilla M. Torres.*"

The facts, as culled from the records of the case, are as follows:

On July 19, 1995, Hazel Thea F. Genove (respondent) was employed as a bank teller by herein petitioner and was eventually assigned at its branch located at Cebu Mandaue-San Miguel. It was alleged that respondent was the only teller employed by the said branch since May 2004.

On July 7, 2004, at around 2:00 p.m., the spouses Ildebrando and Emma Basubas (spouses Basubas) went to petitioner's branch at Cebu Mandaue-San Miguel to purchase a cashier's check in the amount of ₱1,358,000.00. They brought two bags of money at the teller's counter and asked respondent to count the money inside the bags. Respondent accommodated their request and started to count the money inside the first bag in bundles of ₱1,000.00. However, since she was the only teller at that time, respondent had to stop her counting from time to time to assist the other customers that came to the bank for their respective transactions.

In the meantime, Mrs. Basubas secured the cashier's check from the branch cashier, Luvimin S. Tago (Tago),<sup>6</sup> and left the bank while Mr. Basubas stayed behind to wait for respondent to finish counting the money.

When respondent opened the second bag, she saw that instead of ₱1,000.00 bills, the monies inside consisted of various denominations and the spouses Basubas did not prepare a denomination breakdown thereof. Respondent then called the attention of Mr. Basubas to oversee the counting of the monies inside the second bag. After all the denominations inside the second bag were counted and tallied by respondent, she found that the total amounted only to ₱1,345,000.00 or a difference of ₱13,000.00 from the amount of the cashier's check issued to them. Mr. Basubas then handed the said difference in the amount to respondent to cover the supposed deficiency and left the bank thereafter.

Shortly before 4:00 p.m., the spouses Basubas returned and informed respondent that their collections had lacked ₱13,000.00. Thus, respondent recounted the amount of cash she had at hand and compared it with the recorded transactions within that day and found that the amounts balanced with each other. Having informed of the results thereto, the spouses Basubas left the bank again.

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6 Id. at 347.

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However, after the bank had already closed, the spouses Basubas called respondent and asked for another recount. Respondent asked Tago if the spouses Basubas could be allowed to enter the bank premises for the said recounting, which the latter assented to. A few minutes thereafter, the spouses Basubas arrived with their supplier, the spouses Fernandez.

Respondent conducted another recount of her cash at hand and compared it with her recorded transactions for the day, and the resulting amounts remained balanced with each other, as with the previous recounting done earlier that day. Not satisfied, the spouses Basubas requested for a body search of respondent, her personal belongings and the teller's cage. When respondent agreed to the search, the bank's security guard, Sg. Joel Misal (Sg. Misal) began to frisk her body and combed through her personal belongings, as well as the teller's cage, but yielded nothing. Therefore, the spouses Basubas and the spouses Fernandez left the bank premises.

Tago then instructed respondent to make an incident report regarding the events that transpired that day. Soon after, Tago noticed a piece of paper with money under a cabinet near the teller's cage. Tago requested respondent to pick it up, and it turned out to be a deposit slip with Twelve Thousand Pesos (₱12,000.00) folded and taped together like a fan or a flattened cone. Tago requested for Sg. Misal and the janitor to search the area again, thinking that the remaining ₱1,000.00 bill was merely blown away somewhere nearby. Moments later, the janitor reports that he found one piece of ₱1,000.00 bill taped inside the sliding door cabinet under the old and discarded bill arranger.

Immediately thereafter, Tago called the spouses Basubas to return the ₱13,000.00 to them. After receiving the ₱13,000.00 from Tago, the spouses Basubas insisted for an investigation regarding the incident and claimed that that they could no longer trust the bank.

On August 5, 2004, petitioner sent a show-cause letter<sup>7</sup> to respondent, directing the latter to submit a written explanation on why her services should not be terminated for dishonesty and/or qualified theft, gross negligence and violation of the bank's policies and Code of Conduct. Furthermore, in a Memorandum dated September 16, 2004, respondent was made to undergo a polygraph test at the National Bureau of Investigation (NBI), Manila and attend the administrative hearing that was set on October 29, 2004.

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<sup>7</sup> Id. at 407-408.

Thus, on November 12, 2004, petitioner issued its Memorandum<sup>8</sup> notifying respondent of its decision to terminate her employment with the bank upon receipt of the same, explaining that she had failed to conduct the initial counting of the monies in the presence of the spouses Basubas and the fact that the missing ₱13,000.00 were found within respondent's cubicle.

Aggrieved, respondent filed a complaint for illegal dismissal, non-payment of 13<sup>th</sup> month pay, separation pay, leave benefits and tellers' allowances against herein petitioner before the Regional Arbitration Branch (RAB) No. VII of the NLRC in Cebu City.

In her Position Paper,<sup>9</sup> respondent admitted that she began to count the monies given to her by the spouses Basubas without their presence, but when she found out that the second bag consisted of different denominations than what was stated in their wrapper, she called Mr. Basubas to oversee the counting of the remaining bundles of money. She also pointed out that she submitted herself and her personal belongings to a search conducted by the security guard of the bank. Her cubicle was also combed thoroughly by the security guard and yielded nothing in result. She even went to the NBI to take a polygraph test as requested by the management.

Respondent justified the lapses she committed in the performance of her duties as a mistake borne from the heavy workload she had to complete that particular day as the lone teller of the bank. She also pointed out that she had served petitioner for almost 10 years without any issue regarding her honesty. Furthermore, she was terminated from her employment by the management by reason of mere suspicion regarding her honesty in recounting the monies given to her by the spouses Basubas.

On the ground of gross negligence, respondent countered that a single or isolated act of negligence does not constitute a just cause for her dismissal from her employment. Petitioner had not even shown that her negligence was gross and habitual. While she admitted that she took a risk in not following the proper procedure in deference to a valued and well-known client of the bank, it was tolerated and accepted by the latter as shown by the previous and similar transactions she facilitated earlier that day and even before she was transferred to the Cebu Mandaue-San Miguel branch of petitioner. In fact, she did her best to accommodate the spouses Basubas in counting more than a million pesos in different denominations while also entertaining other clients of the bank, being the only teller of the same. Finally, the breach in trust and confidence reposed to her by petitioner must be willful and substantial to constitute as a valid cause for termination.

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<sup>8</sup> Id. at 411-412.

<sup>9</sup> Id. at 73-101.

### **Ruling of the RAB**

On March 20, 2006, the RAB rendered a Decision partially in favor of petitioner and respondent, to wit:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Philippine Savings Bank to pay complainant Hazel Thea F. Genove the amount of EIGHTY-SIX THOUSAND FIVE HUNDRED FIFTY-THREE PESOS AND 33/10 (P86,553.33) representing proportionate 13<sup>th</sup> month pay, teller's allowance and monetary value of her unused leave credits.

The other claims and the case against the individual respondents are dismissed for lack of merit.

SO ORDERED.<sup>10</sup>

The RAB ruled that respondent was dismissed for cause and in accordance with law by reason that as a confidential employee, whose trust and confidence reposed on her by petitioner was breached, the latter cannot be expected to continue her employment with the same. There is enough basis for petitioner to recall their trust and confidence with respondent as she had committed operational lapses in her transaction with the spouses Basubas. Also, the fact that the missing ₱13,000.00 was found in her cubicle serves as sufficient basis for petitioner to suspect that respondent was responsible for its disappearance.

However, petitioner is still liable for the proportionate 13<sup>th</sup> month pay due to respondent for the year 2004, her teller's allowance for the same year and her accumulated unused leave credits since these were not controverted by the former.

Not contented with the ruling of the RAB, herein respondent seasonably filed her appeal with the NLRC.

### **Ruling of the NLRC**

On February 28, 2007, the NLRC, in its Decision, reversed the ruling of the RAB, stating that:

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED insofar as the issue of dismissal. Complainant was dismissed without a valid cause. As such, respondent Philippine Savings

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<sup>10</sup> Id. at 131.

Bank is hereby directed to reinstate complainant to her former position without loss of seniority rights with full backwages from the time of dismissal until actual reinstatement. In addition, complainant should be paid of her monetary benefits granted in the appealed Decision plus ten percent (10%) attorney's fees on the total monetary awards.

SO ORDERED.<sup>11</sup>

The NLRC found that the charge of dishonesty against respondent was not satisfactorily established. It was not shown that respondent kept the missing ₱13,000.00 to herself. In fact, a search of her person, her personal belongings and her cubicle yielded nothing. Moreover, she complied with the request of the management to undergo a polygraph test conducted by the NBI. The tribunal also took into consideration that respondent had been exposed to heavy volumes of transactions daily since May 2004 as the lone teller of the branch of herein petitioner in Cebu-Mandaue, San Miguel. The fact that the money was found under respondent's desk does not automatically indicate dishonesty. It might have been inadvertently dropped from the bags since some bills were not intact.

With regards to the charge of gross negligence and violation of bank policies and Code of Conduct, the NLRC held that the negligent acts committed by respondent were not so gross as to warrant her separation from work. It pointed out that petitioner tolerated the practice of long-time clients leaving their cash deposits with the teller. Respondent might have simply got overwhelmed by her workload on that day that she failed to call the attention of the spouses Basubas in a timely manner when she started to count the monies inside the first bag.

However, the tribunal did not mean that such acts of negligence should be encouraged or countenanced considering that a bank's operation is imbued with public interest. It was merely evaluating the facts and circumstances which brought about the incident and relating these circumstances as to what may be considered a tolerable degree of negligence. Thus, in the eyes of the said tribunal, respondent merely committed an error of judgment or simple negligence. And since respondent's termination was not done in bad faith, fraudulent or oppressive to labor, respondent's claim for damages has no basis in law. But it granted her claim for attorney's fees as she was forced to litigate her claims and engaged a counsel to protect her interests.

Petitioner filed its Motion for Reconsideration<sup>12</sup> of the Decision of the NLRC on April 16, 2007. In a complete turnabout, the NLRC granted the

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<sup>11</sup> Id. at 178-179.

<sup>12</sup> Id. at 180-208.

motion in its Resolution dated May 21, 2007, and reversed its finding that respondent had been illegally dismissed from her employment, which reads as follows:

WHEREFORE, premises considered, the motion for reconsideration of respondents is hereby GRANTED. The Decision of the Commission promulgated on February 28, 2007 is RECONSIDERED and complainant is declared to have been validly dismissed from employment. As such, she is not entitled to reinstatement, payment of backwages and attorney's fees.

SO ORDERED.<sup>13</sup>

The tribunal found the procedural lapses committed by respondent as "undeniably gross and [inexcusable]." It pointed out that she should have exercised utmost diligence and care in handling the cash given to her by the spouses Basubas, in order to protect the interests of the bank, as well as its clients. Respondent should have required the spouses Basubas to prepare a denomination breakdown of the monies they have given to her and called Mr. Basubas to witness the counting of the same right from the start in order to avoid confusion and undue exposure of the bank to a certain risk. Finally, the missing ₱13,000.00 was found in respondent's cubicle, where only she had the access thereto.

Aggrieved by such reversal of its previous ruling, respondent filed her own motion for reconsideration, but to no avail. Thus, respondent sought recourse with the CA *via* petition for *certiorari*.

### **Ruling of the CA**

On August 8, 2011, the CA issued the now appealed Decision reversing and setting aside the rulings made by the NLRC, thus:

WHEREFORE, premises considered, the instant petition is partly granted. The Resolutions of the National Labor Relations Commission dated May 21, 2007 and August 24, 2007 are hereby SET ASIDE.

Accordingly, the Philippine Savings Bank is hereby ordered to pay to [sic] petitioner Hazel Thea F. Genove separation pay *in lieu* of reinstatement computed at the rate of one (1) month pay for every year of service from the time of her employment up to the time of her dismissal, and other monetary claims as provided for and computed in the RAB

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<sup>13</sup> Id. at 217.

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Decision dated March 20, 2006, plus attorney's fees equivalent to 10% of the total award.

SO ORDERED.<sup>14</sup>

The CA ruled that the facts show that there was neither a willful disregard nor malice on the part of respondent to commit any violation of bank policies nor was there willful breach of the trust and confidence reposed unto her by petitioner. It blamed petitioner's tolerance for violations or lapses in its procedures committed by respondent and its management of its personnel to have contributed largely to the unfortunate incident. The fact that Mrs. Basubas was issued the cashier's check before the monies had been counted by respondent attested to the tolerance exercised by the bank in this case. Furthermore, although there were supposed to be two tellers assigned to the Cebu-Mandaue, San Miguel branch of petitioner, the other teller was assigned to the loans department sometime in May 2004 until the time of the incident, thereby leaving the workload meant for two tellers to herein respondent.

As such, petitioner failed to substantiate the loss of its trust and confidence demanded of respondent as a bank teller, making her dismissal illegal. However, since respondent herself committed such infractions and procedural lapses in the policies enacted by the bank to avoid these kinds of incidents, the appellate court held that she is not entitled to the award of backwages, but only to separation pay *in lieu* of reinstatement and attorney's fees.

With its motion for reconsideration denied by the CA, petitioner filed its Petition for Review on *Certiorari* before the Court.

Now, on the merits of the case.

Petitioner posits the following assignment of errors, to wit:

I.

IT WAS SERIOUS ERROR FOR THE HONORABLE [CA] TO CONCLUDE THAT PRIVATE RESPONDENT WAS DISMISSED WITHOUT VALID CAUSE, NOTWITHSTANDING THE EXISTENCE OF CLEAR EVIDENCE TO THE CONTRARY.

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<sup>14</sup> Id. at 55.

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## II.

IT WAS SERIOUS ERROR TO AWARD PRIVATE RESPONDENT WITH SEPARATION PAY AND ATTORNEY'S FEES, WHEN SHE WILLFULLY BREACHED THE TRUST AND CONFIDENCE OF THE BANK, AND DECIDED TO STEAL MONEY FROM THE CLIENT.

## III.

THERE WAS AN ERROR IN THE INTERPRETATION AND EVENTUAL COMPUTATION OF PRIVATE RESPONDENT'S ACCUMULATED UNUSED LEAVE CREDITS WHICH THE LABOR ARBITER [(LA)] AWARDED TO HER IN ITS 20 MARCH 2011 DECISION, AND WHICH THE HONORABLE [CA] ADOPTED IN ITS ASSAILED DECISION.<sup>15</sup>

The Court finds the petition to be without merit.

As the first and second issues are closely intertwined, they would be discussed jointly. Petitioner contends that respondent's dismissal was not merely based on simple or plain procedural lapses. She was found guilty of dishonesty, gross negligence, violation of the bank's policies and Code of Conduct, and qualified theft as duly established by the facts herein. Petitioner laments the fact that even though respondent had admitted to committing procedural lapses or infractions which eventually led to the incident with the spouses Basubas, the appellate court still blindly believed her self-serving claims that such lapses or infractions were justified because petitioner tolerated the same.

*The Court can take cognizance of and resolve factual issues, only when the findings of fact and conclusions of law of the LA or the NLRC are inconsistent with those of the CA*

The issue of whether or not respondent committed gross and habitual neglect of duty, acts of dishonesty and willful breach of trust resulting to loss of confidence by petitioner is factual in nature. It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect, but even finality, and bind the Court when supported by substantial evidence.<sup>16</sup>

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<sup>15</sup> Id. at 22.

<sup>16</sup> *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation*, 662 Phil. 225, 235 (2011).

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Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.<sup>17</sup>

However, the Court may take cognizance of and resolve factual issues, when the findings of fact and conclusions of law of the LA are inconsistent with those of the NLRC and the CA.<sup>18</sup> Because of the differing opinions by the LA, the NLRC and the CA in appreciating the facts surrounding the instant case, this Court deemed it best to resolve with finality the factual issues being raised by the parties.

*The burden of proof in proving that an employee was legally dismissed from his/her employment rests on the employer*

In every dismissal situation, the employer bears the burden of proving the existence of just or authorized cause for dismissal and the observance of due process requirements. This rule implements the security of tenure of the Constitution by imposing the burden of proof on employers in termination of employment situations. The failure on the part of the employer to discharge this burden renders the dismissal invalid.<sup>19</sup>

In determining whether the burden of proof is successfully discharged by the employer in dismissal cases, the Court had the occasion to rule that:

The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence, which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.<sup>20</sup>

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<sup>17</sup> Id. at 236, citing *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 75 (2006).

<sup>18</sup> *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, id. at 74.

<sup>19</sup> *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, 788 Phil. 62, 75 (2016).

<sup>20</sup> *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, 687 Phil. 351, 369-370 (2012).

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*Petitioner has not discharged its burden of proving that the dismissal of respondent was justified based on a just and/or authorized cause*

The Court finds that petitioner had failed to prove by substantial evidence that respondent was dismissed from her employment on just or authorized causes, as provided for under the Labor Code.

Articles 282, 283 and 284 (now Articles 296, 297 and 298)<sup>21</sup> of the Labor Code enumerate the grounds that justify the dismissal of an employee. These include: serious misconduct or willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime and causes analogous to any of these, all under Article 282; closure of establishment and reduction of personnel, under Article 283; and disease, under Article 284.<sup>22</sup>

Petitioner imputes gross negligence (or gross neglect of duty) against respondent for her failure to comply with the bank's policies and rule of procedure when she: 1) initially counted the monies inside the two bags without the presence of the spouses Basubas; and b) did not require the spouses Basubas to prepare a deposit slip showing the breakdown of the denominations inside the said bags of money.

Gross neglect of duty denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. 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.<sup>23</sup> Furthermore, to warrant removal from service, the negligence should be gross and habitual.<sup>24</sup> Thus, a single or isolated act of negligence does not constitute a just cause for the dismissal of an employee.<sup>25</sup>

Respondent's failure to initially count the monies inside the two bags provided for by spouses Basubas, in their presence, and not requiring the latter to prepare a denomination breakdown of the same merely shows simple negligence on her part, considering that respondent was the lone

<sup>21</sup> Per Republic Act No. 10151 (June 21, 2011), the Labor Code Articles beginning with 130 have been renumbered.

<sup>22</sup> *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, supra note 19.

<sup>23</sup> *Philippine National Bank v. Arcobillas*, 716 Phil. 75, 87 (2013).

<sup>24</sup> *Union Motor Corporation v. National Labor Relations Commission*, 487 Phil. 197, 209 (2004).

<sup>25</sup> *Genuino Ice Company, Inc. v. Magpantay*, 526 Phil. 170, 183 (2006).

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teller attending to all clients of the bank at the time of the incident. While respondent admits that she committed lapses in following the bank's policy and procedures in handling the transaction with the spouses Basubas, it was not shown that she had completely abandoned due diligence and want of care in performing her duties to the spouses Basubas' request. In fact, respondent had managed to finish counting the whole ₱1,358,000.00 in different denominations while completing her tasks with the bank's other clients at the same time, serves as a testament to her ability as an employee.

Furthermore, it should have been expected that a single teller cannot handle all the transactions coming from its clients every day, all at the same time. Mistakes are bound to happen given that employees are also human beings that are very susceptible to fatigue and exhaustion, especially if overworked on a regular basis.

*Petitioner had impliedly shown its tolerance to infractions committed by its employees*

The Court also notes that while petitioner ascribes fault on respondent for not strictly complying with the bank policies and procedural rules, it tries to justify the deviation committed by Tago of the same rules in issuing the cashier's check to Mrs. Basubas, even though respondent had not finished counting the monies inside the bags.

As stated by respondent in her comment to petitioner's position paper,<sup>26</sup> a client should first go to the New Accounts clerk and inform the latter of the former's intention to purchase a cashier's check. The said clerk is then required to give the client an application form to be filled up and direct the latter to the teller, who will receive the payment for the cashier's check such client wishes to purchase. Only after payment and confirmation by the cashier would the cashier's check be signed by the same and issued to the client thereof. This rule of procedure was confirmed by petitioner in its memorandum<sup>27</sup> dated August 5, 2004, wherein it stated that the "[b]ank policy further states that all cash received by tellers should be counted and verified in the presence of the depositor prior to validation."

Petitioner had undeniably shown its tolerance and/or acceptance to such practice of showing leniency to its long-time and valued clients when it comes to applying its policies and rules through its indifference and continued defense of infractions committed by Tago, at the expense of herein respondent.

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<sup>26</sup> *Rollo*, pp. 108-115.

<sup>27</sup> *Id.* at 407-408.

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It is clear that whether or not Mr. Basubas was left behind to oversee the counting of the monies inside the bag, the cashier's check should not have been issued to Mrs. Basubas before the counting had been completed by respondent and verified by the bank's cashier, Tago. Under normal circumstances, a cashier's check valued at ₱1,358,000.00 would not have been issued off-handedly to a client without confirmation and/or validation that the bank had received the exact amount from the former, and thereby risk coming up short in the end. Since the cashier's check was immediately issued by the cashier, Tago to Mrs. Basubas before the counting of the monies inside the two bags were completed and verified by the former, it just shows the extent of consideration they are giving to the spouses Basubas, who was their long-time and valued client. Thus, given the circumstances, it cannot be said that respondent was solely responsible and moreover, the proximate cause of the incident that happened afterwards.

Petitioner's inaction or silence regarding the premature issuance of the cashier's check to the spouses Basubas speaks volumes of its implied consent to such practice, when it comes to its long-time and valued clients. In fact, nowhere in the records did it even address such infirmity committed by one of its employees, when it was the proximate cause of why the incident had happened. Thus, petitioner cannot put all fault solely to herein respondent, considering her negligence was not the proximate cause of the incident.

*Petitioner had failed to prove that respondent's action constituted dishonesty and willful breach of trust resulting to loss of confidence*

Petitioner also attributes dishonesty and loss of trust and confidence against respondent by reason that the missing ₱13,000.00 was found within her cubicle.

Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: 1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or 2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property. In any of these situations, it is the employee's

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breach of trust that his or her position holds which results in the employer's loss of confidence.<sup>28</sup>

To justify the employee's dismissal on the ground of willful breach of trust (or loss of confidence as interchangeably referred to in jurisprudence), the employer must show that the employee indeed committed act/s constituting breach of trust, which act/s the courts must gauge within the parameters defined by the law and jurisprudence.<sup>29</sup> To reiterate, it is the breach of the employer's trust, to the specific employee's act/s which the employer claims caused the breach, which the law requires to be willful, knowingly and purposefully done by the employee to justify the dismissal on the ground of loss of trust and confidence.<sup>30</sup> Thus, it must be shown that the employee concerned is responsible for the misconduct or infraction and that the nature of his/her participation therein rendered him/her absolutely unworthy of the trust and confidence demanded by his/her position.<sup>31</sup>

Significantly, loss of confidence is, by its nature, subjective and prone to abuse by the employer. Thus, the law requires that the breach of trust – which results in the loss of confidence – must be willful. The breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.<sup>32</sup>

Verily, respondent held a position of trust and confidence as a bank teller. However, the findings of the LA and NLRC (in its Resolution) that she willfully committed a breach of petitioner's trust is highly doubtful and unfounded at most. It was established that a search on the person of respondent, her personal belongings and cubicle was conducted by Sg. Misal, but it yielded nothing. Moreover, Tago admitted in her incident report dated July 8, 2004, that she saw nothing on the floor and in the nooks below the sliding door cabinets of respondent's work area except for a red ballpen at the time of the search. Now, whether the search done was cursory or thorough would the responsibility of the officer-in-charge at that time, not that of the respondent, especially wherein the client's money is involved and the suspect was respondent herself. Assuming that respondent was thoroughly searched by Sg. Misal, it was very unlikely that he missed the bundles of money under respondent's desk otherwise, it would call upon the competency of the bank's personnel and the bank itself, having direct control and supervision over the performance of its employees' duties.

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<sup>28</sup> *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, supra note 19, at 86.

<sup>29</sup> *Id.* at 77.

<sup>30</sup> *Id.* at 87.

<sup>31</sup> *See Galsim v. Philippine National Bank*, 139 Phil. 747 (1969).

<sup>32</sup> *Lima Land, Inc. v. Cuevas*, 635 Phil. 36, 50 (2010); *Dela Cruz v. National Labor Relations Commission*, 335 Phil. 932, 942 (1997).

During the search, respondent was asked to step out of her cubicle and spouses Fernandez was left with Sg. Misal to witness the same, while Tago accompanied spouses Basubas to her office to take their statements. After spouses Basubas and spouses Fernandez left the bank, Tago immediately went to respondent's cubicle to inform her about the lapses she had committed during the incident. It was during this time that Tago said that she noticed for the first time, the bundles of money beside respondent's feet. Thus, relying on the narration given by both respondent and Tago, the former was being monitored most of the time, if not all, throughout the search conducted by Sg. Misal and could not have possibly hidden the missing ₱13,000.00 on her person, her personal belongings and her cubicle until the time of its discovery, assuming that Sg. Misal and Tago performed the search meticulously.

Furthermore, respondent submits that she willingly took a polygraph test to clear her name of the charges against her, which she eventually passed.

The Court in *People v. Adoviso*<sup>33</sup> had the opportunity to discuss the weight of the results of a polygraph test as evidence of guilt or innocence of the examinee, to wit:

A polygraph is an electromechanical instrument that simultaneously measures and records certain physiological changes in the human body that are believed to be involuntarily caused by an examinee's conscious attempt to deceive the questioner. The theory behind a polygraph or lie detector test is that a person who lies deliberately will have a rising blood pressure and a subconscious block in breathing, which will be recorded on the graph. **However, x x x polygraph tests when offered in evidence for the purpose of establishing the guilt or innocence of one accused of a crime, whether the accused or the prosecution seeks its introduction, for the reason that polygraph has not as yet attained scientific acceptance as a reliable and accurate means of ascertaining truth or deception.** The rule is no different in this jurisdiction. Thus, in *People v. Daniel*, stating that much faith and credit should not be vested upon a lie detector test as it is not conclusive. (Emphasis supplied; citation omitted)

While the Court held that the results of a polygraph test cannot be offered in evidence to prove the guilt or innocence of an accused in a crime, it does not mean that it has no weight at all. Unlike in criminal cases where the prosecution is required to establish proof beyond reasonable doubt, the burden of proof needed in labor cases is merely substantial evidence. Section 5, Rule 133 of the Rules of Court defines substantial evidence as "that

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368 Phil. 297, 310-311 (1999).

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amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”

Thus, the results of the polygraph test may be used in conjunction with other corroborative evidence to prove an allegation made by a party. In this case, the culmination of the facts from the time when the spouses Basubas left the bags of money to respondent and leading up the discovery of the missing ₱13,000.00 in her cubicle is insufficient to prove that respondent took and hid the money, as discussed earlier. Leaving the guesswork on how Sg. Misal and Tago both did not see the said missing money when they searched respondent’s cubicle earlier, aside from mere suspicions or speculations, petitioner had no basis at all to support its claims. It could have presented the videos from its closed-circuit television cameras to present a reasonable explanation on how the missing ₱13,000.00 ended up in respondent’s cubicle and show that respondent was responsible for the same, but instead relied on assumptions and statements made by Tago in its investigation. The required quantum of proof to hold that respondent is guilty of dishonesty and willful breach of trust resulting to loss of confidence is substantial evidence, which is more than a mere scintilla of evidence or relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>34</sup>

As for the claim of petitioner that respondent is guilty of qualified theft, the Court finds that it has no basis in fact and in law considering that no charges were filed against respondent and neither was she convicted in court for the same.

While an employer has the inherent right to discipline its employees, we have always held that this right must always be exercised humanely, and the penalty it must impose should be commensurate to the offense involved and to the degree of its infraction.<sup>35</sup> The employer should bear in mind that, in the exercise of such right, what is at stake is not only the employee’s position, but her livelihood as well.<sup>36</sup> Thus, when the act complained of is not so grave as to result in a complete loss of trust and confidence, a lower penalty such as censure, warning or even suspension would be more circumspect.<sup>37</sup> This is more true considering that during her nine years of service with petitioner, respondent was not even once reprimanded or suspended from her employment and had maintained a good service record in her work at the said bank.

<sup>34</sup> *Agusan Del Norte Electric Cooperative, Inc. v. Cagampang*, 589 Phil. 306, 313 (2008).

<sup>35</sup> *See Dongon v. Rapid Movers and Forwarders Co., Inc.*, 716 Phil. 533, 545-546 (2013).

<sup>36</sup> *Pioneer Texturizing Corp. v. National Labor Relations Commission*, 345 Phil. 1057, 1066 (1997).

<sup>37</sup> *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, supra note 20, at 371.



Given the foregoing, respondent is rightfully entitled to reinstatement and backwages, reckoned from the date she was illegally dismissed until the finality of this decision, in accordance with jurisprudence.<sup>38</sup> However, the Court recognizes the impracticality of reinstatement of respondent as a substantial period of time had already lapsed since she was illegally dismissed from her employment. Coupled with the fact that there is an undeniable strained relations existing among petitioner, respondent and Tago, even before the instant case was filed before the courts, it is best that separation pay *in lieu* of reinstatement should be awarded to herein respondent.

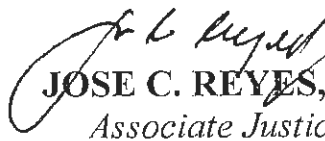
In *Golden Ace Builders v. Talde*,<sup>39</sup> citing *Macasero v. Southern Industrial Gases Philippines*,<sup>40</sup> the Court held that:

Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition of payment of backwages.

**WHEREFORE**, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision and the Resolution of the Court of Appeals dated August 8, 2011 and May 11, 2012, respectively, in CA-G.R. SP No. 03070, are **AFFIRMED**.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

<sup>38</sup> *Javellana, Jr. v. Belen*, 628 Phil. 241, 249 (2010).

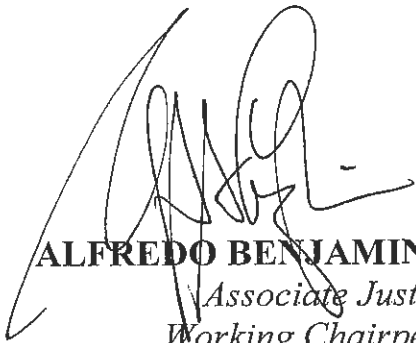
<sup>39</sup> 634 Phil. 364, 370 (2010).

<sup>40</sup> 597 Phil. 494, 501 (2009).

**WE CONCUR:**



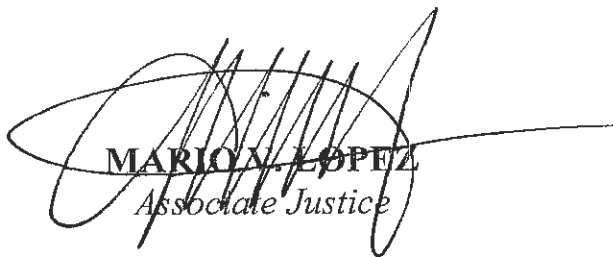
**DIOSDADO M. PERALTA**  
*Chief Justice*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Working Chairperson*



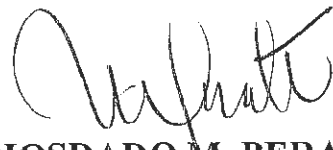
**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**MARION LOPEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**DIOSDADO M. PERALTA**  
*Chief Justice*

