



Republic of the Philippines  
**SUPREME COURT**  
Manila

**THIRD DIVISION**

**WESLEYAN UNIVERSITY-  
PHILIPPINES,**

Petitioner,

- versus -

**NOWELLA REYES,**

Respondent.

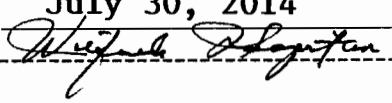
**G.R. No. 208321**

Present:

VELASCO, JR., *J.*, Chairperson,  
PERALTA,  
VILLARAMA, JR.,<sup>\*</sup>  
MENDOZA, and  
LEONEN, *JJ.*

Promulgated:

July 30, 2014

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**DECISION**

**VELASCO, JR., *J.*:**

**Nature of the Case**

The issue in this petition boils down to the legality of respondent Nowella Reyes' termination as University Treasurer of petitioner Wesleyan University – Philippines (WUP) on the ground of loss of trust and confidence. Petitioner prays in this recourse that We reverse the February 28, 2013 Decision of the Court of Appeals (CA) in CA-G.R. SP No. 122536 which declared respondent's termination illegal.

**The Facts**

On March 16, 2004, respondent Nowella Reyes was appointed as WUP's University Treasurer on probationary basis. A little over a year after, she was appointed as full time University Treasurer.

On April 27, 2009, a new WUP Board of Trustees was constituted. Among its first acts was to engage the services of Nepomuceno Suner & Associates Accounting Firm (External Auditor) to investigate circulating rumors on alleged anomalies in the contracts entered into by petitioner and in its finances.

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<sup>\*</sup> Acting member per Special Order No. 1691 dated May 22, 2014.



Discovered following an audit were irregularities in the handling of petitioner's finances, mainly, the encashment by its Treasury Department of checks issued to WUP personnel, a practice purportedly in violation of the imprest system of cash management, and the encashment of various crossed checks payable to the University Treasurer by Chinabank despite management's intention to merely have the funds covered thereby transferred from one of petitioner's bank accounts to another. The External Auditor's report embodied the following findings and recommendations:<sup>1</sup>

**Treasury Department (Cash Management):**

***Findings:***

1. It was noted that checks consisting of various checks payable to teachers, staffs and other third parties had been the subject of encashment directly with the Treasury Department under the stewardship of Mrs. Nowella A. Reyes, the University Treasurer. This practice is a clear violation of imprest system of cash management, hence, resulting to unsound accounting practice. This laxity in cash management of those checks were paid as intended for them.

***Recommendations:***

For internal control reasons, the treasury should not accept any check encashment from its daily collections. Checks are being issued for encashment with our depository bank for security reasons. The mere acceptance of checks from the collections is tantamount to cash disbursement out of collections.

***Findings:***

2. It was also noted that various checks payable to the Treasurer of WUP x x x had been negotiated for encashment directly to China Bank – Cabanatuan Branch, while the intention of the management for these checks were merely for fund transfer with the other account maintained at China Bank. This practice is a violation not only in the practice of accounting/cash custodianship but had been mingled with spurious elements. Unfortunately, check vouchers relating to this exception are nowhere to be found or not on file.

***Findings:***

3. A crossed check payable to the Treasurer – [WUP] x x x had been negotiated for encashment to China Bank – Cabanatuan Branch despite of the restriction indicated in the face of the check. Unfortunately, the used check was no longer found on file.

As a result of said audit, petitioner served respondent a Show Cause Order and placed her under preventive suspension.<sup>2</sup> The said Show Cause Order required her to explain the following matters found by the External Auditors:

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<sup>1</sup> *Rollo*, p. 36.

<sup>2</sup> *Id.* at 47.

- (a) your encashment of Php300,000.00 of a crossed check you issued payable to yourself (Chinabank Check No. 000873613 dated 26 November 2008) x x x;
- (b) the encashment of various checks without any supporting vouchers x x x;
- (c) unliquidated cash advances in the aggregate amount of Php9.7 million x x x.<sup>3</sup>

On June 18, 2009, respondent submitted her Explanation. Following which, WUP's Human Resources Development Office (HRDO) conducted an investigation. Finding respondent's Explanation unsatisfactory, the HRDO, on July 2, 2009, submitted an Investigation Report<sup>4</sup> to the University President containing its findings and recommending respondent's dismissal as University Treasurer.

Upon receipt of her notice of termination on July 9, 2009, respondent post-haste filed a complaint for illegal dismissal with the Arbitration Branch of the National Labor Relations Commission. She contended that her dismissal was illegal, void and unjust, for the following reasons:

*First*, her 60-day preventive suspension violated the Labor Code provisions prohibiting such suspensions to last for more than thirty (30) days. Thus, the fact that she was not reinstated to her former position before the lapse of thirty (30) days, amounted to constructive dismissal;<sup>5</sup>

*Second*, there was a violation of her right to substantive and procedural due process, as evidenced by petitioner's failure to apply the pertinent due process provisions under its Administrative and Personnel Policy Manual;<sup>6</sup> and

*Finally*, the charges against her were based on mere suspicion and speculations and unsupported by evidence.<sup>7</sup>

Petitioner, for its part, predicated its defense on the contention that respondent was a highly confidential employee who handled significant amounts of money as University Treasurer and that the irregularities attributed to her in the performance of her duties justify her dismissal on the basis of loss of trust and confidence.<sup>8</sup>

Petitioner also averred that the 60-day preventive suspension thus imposed does not necessarily make such suspension void, inasmuch as the law merely requires that after a 30-day preventive suspension, the affected employee shall automatically be reinstated. But in the case of respondent, there was no need for her automatic reinstatement inasmuch as she was duly

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<sup>3</sup> Id.

<sup>4</sup> Id. at 58-62.

<sup>5</sup> Id. at 23.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

terminated within the 30-day period of her preventive suspension.<sup>9</sup> Moreover, respondent was duly afforded her right to due process since WUP substantially complied with the twin-notice rule.

### **Ruling of the Labor Arbiter**

On December 15, 2010, Labor Arbiter Reynaldo V. Abdon rendered a Decision finding for respondent. The dispositive portion of the Labor Arbiter Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, DECLARING that complainant Nowella Reyes x x x [was] illegally dismissed by respondent Wesleyan University Philippines.

Accordingly, respondent Wesleyan University Philippines through its President is hereby DIRECTED to:

- (1) Reinstate complainant Nowella Reyes to her former or equivalent position without loss of seniority right;
  - (1.1) Since reinstatement is immediately executory, to render a Report of Compliance to this Office within ten (10) days from receipt of this Decision.
- (2) Pay complainant Reyes her backwages, from the time of her dismissal until reinstatement, the present sum of which is P429,000.00;
- (3) Pay complainant Reyes, her 13<sup>th</sup> month pay in the sum of P52,000; her shared (sic) in related learning experience fee, P12,000.00; clothing allowance, P6,000.00; Honorarium as member of standing committees, P4,000.00; and her vacation leave credits in the sum of P17,862.59;
- (4) Pay complainant Reyes, moral damages in the sum of P150,000.00, exemplary damages in the amount of P100,000.00, and 10% attorney's fees in the sum of P77,086.25;

x x x x

SO ORDERED.<sup>10</sup>

The Labor Arbiter noted, as respondent has insisted, that the charges against the latter were based on mere rumors and speculations. As observed too by the Labor Arbiter, petitioner itself was in the wrong because it had no proper policies on its accounting and financial procedures and that the encashment and accommodation of checks to personnel, especially after banking hours, had been the practice of its previous and present administrations. Thus, it was unfair to put all the blame on respondent without any evidence that her actions were highly irregular, unfair or unjustified.<sup>11</sup>

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<sup>9</sup> Id. at 24.

<sup>10</sup> Id. at 24-25.

<sup>11</sup> Id. at 39.

As regards petitioner's findings on the alterations in the Check Disbursement Voucher (CDV), unliquidated cash advances and duplicate checks, the Labor Arbiter found and wrote:

Anent the alleged finding of the university that there was material alteration on the documents as regards the Check Disbursement Voucher (CDV), for allegedly there was an absence of Board Resolution entry in the CDV filed in the Accounting while the copy submitted by the Treasurer has a Board Resolution entry as well as the word ATM on the payee portion on the photocopy as crossed out while in the original it was not crossed out, respondent cannot summarily state that complainant was at fault. The Human Resource should have conducted an in-depth investigation on this matter. Unfortunately, respondent just followed the twin-notice rule, and did not conduct a thorough administrative investigation in accordance with their own internal rules and policies in the Manual. Consequently, this Office has serious doubt that such matter was the fault of the complainant for the blame may fall on the accounting personnel who is handling the CDV.

With respect to the unliquidated cash advances, it is not likewise the fault of the complainant. She pointed out that follow ups of the liquidation is [sic] being handled by the auditor, while respondent claims that she was previously handling the same before it was transferred to Accounting Office in August 2008. We see no evidence to prove that the liquidation is being handled by the complainant prior to August 2008. Moreover, it is common practice that the Treasurer disburses the funds such as cash advances but the liquidation must be done by the beneficiary of the fund, and the responsible people who should follow up the liquidation is the accounting office.

With respect to the duplicate checks, the same were done by a syndicate or individuals not connected with the University. The bank has already admitted responsibility in the encashment of these checks and had returned the amounts to the respondent University, thus complainant has no fault about this incident.<sup>12</sup>

### **Ruling of the NLRC**

Petitioner filed an appeal with the National Labor Relations Commission (NLRC) which was granted in the tribunal's Decision dated July 11, 2011, declaring that respondent was legally dismissed. However, petitioner was ordered to pay respondent her proportionate 13<sup>th</sup> month pay, the monetary value of her vacation leave, and attorney's fees.

Adopting a stance entirely opposite to that of the Labor Arbiter, the NLRC held that respondent failed to controvert and disprove the established charges of petitioner (as appellant-respondent) and instead conveniently put the blame on other departments for her inculpatory acts. The NLRC opined that her termination was not motivated by the change of petitioner's officers but by the University's goal to promote the economy and efficiency of its Treasury Department.<sup>13</sup>

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<sup>12</sup> Id. at 40.

<sup>13</sup> Id. at 62.

In net effect, the NLRC found petitioner's contention of loss of trust and confidence in respondent with sufficient basis. While respondent, so the NLRC notes, may not have been guilty of **willful** breach of trust, the fact that she held a highly confidential position, and considering that anomalous transactions transpired under her command responsibility, provided petitioner with ample ground to distrust and dismiss her.<sup>14</sup> The NLRC explained:

In this case, complainant-appellee [herein respondent] may not have been guilty of willful breach of trust. But as Treasurer of [WUP] who handles and supervises all monetary transactions in the University and being a highly confidential employee at that, holding trust and confidence and after considering the series of irregular and anomalous transactions that transpired under complainant-appellee's command responsibility, respondent has basis or ample reason to distrust complainant-appellee. Thus, we cannot justly deny [WUP] the authority to dismiss complainant-appellee.

The principle of respondent (sic) superior or command responsibility may be cited as basis for the termination of employment of managerial employees based on loss of trust and confidence.

In the Etcuban case (Ibid) the Supreme Court in upholding the validity of petitioner-employee's dismissal on the ground of loss of trust and confidence, ruled that even if the employee x x x had no actual and direct participation in the alleged anomalies, his failure to detect any anomaly that would normally fall within the scope of his work reflects his ineffectiveness and amounts to gross negligence and incompetence which are likewise justifiable grounds for his irregularity, for what is material is that his actuations were more than sufficient to sow in his employer the seed of mistrust and loss of confidence.

As found by the External Auditor, complainant-appellee should have implemented an imprest system of cash management in order to secure the indicated payees in those checks and they were paid of the checks as intended for them. It appears that checks payable to teachers, staffs and other third parties had been the subject of encashment directly with the Treasury Department x x x and this is an unsound accounting practice.

Moreover, the External Auditors found that various checks payable to the Treasurer of Wesleyan University has been negotiated for encashment directly to China Bank-Cabanatuan Branch while the intention of the management for those checks were merely for fund transfer with the other account maintained at China Bank. That this practice violated accounting or cash custodianship and check vouchers are nowhere to be found.

Further, the crossed check payable to the Treasurer (complainant-appellee) in the amount of P300,000.00 dated 26 November 2008 had been negotiated for encashment to China Bank – Cabanatuan Branch despite of restriction indicated in the face of the check and that the used check was no longer found on file. There is a need for a clear policy when to issue crossed-checks or otherwise and the use of debit/credit memo to

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<sup>14</sup> Id. at 63.

transfer one account to another with the same bank. That these acts of violation of cash and check custodianship by complainant-appellee resulted in the loss of respondent-appellant thus affecting the economy of the respondent-appellant institution.

In view of our finding that respondents-appellants (sic) has validly terminated complainant-appellee the latter's claim for damages and attorney's fees lacks sufficient factual and legal basis. Accordingly, the Labor Arbiter's decision directing the reinstatement of complainant-appellee with full backwages is hereby vacated and set aside.<sup>15</sup>

The NLRC denied respondent's motion for reconsideration in a Resolution dated September 29, 2011. Therefrom, respondent went on Certiorari to the CA, in CA-G.R. SP No. 122536.

### **Ruling of the Court of Appeals**

On February 28, 2013, the CA, through its assailed Decision,<sup>16</sup> found the NLRC's ruling tainted with grave abuse of discretion and reinstated the Decision of the Labor Arbiter. The *fallo* of the CA Decision reads:

**WHEREFORE**, premises considered, the assailed Decision and Resolution of the National Labor Relations Commission dated July 11, 2011 and September 29, 2011 are **REVERSED and SET ASIDE**. The Decision of the Labor Arbiter dated December 15, 2010 is hereby **REINSTATED**, subject to the modification that if reinstatement is no longer feasible, petitioner shall be awarded separation pay equivalent to one month salary for every year of service reckoned from the time of employment to the finality of this decision.<sup>17</sup>

Holding that respondent's termination was unjust, the CA, in virtual restoration of the findings and conclusions of the Labor Arbiter, pointed out, among others, that: (1) respondent sufficiently countered all charges against her; (2) it had been the practice of the previous and present administrations of petitioner to encash and accommodate checks of WUP personnel; thus, it would be unjust to penalize respondent for observing a practice already in place when she assumed office; (3) the duty to liquidate cash advances is assigned to the internal auditor; (4) it has been established that the encashments of spurious duplicate checks were perpetrated by individuals not connected with WUP, and that the bank admitted responsibility therefor and had returned the amount involved to petitioner; (5) there was no imputation of any violation of the University's Administration and Personnel Policy Manual; (6) while the acts complained of violated the imprest system of cash management, there was no showing that the said system had been adopted and observed in the school's accounting and financial procedures; and (7) there was no showing that respondent had the responsibility to

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<sup>15</sup> Id. at 63-64.

<sup>16</sup> Penned by Associate Justice Pricilla J. Baltazar-Padilla and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio.

<sup>17</sup> *Rollo*, p. 41.

implement changes in petitioner's accounting system even if it were not in accordance with the generally accepted principles of accounting.<sup>18</sup>

Hence, the instant petition.

### **The Issues**

For consideration herein are the following issues raised by petitioner:

1. Whether or not the CA over-reached its power of review under Rule 65 of the Rules of Court when it reversed the judgment of the NLRC; and
2. Whether or not the CA erred in finding respondent illegally dismissed by petitioner on the ground of loss of trust and confidence.

### **The Court's Ruling**

The petition is impressed with merit. The CA erred in reinstating the Labor Arbiter's Decision and in finding that respondent was illegally dismissed.

#### **The CA's power of review**

We first resolve the procedural issue raised in this recourse. Petitioner contends that the CA over-reached its power of review under Rule 65 when it substituted its own judgment over errors of judgment that it found in the NLRC Decision, stressing that the province of a writ of certiorari is to correct only errors of jurisdiction and not errors of judgment.

This contention is misplaced. It is settled that under Section 9 of *Batas Pambansa Blg. 129*,<sup>19</sup> as amended by Republic Act No. 7902,<sup>20</sup> the CA, pursuant to the exercise of its original jurisdiction over petitions for certiorari, is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. Sec. 9 clearly states:

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x

Hence, the appellate court acted within its sound discretion when it re-evaluated the NLRC's factual findings and substituted the latter's own judgment.

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<sup>18</sup> Id. at 37-38.

<sup>19</sup> An Act Reorganizing the Judiciary, Appropriating Funds therefor, and for Other Purposes.

<sup>20</sup> An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of *Batas Pambansa Blg. 129*, as Amended, Known as the Judiciary Reorganization Act of 1980.



## Loss of trust and confidence as a ground for termination

We now proceed to the substantive issue on the propriety of respondent's dismissal due to loss of trust and confidence. As provided in Art. 282(c) of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines:

**Article 282. Termination by employer.** An employer may terminate an employment for any of the following causes:

x x x x

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

We explained in *M+W Zander Philippines, Inc. v. Enriquez*<sup>21</sup> the requisites of a valid dismissal based on loss of trust and confidence. As the case elucidates:

Article 282 (c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. Certain guidelines must be observed for the employer to terminate an employee for loss of trust and confidence. We held in **General Bank and Trust Company v. Court of Appeals**, viz.:

[L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith.

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence.

There are two classes of positions of trust: managerial employees and fiduciary rank-and-file employees.

Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.

The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, etc., or those who, in the normal exercise of their functions, regularly handle significant amounts of money

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<sup>21</sup> G.R. No. 169173, June 5, 2009, 588 SCRA 590.

or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.<sup>22</sup>

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The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence. To be a valid cause for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts.<sup>23</sup>

To summarize, the *first* requisite is that the employee concerned must be one holding a position of trust and confidence, thus, one who is either: (1) a managerial employee; or (2) a fiduciary rank-and-file employee, who, in the normal exercise of his or her functions, regularly handles significant amounts of money or property of the employer. The *second* requisite is that the loss of confidence must be based on a willful breach of trust and founded on clearly established facts.

In *Lima Land, Inc. v. Cuevas*,<sup>24</sup> We discussed the difference between the criteria for determining the validity of invoking loss of trust and confidence as a ground for terminating a managerial employee on the one hand and a rank-and-file employee on the other. In the said case, We held that with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer would not suffice. With respect to a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. The following excerpts from *Lima Land* are instructive:

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized.

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his

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<sup>22</sup> Id. at 602-604.

<sup>23</sup> Id. at 606.

<sup>24</sup> G.R. No. 169523, June 16, 2010, 621 SCRA 36.

employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.

On the other hand, loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.<sup>25</sup>

**Respondent's employment classification is irrelevant in light of her proven willful breach**

There is no doubt that respondent held a position of trust; thus, greater fidelity is expected of her. She was not an ordinary rank-and-file employee but an employee occupying a very sensitive position. As University Treasurer, she handled and supervised all monetary transactions and was the highest custodian of funds belonging to WUP.<sup>26</sup> To be sure, in the normal exercise of her functions, she regularly handled significant amounts of money of her employer and managed a critical department.

The presence of the first requisite is certain. So is as regards the second requisite. Indeed, the Court finds that petitioner adequately proved respondent's dismissal was for a just cause, based on a willful breach of trust and founded on clearly established facts as required by jurisprudence. At the end of the day, the question of whether she was a managerial or rank-and-file employee does not matter in this case because not only is there basis for believing that she breached the trust of her employer, her involvement in the irregularities attending to petitioner's finances has also been proved.

To recall, petitioner, per its account, allegedly lost trust and confidence in respondent owing to any or an interplay of the following events: (1) she encashed a check payable to the University Treasurer in the amount of three hundred thousand pesos (PhP 300,000); (2) she encashed crossed checks payable to the University Treasurer, when the intention of management in this regard was to merely transfer funds from one of petitioner's accounts to another in the same bank; (3) she allowed the Treasury Department to encash the checks issued to WUP personnel rather than requiring the latter to have said checks encashed by the bank, in violation of the imprest system of accounting; (4) she caused the disbursement of checks without supporting check vouchers; (5) there were

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<sup>25</sup> Id. at 46-47.

<sup>26</sup> *Rollo*, p. 52.

unliquidated cash advances; and (6) spurious duplicate checks bearing her signature were encashed causing damage to petitioner.

We disagree with the CA's finding that respondent has sufficiently countered all inculpatory allegations and accusations against her. On the contrary, We find that here, there was an admitted, actual and real breach of duty committed by respondent, which translates into a breach of trust and confidence in her. For perspective, respondent's explanation as to the charges against her is as follows:

1. *That the alleged crossed check issued by her payable to THE TREASURER – WUP was done in the exercise of her duty and function as such, and not with her name and not to herself and personal favor, and that said check had been prepared passing through the usual system;*
2. *That the University heads were the beneficiaries of said amount who strongly requested that their love gift be given, hence, the encashment;*
3. *That the amount of the check was properly disposed of as evidenced by the document bearing the signatures of recipients;*
4. *That the Office to point to if vouchers and supporting documents will have to be checked concerning payments made is the Accounting Office;*
5. *That cash advances to various University personnel pass through her office in the exercise of her duties as such but the office who follow up the liquidation of payments received is the Office of the University Auditor;*
6. *That respondent Reyes adopted her reply on the show-cause order in the investigation previously conducted by Dr. Jeremias Garcia about the duplicated checks alleging among others:*
  - a) *She and her staff confirmed that only the checks issued to General Capulong and Leodigario David were encashed by the University Teller;*
  - b) *The check issued to Norma de Jesus was encashed by the Pick-up Chinabank Teller on December 5, 2008 while collecting deposits from the University with the assistance of the University teller;*
  - c) *That the check issued to Mercedes was not encashed with the University teller but with WEMCOOP;*
  - d) *As to the encashment and accommodation of checks to personnel, it has been the practice of previous and present administration moreso when employees cannot anymore go to Chinabank to transact business as it is mostly beyond banking hours when checks are ready for disbursement;*
  - e) *That Respondent's department has no control over fraudulent transactions done outside the University, that it is the Bank's duty to protect its clients as to the proper procedures to secure our account;*
  - f) *That the computer system program of the University's depository bank has very limited capabilities to detect fraudulent entries;*
  - g) *That the signature verifier also had been remiss in carefully checking the authenticity of previous signatories.*<sup>27</sup>

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<sup>27</sup> Id. at 61-62.

### **a. Respondent's encashment of checks**

As it were, respondent did not deny, in fact admitted, the encashment of the three hundred thousand peso (PhP 300,000) crossed check payable to the University Treasurer which covered the total amount of the "love gift" for administrative and academic officials of WUP. Neither did she deny the fact that the Treasury Department encashed checks issued to WUP personnel rather than requiring them to have the checks encashed by the bank. Instead, she explained that the beneficiaries of the amounts strongly requested that their love gifts be given in cash, hence the encashment of the PhP 300,000 crossed check and, thereafter, the accommodation and encashment of their checks directly by the Treasury Department. Moreover, she submitted a document bearing the signatures of the recipients of the "love gift" as proof that the amount was disposed properly.<sup>28</sup> She further insisted that this was the usual practice of the University and that she merely accommodated the requests of WUP personnel especially when Chinabank was already closed.

Jurisprudence has pronounced that the crossing of a check means that the check may not be encashed but only deposited in the bank.<sup>29</sup> As Treasurer, respondent knew or is at least expected to be aware of and abide by this basic banking practice and commercial custom. Clearly, the issuance of a crossed check reflects management's intention to safeguard the funds covered thereby, its special instruction to have the same deposited to another account and its restriction on its encashment.

Here, respondent, as aptly detailed in the auditor's report, disregarded management's intentions and ignored the measures in place to secure the handling of WUP's funds. By encashing the crossed checks, respondent put the funds covered thereby under the risk of being lost, stolen, co-mingled with other funds or spent for other purposes. Furthermore, the accommodation and encashment by the Treasury Department of checks issued to WUP personnel were highly irregular. First, WUP, not being a bank, had no business encashing the checks of its personnel.<sup>30</sup> More importantly, in encashing the said checks, the Treasury Department made disbursements contrary to the wishes of management because, in issuing said checks, management has made clear its intention that monies therefor would be sourced from petitioner's deposit with Chinabank, under a specific account, and not from the cash available in the Treasury Department.

That the encashment of crossed checks and payment of checks directly to WUP personnel had been the practice of the previous and present administration of petitioner is of no moment. To Our mind, this was simply respondent's convenient excuse, a poorly disguised afterthought, when her

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<sup>28</sup> Id. at 97.

<sup>29</sup> *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, G.R. No. 93048, March 3, 1994, 230 SCRA 643.

<sup>30</sup> By definition, a check is a written order addressed to a bank or a person carrying on the business of banking, by a party having money in their hands, requesting them to pay on presentment, to a person named therein or to bearer or order, a named sum of money. See *Moran v. Court of Appeals*, G.R. No. 105836, March 7, 1994, 230 SCRA 799.

unbecoming carelessness in managing WUP's finances was exposed. Moreover, the prevalence of this practice could have been contained if only respondent consistently observed the regular procedure for encashing crossed checks and properly handled requests for accommodation of checks issued to the WUP personnel.

### **b. Unliquidated cash advances**

On the matter of unliquidated cash advances in the aggregate amount of nine million seven hundred thousand pesos (PhP 9,700,000), respondent explained that while it was true that cash advances to WUP personnel passed through her office in the exercise of her duties as University Treasurer, the office that follows up the liquidation of advances received is the office of the University Auditor.<sup>31</sup> However, granting that the responsibility of handling the liquidation of cash advances is no longer lodged in her office, there is proof showing that before the Treasury Department was relieved of said responsibility, the total unliquidated cash advances was even bigger, amounting to eleven million five hundred thirty-three thousand two hundred thirty pesos and thirty-seven centavos (PhP 11,533,230.37). There is nothing in the records before us showing that respondent denied the following findings in the Investigation Report of the WUP's Human Resource Development Office (HRDO) on this matter, to wit:

*In the matter of unliquidated cash advances in the aggregate amount of Php9.7million as found by the External Auditors, respondent's contention was that cash advances to various University personnel pass through her office in the exercise of her duties as such but the office who follows up the liquidation of payments received is the Office of the University Auditor.*

*On the inquiry done x x x of the Internal Auditor, Treasury and Accounting officer on July 1, 2009, it was found out that the responsibility of handling cash advances and liquidation report was transferred from Treasury Office to Accounting Office on August 2008, when Ms. Luzviminda Torres, the personnel handling the same detailed at the Treasury Office went on leave. It was transferred to Ms. Julieta Mateo. What was surprising was that as per certification and summary submitted by Ms. Mateo, the amount of unliquidated cash advances previous to August 2008, when the same was under the responsibility of the Treasury Office, was even bigger with the total amount of ELEVEN MILLION FIVE HUNDRED THIRTY THREE THOUSAND, TWO HUNDRED THIRTY PESOS AND THIRTY SEVEN CENTAVOS (Attached as Annex "G")*

*Even if there is truth in the contention of herein Respondent that she was no longer the one in charge of the liquidation proceedings, the same would not absolve her from gross negligence of duties. The fact that the said function was with her office until August 2008, with unliquidated cash advances even bigger, still showed that she reneged in her duties which she had overlooked for so long. She now mistakenly points the responsibility to the Office of the University Auditor. These informations*

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<sup>31</sup> Rollo, p. 98.

*are enough to be considered as Respondent's acts constitutive of breach of trust and confidence.*<sup>32</sup> x x x

**c. Other irregularities in respondent's performance**

In all, We find the Investigation Report of the HRDO a credible, extensive and thorough account of respondent's involvement in incidents which are sufficient grounds for petitioner's loss of trust and confidence in her, to wit:

**Respondent Nowella C. Reyes has committed breach of trust and confidence in the conduct of her office.**

*In her answer, Respondent admitted the encashment of the crossed check with the defense that the same was done in the performance of her duty, not for her personal use but because of the request of University heads who wanted their love gifts be given. She also admitted habitual encashment of checks issued by the University to its personnel on the basis of practice of previous administration.*

*The charge against Respondent of the act of improper encashment of a check, which aside from being irregular is clearly violative of imprest system of cash management. Moreover, the same being a crossed check, should not be negotiated for encashment to Chinabank – Cabanatuan Branch because of the restriction indicated on its face, which Mrs. Reyes, by reason of her office knew very well.*

*During the investigation conducted, it was revealed that the check disbursement voucher attached by Respondent on her answer to justify the regularity of its issuance and eventual encashment was not exactly the same as the one filed at the Accounting Office. It showed that the photocopy of the original CDV which was attached by Respondent (attached as Annex "E" of this report) bear some material alterations, namely:*

- 1. The absence of entry of the Board Resolution which was reflected as a sort of inquiry by the Internal Auditor, and which at present was left blank on the original, as compared to the photocopy submitted by respondent bearing an entry of the Board Resolution number;*
- 2. The word ATM on the payee portion of the CDV in the original as compared to the photocopy wherein the entry ATM was crossed out.*

*During a discussion with the external auditors, it was categorically stated by them that during the course of external audit, said document was inexistent in the records presented by the Accounting and Treasurer's Offices. The production of the photocopy by Respondent already altered only after the suspension was effected cast doubt on the regularity of its issuance, negating her otherwise claim. Another significant observation was that the original copy of CDV (attached as Annex "F" of this report) and corresponding signatures of administrative heads who received payments showed folded marks halfway, with the fastener holes unmatched, showing that those two documents were not really filed together, as regularly done, and the same were not filed in the regular*

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<sup>32</sup> Id. at 59-60.

*course and must have been kept previously on a different manner in possession of person other than the office which must file the same.*

*x x x x*

*On the last charge in the show cause order specifically the existence of duplicate checks in the account of the University amounting to Php 1.050 Million, included in Respondent's defenses were that among the checks duplicated, only two of them were encashed with the University Teller, and the check originally named to Norma de Jesus as payee was paid by the pick-up teller only through the assistance of the University teller.*

*Again, Respondent's defense were void of truth and merit. The act of encashing checks issued by the Treasury Office, clearly violative of imprest system of cash management which Mrs. Reyes by reason of her office knew very well, showed that Respondent directly reneged in her duty to observe economic security measures.*

*As found on the documents attached to the Investigation report of Dr. Garcia which had been expressly adopted by herein respondent in her answer is an Affidavit of Norma de Jesus stating that she actually encashed the check with the personnel of the Treasury Office particularly Shirley Punay, who gave her the amount equivalent days after the check was handed to the Treasury office.*

*However noble the intention of herein Respondent in helping her fellow workers in the University by her acts of accommodation by encashing their checks directly with the Treasury Office when Chinabank was already closed, the same still reneged in her duty to protect the economic security of the University. An act of misconduct which caused [sic]<sup>33</sup>*

An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer. A company has the right to dismiss its employees if only as a measure of self-protection. This is all the more true in the case of supervisors or personnel occupying positions of responsibility.<sup>34</sup> In this case, let it be remembered that respondent was not an ordinary rank-and-file employee as she was no less the Treasurer who was in charge of the coffers of the University. It would be oppressive to require petitioner to retain in their management an officer who has admitted to knowingly and intentionally committing acts which jeopardized its finances and who was untrustworthy in the handling and custody of University funds.

**WHEREFORE**, premises considered, we **GRANT** the petition. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 122536 is, thus, **SET ASIDE**. The Decision of the National Labor Relations Commission in NLRC RAB III Case No. 07-15131-09 is **REINSTATED**.

**SO ORDERED.**

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<sup>33</sup> Id. at 58-60.

<sup>34</sup> *MGG Marine Services, Inc. v. NLRC*, G.R. No. 114313, July 29, 1996, 259 SCRA 664.



**PRESBITERO J. VELASCO, JR.**

Associate Justice

WE CONCUR:



**DIOSDADO M. PERALTA**

Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice

**JOSE CATRAL MENDOZA**

Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
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.

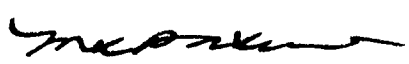
**PRESBITERO J. VELASCO, JR.**

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