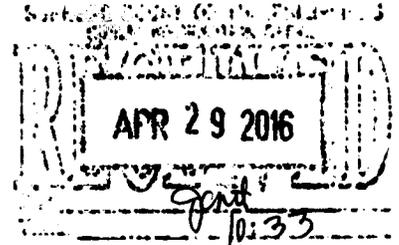




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

SECURITY BANK SAVINGS CORPORATION (formerly PREMIERE DEVELOPMENT BANK) /HERMINIO M. FAMATIGAN, JR.,
 Petitioners,

G.R. No. 214230

Present:

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 JARDELEZA, JJ.

- versus -

CHARLES M. SINGSON,
 Respondent.

Promulgated:

FEB 10 2016

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ is the Decision² dated May 21, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 121053, which affirmed the Decision³ dated April 25, 2011 and the Resolution⁴ dated June 17, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 08-001972-10, sustaining the award of separation pay by way of financial assistance to respondent Charles M. Singson (respondent) despite having been dismissed for just cause.

The Facts

On November 25, 1985, respondent was initially employed by petitioner Premiere Development Bank (now Security Bank Savings

¹ *Rollo*, pp. 20-30.

² *Id.* at 7-16. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison concurring.

³ *Id.* at 51-58. Penned by Commissioner Mercedes R. Posada-Lacap with Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley concurring.

⁴ *Id.* at 75-76.

Corporation [SBSC]) as messenger until his promotion as loans processor at its Sangandaan Branch. Thereafter, he was appointed as Acting Branch Accountant and, in June 2007, as Acting Branch Manager. On March 26, 2008, he was assigned to its Quezon Avenue Branch under the supervision of Branch Manager Corazon Pinero (Pinero) and held the position of Customer Service Operations Head (CSOH) tasked with the safekeeping of its checkbooks and other bank forms.⁵

On July 22, 2008, respondent received a show-cause memorandum⁶ from Ms. Ruby O. Go, head of West Regional Operations, charging him of violating the bank's Code of Conduct when he mishandled various checkbooks under his custody. The matter was referred to SBSC's Investigation Committee which discovered, among others, that as of July 11, 2008, forty-one (41) pre-encoded checkbooks of the Quezon Avenue Branch were missing.⁷

At the scheduled conference before the Investigating Committee, respondent readily admitted having allowed the Branch Manager (*i.e.*, Pinero) to bring out of the bank's premises the missing checkbooks and other bank forms on the justification that the latter was a senior officer with lengthy tenure and good reputation. He claimed that it was part of Pinero's marketing strategy to procure more clients for the bank and that he did not receive any consideration for consenting to such practice. He added that the reported missing checkbooks had been returned by Pinero to his custody after the inventory.⁸

Pending investigation, respondent was transferred to SBSC's Pedro Gil Branch. On September 30, 2008, he was again issued a memorandum⁹ directing him to explain his inaccurate reporting of some Returned Checks and Other Cash Items (RCOCI) which amounted to ₱46,279.33. The said uncovered amount was treated as an account receivable for his account.¹⁰

A month thereafter, respondent was again transferred and reassigned to another branch in Sampaloc, Manila.¹¹ Dismayed by his frequent transfer to different branches, respondent tendered his resignation¹² on November 10, 2008, effective thirty (30) days from submission. However, SBSC rejected the same in view of its decision to terminate his employment on November 11, 2008 on the ground of habitual neglect of duties.¹³

⁵ Id. at 8 and 44.

⁶ NLRC records, p. 71.

⁷ *Rollo*, pp. 8-9 and 44-45. See also NLRC records, p. 73.

⁸ *Rollo*, pp. 9-10.

⁹ NLRC records, p. 72.

¹⁰ *Rollo*, p. 10.

¹¹ Id. at 10.

¹² NLRC records, p. 74.

¹³ *Rollo*, pp. 10 and 46.

Consequently, respondent instituted a complaint for illegal dismissal with prayer for backwages, damages, and attorney's fees against SBSC and its President, Herminio M. Famatigan, Jr. (petitioners), before the NLRC, docketed as NLRC-NCR Case No. 10-14683-09.¹⁴

For their part,¹⁵ petitioners maintained that respondent was validly dismissed for cause on the ground of gross negligence in the performance of his duties when he repeatedly allowed Pinero to bring outside the bank premises its pre-encoded checks and accountable forms in flagrant violation of the bank's policies and procedures, and in failing to call Pinero's attention on the matter which was tantamount to complicity and consent to the commission of said irregularity.¹⁶

The LA Ruling

In a Decision¹⁷ dated July 26, 2010, the Labor Arbiter (LA) dismissed the complaint and accordingly, declared respondent to have been terminated from employment for a valid cause. The LA found that respondent not only committed a violation of SBSC's Code of Conduct but also gross and habitual neglect of duties when he repeatedly allowed Pinero to bring outside the bank premises the checkbooks and bank forms despite knowledge of the bank's prohibition on the matter. According to the LA, the fact that SBSC suffered no actual loss or damage did not in any way affect the validity of his termination. This notwithstanding, the LA awarded respondent separation pay by way of financial assistance in the amount of ₱218,500.00.

Aggrieved, petitioners appealed¹⁸ to the NLRC, docketed as NLRC NCR Case No. 10-14683-09, assailing the grant of financial assistance to respondent despite a finding that he was validly dismissed.

The NLRC Ruling

In a Decision¹⁹ dated April 25, 2011, the NLRC affirmed the LA decision, ruling that the grant of separation pay was justified on equitable grounds such as respondent's length of service, and that the cause of his dismissal was not due to gross misconduct or that reflecting on his moral character but rather, a weakness of disposition and grievous error in judgment.²⁰ It likewise observed that respondent never repeated the act

¹⁴ Id. at 10.

¹⁵ See Position Paper dated January 2, 2008; NLRC records, pp. 22-55.

¹⁶ *Rollo*, p. 47.

¹⁷ Id. at 44-49. Penned by Labor Arbiter Jose G. De Vera.

¹⁸ See Notice of Appeal and Memorandum of Appeal dated August 20, 2010; NLRC records, pp. 149-174.

¹⁹ *Rollo*, pp. 51-58.

²⁰ Id. at 57.

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complained of when he was transferred to other branches. Thus, it found the award of separation pay of one-half (½) month pay for every year of service to be reasonable.

Petitioners moved for reconsideration²¹ which was likewise denied in a Resolution²² dated June 17, 2011, prompting them to elevate the matter to the CA on *certiorari*, docketed as CA-G.R. SP No. 121053.²³

The CA Ruling

In a Decision²⁴ dated May 21, 2014, the CA denied the petition and sustained the award of separation pay.

The CA pointed out that separation pay may be allowed as a measure of social justice where an employee was validly dismissed for causes other than serious misconduct or those reflecting on his moral character. It held that since respondent's infractions involved violations of company policy and habitual neglect of duties and not serious misconduct, and that his dismissal from work was not reflective of his moral character, the NLRC committed no grave abuse of discretion in sustaining the award of separation pay by way of financial assistance. It further concluded that respondent did not commit a dishonest act since he readily admitted to the petitioners that he allowed the Branch Manager to bring out the subject checkbooks. Moreover, it ruled that while respondent acquiesced to the latter's marketing strategy that was contrary to the bank's rules and regulations, there was no showing that his conduct was perpetrated with self-interest or for an unlawful purpose.

Hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in upholding the award of separation pay as financial assistance to respondent despite having been validly dismissed.

The Court's Ruling

The petition is meritorious.

²¹ See motion for reconsideration dated May 18, 2011; *id.* at 59-73.

²² *Id.* at 75-76.

²³ *Id.* at 77-114.

²⁴ *Id.* at 7-16.

Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 298²⁵ and 299²⁶ of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible.²⁷ On the other hand, an employee dismissed for any of the just causes enumerated under Article 297²⁸ of the same Code, being causes attributable to the employee's fault, is not, as a general rule, entitled to separation pay. The non-grant of such right to separation pay is premised on the reason that an erring employee should not benefit from their wrongful acts.²⁹ Under Section 7,³⁰ Rule I, Book VI of the Omnibus Rules Implementing the Labor Code, such dismissed employee is nonetheless entitled to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

As an exception, case law instructs that in certain circumstances, the grant of separation pay or financial assistance to a legally dismissed employee has been allowed as a measure of social justice or on grounds of equity. In *Philippine Long Distance Telephone Co. v. NLRC (PLDT)*,³¹ the Court laid down the parameters in awarding separation pay to dismissed employees based on social justice:

- ²⁵ As renumbered pursuant to Department Advisory No. 01, Series of 2015. Formerly Article 283. **Closure of Establishment and Reduction of Personnel.** – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.
- ²⁶ Formerly Article 284. **Disease as Ground for Termination.** – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to (½) one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.
- ²⁷ *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) – Katipunan*, 629 Phil. 247, 257 (2010).
- ²⁸ Formerly Article 282. **Termination by Employer.** – An employer may terminate an employment for any of the following causes:
- (a) Serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
 - (b) Gross and habitual neglect by the employee of his duties;
 - (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
 - (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
 - (e) Other causes analogous to the foregoing.
- ²⁹ See *Solidbank Corporation v. NLRC*, 631 Phil. 158, 168-175 (2010); and *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. NLRC*, 562 Phil. 759, 808-817 (2007).
- ³⁰ Section 7. *Termination of employment by employer.* – The just causes for terminating the services of an employee shall be those provided in Article 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.
- ³¹ 247 Phil. 641 (1988).

There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. x x x It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. x x x.

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a little leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.³² (Emphasis supplied)

Thus, in the *PLDT* case, the Court required that the grant of separation pay as financial assistance given in light of social justice be allowed only when the dismissal: (a) was not for serious misconduct; and (b) does not reflect on the moral character of the employee or would involve moral turpitude.

However, in the later case of *Toyota Motor Philippines Corporation Workers Association v. NLRC (Toyota)*,³³ the Court further excluded from the grant of separation pay based on social justice the other instances listed

³² Id. at 648-649.

³³ Supra note 29, at 812.

under Article 282 (now 296) of the Labor Code, namely, willful disobedience, **gross and habitual neglect of duty**, fraud or willful breach of trust, and commission of a crime against the employer or his family. But with respect to analogous cases for termination like inefficiency, drug use, and others, the social justice exception could be made to apply depending on certain considerations, such as the length of service of the employee, the amount involved, whether the act is the first offense, the performance of the employee, and the like.³⁴

Thus, in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*,³⁵ citing *Toyota*, the Court set aside the award of separation pay as financial assistance to the dismissed employee in view of the gross and habitual neglect of his duties, pointing out that the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers:

To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Article 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.³⁶

Guided by the foregoing, the Court finds the CA to have erred in awarding separation pay.

To reiterate, the grant of separation pay to a dismissed employee is primarily determined by the cause of the dismissal. In the case at bar, respondent's established act of repeatedly allowing Branch Manager Pinero to bring the checkbooks and bank forms outside of the bank's premises in violation of the company's rules and regulations had already been declared by the LA to be gross and habitual neglect of duty under Article 282 of the Labor Code, which finding was not contested on appeal by respondent. It was petitioners who interposed an appeal solely with respect to the award of separation pay as financial assistance. As they aptly pointed out, the infractions, while not clearly indicative of any wrongful intent, is, nonetheless, serious in nature when one considers the employee's functions, rendering it inequitable to award separation pay based on social justice. As

³⁴ Id.

³⁵ 580 Phil. 177 (2008).

³⁶ Id. at 189.

the records show, respondent was the custodian of accountable bank forms in his assigned branch and as such, was mandated to strictly comply with the monitoring procedure and disposition thereof as a security measure to avoid the attendant high risk to the bank. Indeed, it is true that the failure to observe the processes and risk preventive measures and worse, to take action and address its violation, may subject the bank to regulatory sanction. It bears stressing that the banking industry is imbued with public interest. Banks are required to possess not only ordinary diligence in the conduct of its business but extraordinary diligence in the care of its accounts and the interests of its stakeholders. The banking business is highly sensitive with a fiduciary duty towards its client and the public in general, such that central measures must be strictly observed.³⁷ It is undisputed that respondent failed to perform his duties diligently, and therefore, not only violated established company policy but also put the bank's credibility and business at risk. The excuse that his Branch Manager, Pinero, merely prompted him towards such ineptitude is of no moment. He readily admitted that he violated established company policy against bringing out checkbooks and bank forms,³⁸ which means that he was well aware of the fact that the same was prohibited. Nevertheless, he still chose to, regardless of his superior's influence, disobey the same not only once, but on numerous occasions. All throughout, there is no showing that he questioned the acts of Branch Manager Pinero; neither did he take it upon himself to report said irregularities to a higher authority. Hence, under these circumstances, the award of separation pay based on social justice would be improper.

A similar ruling was reached in the case of *Philippine National Bank v. Padao*³⁹ where the Court disallowed the payment of separation pay as financial assistance to an employee, *i.e.*, a credit investigator in a bank, who has repeatedly failed to perform his duties which amounted to gross and habitual neglect of duties under Article 282 (now 296) of the Labor Code:

The role that a credit investigator plays in the conduct of a bank's business cannot be overestimated. The amount of loans to be extended by a bank depends upon the report of the credit investigator on the collateral being offered. If a loan is not fairly secured, the bank is at the mercy of the borrower who may just opt to have the collateral foreclosed. If the scheme is repeated a hundredfold, it may lead to the collapse of the bank.

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Padao's repeated failure to discharge his duties as a credit investigator of the bank amounted to gross and habitual neglect of duties under Article 282 (b) of the Labor Code. He not only failed to perform what he was employed to do, but also did so repetitively and habitually, causing millions of pesos in damage to PNB. Thus, PNB acted within the bounds of the law by meting out the penalty of dismissal, which it deemed appropriate given the circumstances.

³⁷ See *rollo*, pp. 26-27.

³⁸ *Id.* at 47.

³⁹ 676 Phil. 290 (2011).

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However, Padao is not entitled to financial assistance. In *Toyota Motor Phils. Corp. Workers Association v. NLRC*, the Court reaffirmed the general rule that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes **other than serious misconduct, willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character**. These five grounds are just causes for dismissal as provided in Article 282 of the Labor Code.⁴⁰

Notably, respondent's long years of service and clean employment record will not justify the award of separation pay in view of the gravity of the foregoing infractions.⁴¹ Length of service is not a bargaining chip that can simply be stacked against the employer.⁴² As ruled in *Central Pangasinan Electric Cooperative, Inc. v. NLRC*:⁴³

Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity under the Labor Code nor under our prior decisions. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.⁴⁴

All told, the Court finds that the award of separation pay to respondent as a measure of social justice is not warranted in this case. A contrary ruling would effectively reward respondent for his negligent acts instead of punishing him for his offense, in observation of the principle of equity.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 21, 2014 of the Court of Appeals in CA-G.R. SP No. 121053 is hereby **REVERSED** and **SET ASIDE** deleting the award of separation pay in favor of Charles M. Singson.

⁴⁰ Id. at 306-307 and 311.

⁴¹ *Immaculate Conception Academy v. Camilon*, G.R. No. 188035, July 2, 2014, 728 SCRA 689, 704.

⁴² *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa – Katipunan*, supra note 27, at 260.

⁴³ 555 Phil. 134 (2007).

⁴⁴ Id. at 139-140.

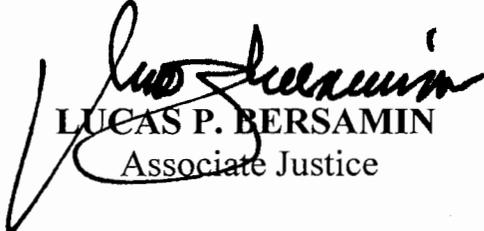
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

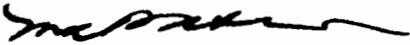

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


FRANCIS H. JARDELEZA
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.


MARIA LOURDES P. A. SERENO
Chief Justice